

LALU PRASAD @ LALU PRASAD YADAV

v.

STATE OF JHARKHAND

(Criminal Appeal No.1166 of 2013)

AUGUST 13, 2013

**[P. SATHASIVAM, CJI, RANJANA PRAKASH DESAI
AND RANJAN GOGOI, JJ.]**

Criminal trial - Fodder scam - Prosecution initiated in 1997 - After prolonged trial, the matter reached final stage, namely, pronouncement of the decision - Petition filed by appellant at this stage for transfer of the case from the Court of Special Judge IV, CBI (AHD) to any other court of competent jurisdiction on the apprehension that a fair and impartial trial cannot be done by the aforesaid court - Dismissed by High Court - Justification - Held: Claim of appellant for transfer of the entire case from the file of the Special Judge to any other competent court cannot be entertained - Merely because some of the distantly related members were in the midst of the present Chief Minister, it cannot be presumed that the Presiding Judge would conclude against the appellant - If appellant really had any apprehension in his mind, this could have been raised at the earliest point of time and not after conclusion of evidence and arguments, particularly, on the eve of pronouncement of judgment - Objection relating to bias on the eve of passing orders, cannot be entertained - In a matter of this nature, it is not at all desirable to shift the case to some other court at the last hour - Also, procedure adopted by the Special Judge cannot be faulted with, except one aspect which was also noticed by the High Court i.e. intimating the parties in the midst of the arguments and compelling them to file written arguments on or before a particular date - Except the said recourse, which is not in consonance with the scheme of the

- A *Code, particularly, in a criminal trial, considering the magnitude of the case pending since 1997, the conduct of the Judge cannot be faulted with - Inconvenience, if any, can be set at right by granting further time for arguments - Further time of 5 days granted for the prosecution and 15 days for all*
- B *the accused including the appellants - Transfer petition.*

- Judiciary - Independence of - Requirement of upholding the dignity of high office with full sense of responsibility - Held: Independence of judiciary is basic feature of the Constitution - Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State - Public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent.*
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- Administration of Justice - Held: In administering justice, Judges should be able to act impartially, objectively and without any bias.*
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- A sum of Rs.35.66 crores was alleged to have been illegally withdrawn from the Treasury of Chaibasa by the officials of Animal Husbandry Department, Government of Bihar in connivance with the politicians and suppliers in the year 1994-95 which culminated into the registration of a FIR being R.C. No. 20(A)/1996 dated 27.03.1996 under Sections 409, 420, 467, 468, 471, 477, 477A, 201, 511 read with Section 120B of IPC and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 against a number of accused persons including the appellants.**
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- After investigation, a charge sheet was submitted in the Court of the Special Judge IV, CBI (AHD), Ranchi in the year 1997 and the charges were framed in the year**
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2000 in respect of various offences punishable under the IPC and the PC Act. The prosecution argued its case against the appellant from 22.04.2013 to 15.05.2013 and thereafter the case was posted on 16.05.2013 for arguments to be advanced on behalf of the appellant on day-to-day basis which continued till 31.05.2013. On 10.06.2013, an order was passed by the Special CBI Judge stating that on the next date, if the arguments would not be advanced on behalf of the appellant, the case will be closed. Thereupon, the arguments were advanced for 5 more days till 18.06.2013. On 20.06.2013, a notice was issued by the trial Judge informing all the parties that written arguments may be filed on or before 01.07.2013 and judgment is to be delivered on or before 15.07.2013.

At this stage, Criminal Misc. Petition was filed before the High Court by the appellant for the transfer of the case from the Court of Special Judge IV, CBI (AHD) to any other court of competent jurisdiction on the apprehension that a fair and impartial trial cannot be done by the aforesaid court. The High Court dismissed the petition which resulted in the present appeal by way of special leave.

The appellant made two fold submissions:- 1) that conduct of the trial Judge made it obvious that fair opportunity was not being given to the appellant to defend himself and there was every likelihood that he would not get justice, hence, it was a fit case for transfer; and (ii) that the Presiding Judge was related to a political rival of the appellant who was also a Minister in the Government of Bihar; and in such circumstance, because of the relationship and closeness, the appellant may not get fair justice at the hands of the Presiding Judge.

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A Dismissing the appeal, the Court

B HELD: 1.1. On going through all the details including
the Order Sheet of the Fodder Scam case, it is clear that
the procedure adopted by the Special Judge cannot be
faulted with, except one aspect which was also noticed
C by the High Court intimating the parties in the midst of
the arguments and compelling them to file written
arguments on or before 01.07.2013 and judgment to be
pronounced on 15.07.2013. Except the said recourse,
D which is not in consonance with the scheme of the Code,
particularly, in a criminal trial, considering the magnitude
of the case pending since 1997, the conduct of the Judge
cannot be faulted with. In view of the same, this Court is
inclined to provide further time for the accused as well
as prosecution to complete their arguments, if they so
desire. [Para 8] [172-E-H]

E 1.2. Merely because some of the distantly related
members were in the midst of the present Chief Minister,
it cannot be presumed that the Presiding Judge would
conclude against the appellant. Admittedly, the above
criminal proceedings were heard by the very same Judge
from November, 2011. After examination of witnesses and
after hearing the arguments on both the sides, it is not
F clear how the appellant has such an apprehension at this
stage. If the appellant really had any apprehension in his
mind, this could have been raised at the earliest point of
time and not after the conclusion of evidence and
arguments, particularly, on the eve of pronouncement of
G judgment. In administering justice, Judges should be
able to act impartially, objectively and without any bias.
The only error which the Special Judge has committed
is that after granting time for arguments, it abruptly
issued a notice informing the parties that the written
arguments are to be submitted on or before 01.07.2013
and the judgment would be delivered on or before
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15.07.2013. Inconvenience, if any, can be set at right by granting further time for arguments. Accordingly, the claim of the appellant for transfer of the entire case from the file of the Special Judge to any other competent court cannot be entertained. The prosecution was initiated as early as in 1997 and after prolonged trial, the matter has reached final stage, namely, pronouncement of the decision. In a matter of this nature, it is not at all desirable to shift the case to some other court at the last hour. [Para 10] [174-C-H; 175-A]

1.3. In the light of the entire factual scenario, particularly, the objection relating to bias which came to be raised at the fag end of the trial that is on the eve of passing orders, this Court is not inclined to entertain such objection. The Presiding Judge will take note of the grievance expressed and eliminate the apprehension of the appellant. It goes without saying that every litigant is entitled to fair justice. [Para 12] [175-D]

1.4. Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent. [Para 13] [175-E-G]

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A 1.5. There is no valid and acceptable reason for
interference with the impugned order of the High Court.
However, keeping in view the submissions made that
arguments are still to be advanced, a further time of 5
B days is granted for the prosecution and 15 days for all
the accused including the appellant. After completion of
the arguments as prescribed, the Special Judge shall
pronounce the decision as early as possible,
uninfluenced by any of the observations made by the
High Court and this Court. [Paras 14] [176-A-B]

C *Manak Lal, Advocate vs. Dr. Prem Chand Singhvi and
Ors. AIR 1957 SC 425: 1957 SCR 575 - referred to.*

Case Law Reference:

D 1957 SCR 575 referred to Para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1166 of 2013.

E From the Judgment and Order dated 01.07.2013 of the
High Court of Jharkhand at Ranchi in CrI. M.P. No. 1619 of
2013.

F Mohan Parasaran, S.G., Ram Jethmalani, P.H. Parekh,
Shanti Bhushan, E.R. Kumar, Karan Kalia, Praanv Diesh, P.R.
Mala, Galav Sharma, Ekansh Mishra (Parekh & Co.), D.L.
Chidananda, Anupam Prasad, Rohit Sharma, B.V. Balaram
Das, Rohit K. Singh, Gopal Singh, Kartik Seth, Manish Kumar
for the appearing parties.

The Judgment of the Court was delivered by

G **P. SATHASIVAM, CJI.** 1. Leave granted.

2. This appeal is directed against the final judgment and
order dated 01.07.2013 passed by the High Court of
Jharkhand at Ranchi in Criminal Misc. Petition No. 1619 of

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2013 whereby the High Court dismissed the petition filed by the appellant herein for transferring the case being R.C. No. 20(A)/1996 from the Court of Special Judge-IV, CBI, (AHD), Ranchi to any other Court of competent jurisdiction.

3. Brief facts:

(a) This appeal relates to illegal withdrawal of a sum of Rs.35,66,42,086/- from the Treasury of Chaibasa by the officials of Animal Husbandry Department, Government of Bihar in connivance with the politicians and suppliers in the year 1994-95 which culminated into the registration of a First Information Report (FIR) being R.C. No. 20(A)/1996 dated 27.03.1996 under Sections 409, 420, 467, 468, 471, 477, 477A, 201, 511 read with Section 120B of the Indian Penal Code, 1860 (in short 'the IPC') and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') against a number of accused persons including the appellant herein.

(b) After investigation, a charge sheet was submitted in the Court of the Special Judge IV, CBI (AHD), Ranchi in the year 1997 and the charges were framed in the year 2000 in respect of various offences punishable under the IPC and the PC Act. The prosecution started its arguments and concluded on 10.12.2012 and the arguments advanced on behalf of 43 out of 45 accused persons got concluded on 25.02.2013. The prosecution argued its case against the appellant from 22.04.2013 to 15.05.2013 and, thereafter, the case was posted on 16.05.2013 for arguments on behalf of the appellant which continued till 31.05.2013. Considering the fact that the matter has been lingering on since 1997, the Court below passed an order dated 10.06.2013 that on the next date, if the arguments would not be advanced on behalf of the appellant, it shall be closed. Thereupon, the arguments were advanced till 18.06.2013. On 20.06.2013, a notice was issued by the trial Judge informing all the parties that written arguments may be filed on or before 01.07.2013 and judgment is to be delivered

A on or before 15.07.2013. At this stage, Criminal Misc. Petition
 No. 1619 of 2013 was filed before the High Court by the
 appellant for the transfer of the case from the Court of Special
 Judge IV, CBI (AHD) to any other court of competent jurisdiction
 on the apprehension that a fair and impartial trial cannot be
 B done by the aforesaid court.

(c) The High Court, after considering the rival submissions
 and taking note of the fact that the case has reached the stage
 of delivering judgment, by order dated 01.07.2013, provided a
 C further time of 10 days for conclusion of the arguments and
 dismissed the petition which resulted in the present appeal by
 way of special leave.

(d) On the day when the matter was posted for hearing,
 one Rajiv Ranjan Singh @ Lallan Singh, Member of the Lok
 D Sabha from Munger Parliamentary Constituency in the State of
 Bihar, filed Criminal Misc. Petition No. 14939 of 2013 seeking
 intervention in the abovesaid appeal. It was also stated that he
 was one of the writ petitioners before the High Court of Patna
 in a writ petition filed in public interest which led to the
 E unearthing of the fodder scam in the State of Bihar during the
 period 1977 to 1996. According to him, he has been fighting
 all along for a free and fair investigation of the case and
 expeditious conclusion of the trial so that the guilty are brought
 to book and public confidence in the judicial system is not
 F shaken. It is also highlighted that due to various orders of the
 monitoring Bench of the High Court of Jharkhand, the matter
 has reached its concluding stage, hence, there is no bona fide
 and the claim of the appellant is devoid of any merit and
 deserves to be dismissed in the interest of justice.

G (e) Serious objection was raised by the appellant and the
 respondent-State through its Investigation Officer-CBI about the
 role of the intervenor in a criminal trial.

4. Heard Mr. Ram Jethmalani, learned senior counsel for
 H the appellant, Mr. Mohan Parasaran, learned Solicitor General

for the respondent-CBI and Mr. Shanti Bhushan, learned senior counsel for the intervenor. A

Submissions:

5. Mr. Ram Jethmalani, learned senior counsel for the appellatant, at the foremost, submitted as under:- B

(i) The conduct of the trial Judge gives a reasonable apprehension of not getting fair justice. In other words, according to him, from the conduct of the trial Judge, it is obvious that fair opportunity was not being given to the appellatant to defend himself and there is every likelihood that he would not get justice, hence, it is a fit case for transfer; and C

(ii) The younger sister of the Presiding Judge of the CBI, viz., Mrs. Minu Devi, is married to Mr. Jainendra Shahi, the cousin of Mr. P.K. Shahi, who, besides having appeared for the CBI, is a political rival of the appellatant in the Public Interest Litigations and presently a Minister in the Government of Bihar. In such circumstance, according to Mr. Jethmalani, because of the relationship and closeness, the appellatant may not get fair justice at the hands of the Presiding Judge. D E

6. On the other hand, Mr. Mohan Parasaran, learned Solicitor General appearing for the CBI, after adverting to the factual scenario, left the issue to the decision of this Court, however, he strongly pointed out about the maintainability of the application for intervention. F

7. Mr. Shanti Bhushan, learned senior counsel for the intervenor, by placing the factual details starting from the taking of cognizance, filing of the charge sheet, various dates on which the evidence was led in by both the sides and the arguments advanced submitted that it is not a fit case for transfer at this juncture, particularly, when the Special Judge is going to pronounce the judgment shortly. He also submitted that the applicant has filed several petitions before the High Court as G H

A well as in this Court highlighting various issues relating to 'fodder scam'.

Discussion:

B 8. With regard to the first submission relating to the apprehension in the mind of the appellant that he may not get fair and impartial trial, it is relevant to point out that cognizance of various offences punishable under the IPC and the PC Act was taken against the accused persons in the year 1997 and charges were framed against them in the year 2000. It is further
C seen that the prosecution took 13 years in examining the witnesses. The prosecution argued its case against the present appellant from 22.04.2013 to 15.05.2013 and thereafter the case was posted on 16.05.2013 for arguments to be advanced on behalf of the appellant on day-to-day basis which continued
D till 31.05.2013. It is the grievance of the appellant that on 10.06.2013, an order was passed by the Special Judge stating that on the next date, if the arguments would not be advanced on behalf of the appellant, the case will be closed. Thereupon, the arguments were advanced for 5 more days till 18.06.2013.
E On 20.06.2013, a notice was issued by the trial Judge informing all the parties that written arguments may be filed on or before 01.07.2013 and judgment is to be delivered on or before 15.07.2013. On going through all the details including the Order Sheet of the Fodder Scam case, we are of the view
F that the procedure adopted by the Special Judge cannot be faulted with except one aspect which was also noticed by the High Court intimating the parties in the midst of the arguments and compelling them to file written arguments on or before 01.07.2013 and judgment to be pronounced on 15.07.2013.
G Except the said recourse, which is not in consonance with the scheme of the Code, particularly, in a criminal trial, considering the magnitude of the case pending since 1997, the conduct of the Judge cannot be faulted with. In view of the same, this Court is inclined to provide further time for the accused as well as prosecution to complete their arguments, if they so desire.
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9. Coming to the second apprehension about the closeness of the trial Judge with the person in power, it is pointed out that Mr. P.K. Shahi, Ex-Advocate General of the State of Bihar, presently a Minister in the Government of Bihar is a close relative of the trial Judge. While elaborating further, Mr. Ram Jethmalani submitted that the sister of the Presiding Judge, Mrs. Minu Devi, is married to Mr. Jainendra Shahi, grand son of Late Fulena Shahi, whose one of the brothers was Late Hari Shankar Shahi and Mr. P.K. Shahi happens to be the grand son of Late Hari Shankar Shahi and as such Jainendra Shahi, husband of the sister of trial Judge happens to be the cousin of Mr. P.K. Shahi, who on account of his defeat in a Parliamentary election at the hands of the candidate belonging to the appellant's party is quite anxious to settle the score by making his influence to get the appellant convicted so that there would be a political death of the appellant. With regard to the above aspect, Mr. Jethmalani heavily relied on a decision of this Court in *Manak Lal, Advocate, vs. Dr. Prem Chand Singhvi & Ors.*, AIR 1957 SC 425 and submitted that with regard to bias, proof of actual prejudice is not necessary. This Court, in paragraph 4 of the judgment, enunciated the following principles:

"4.....It is well settled that every member of a Tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done....."

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A 10. In order to substantiate the contention relating to bias,
namely, the Presiding Judge would be influenced by his
brother-in-law or even by his sister or Mr. P.K. Shahi to go
against the interest of the appellant, Mr. Ram Jethmalani,
learned senior counsel, placed some photographs taken on
B 13.01.2013 during the visit of Hon'ble the Chief Minister of
Bihar Shri Nitish Kumar to the ancestral house of Shri P.K.
Shahi along with the entire Shahi family at House No. 147
Village Angota Block, Nautan P.S., District Sivan. By showing
these photographs, it is argued that there is a reasonable
C apprehension of real likelihood of bias on the part of the
Presiding Judge. Apart from the relationship, as mentioned by
the appellant, we were also shown the genealogical table. In
our opinion, merely because some of the distantly related
members were in the midst of the present Chief Minister, it
D cannot be presumed that the Presiding Judge would conclude
against the appellant. Admittedly, the above criminal
proceedings were heard by the very same Judge from
November, 2011. After examination of witnesses and after
hearing the arguments on both the sides, it is not clear how the
E appellant has such an apprehension at this stage. If the
appellant really had any apprehension in his mind, this could
have been raised at the earliest point of time and not after the
conclusion of evidence and arguments, particularly, on the eve
of pronouncement of judgment. In administering justice, Judges
should be able to act impartially, objectively and without any
F bias. The only thing which, according to us, is that the Special
Judge has committed an error that after granting time for
arguments, abruptly issued a notice informing the parties that
the written arguments are to be submitted on or before
G 01.07.2013 and the judgment would be delivered on or before
15.07.2013. As observed earlier, inconvenience, if any, can be
set at right by granting further time for arguments. Accordingly,
the claim of the appellant for transfer of the entire case from
the file of the Special Judge to any other competent court cannot
be entertained. We have already highlighted that the
H prosecution was initiated as early as in 1997 and after

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prolonged trial, the matter has reached final stage, namely, pronouncement of the decision. In our view, in a matter of this nature, it is not at all desirable to shift the case to some other court at the last hour.

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11. It is also brought to our notice that the case was being monitored by the High Court of Jharkhand at Ranchi by way of getting status/progress reports. We also noticed that the High Court at Ranchi, by order dated 17.06.2013, directed the trial Court to expeditiously proceed in the matter. In fact, the Court directed the trial Judge to submit a progress report by 06.08.2013.

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12. In the light of the entire factual scenario, particularly, the objection relating to bias which came to be raised at the fag end of the trial that is on the eve of passing orders, as observed earlier, we are not inclined to entertain such objection. The Presiding Judge, in our view, will take note of the grievance expressed and eliminate the apprehension of the appellant. It goes without saying that every litigant is entitled to fair justice.

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13. Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent.

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14. In the light of what is stated above, we do not find any

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- A valid and acceptable reason for interference with the impugned order of the High Court. However, keeping in view the submissions made that arguments are still to be advanced, we grant a further time of 5 days for the prosecution and 15 days for all the accused including the appellant herein. After
- B completion of the arguments as prescribed, we direct the Special Judge to pronounce the decision as early as possible, uninfluenced by any of the observations made by the High Court and this Court.
- C 15. The appeal is dismissed with the above direction. In view of the above conclusion, without expressing any opinion on the maintainability, the application for intervention is dismissed.

B.B.B.

Appeal dismissed.