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KANAKLATA

v.

STATE OF (NCT) OF DELHI & ORS.

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(Criminal Appeal No.222 of 2015)

FEBRUARY 04, 2015

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[T. S. THAKUR, ADARSH KUMAR GOEL AND  
R. BANUMATHI, JJ.]

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*Transfer petition: Complaint u/ss.3(1)(x), (xi), (xv) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 and ss.323/354, IPC – Sessions Judge, Rohini discharged the accused persons for offence under the Special Act of 1989 – High Court allowed the revision petition filed by the complainant with a direction to trial court to pass fresh order being uninfluenced by any observation made in earlier order – Complainant filed transfer petition*

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*on the ground that it apprehended biased approach of the trial court in view of its findings recorded in the order of discharge passed earlier – Session court dismissed the petition – Complainant filed transfer petition before the High Court which was also dismissed – On appeal, Held: **Majority***

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*view: In the ordinary course, if an order passed by the Court is set aside the observations and findings recorded therein also get obliterated for all intents and purposes – So also if the High Court makes the position clear that any such observation shall not influence the Court concerned while*

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*making a fresh order the same should ordinarily put the matter beyond the pale of any controversy – However, there may still be situations where the nature of the observations made by the court concerned create a reasonable*

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*apprehension in the mind of the litigant that the Court has so committed itself to a given approach or thought process that it may not be possible for it to retrace its steps to take a fair and non-partisan view in the matter – In the instant case, despite the safeguards provided by the High Court's observations, the apprehension of the complainant continued to subsist – Such apprehension cannot be said to be wholly misconceived nor can it be dubbed as forum shopping in disguise – The earlier order passed by trial Court was so strongly worded that it could in all likelihood give rise to a reasonable apprehension in the mind of the complainant which cannot be lightly brushed aside – On that test, High Court ought to have directed a transfer – In as much as it did not do so, it is directed to transfer the case to another Court – **Minority opinion:** Any casual observations made by a presiding officer of trial court would not be a sufficient ground for transfer for the reason that trial courts work in a charged atmosphere and they do not have the benefit of a detached atmosphere of the higher courts so as to think coolly and decide patiently – Appellant did not make out any sufficient ground for transfer.*

**Allowing the appeal, the Court**

**HELD: (Majority opinion) (Per T.S. Thakur and Adarsh Kumar Goel, JJ)**

**The trial court had while discharging the accused persons under the Special Act made certain observations about the alleged misuse of the provisions of the said Act by unscrupulous elements and also certain suggestions for remedying that situation. The trial court had come to the conclusion that there is no real basis for it to frame any charge against the accused persons under the said Act. But it is equally true that**

A while setting aside that order and directing a fresh order  
on the question of charge, the High Court has clearly  
mentioned that the trial Court shall remain uninfluenced  
by the observation made in its earlier order. That  
B observation is, in the opinion of the High Court, a  
sufficient safeguard against any possible prejudice to  
the complainant-appellant making transfer of the case  
from the Court at Rohini to any other Court unnecessary.  
C Now in the ordinary course if an order passed by the  
Court is set aside the observations and findings  
recorded therein also get obliterated for all intents and  
purposes. So also if the High Court makes the position  
D clear that any such observation shall not influence the  
Court concerned while making a fresh order the same  
should ordinarily put the matter beyond the pale of any  
controversy. Having said that, there may still be  
E situations where the nature of the observations made  
by the court concerned create a reasonable  
apprehension in the mind of the litigant that the Court  
has so committed itself to a given approach or thought  
F process that it may not be possible for it to retrace its  
steps to take a fair and non-partisan view in the matter.  
The present appears to be one such case where despite  
the safeguards provided by the High Court's  
G observations, the apprehension of the complainant  
continues to subsist. Such apprehension cannot be said  
to be wholly misconceived nor can it be dubbed as  
forum shopping in disguise. The earlier order passed  
by the trial Court is so strongly worded that it could in  
all likelihood give rise to a reasonable apprehension in  
H the mind of the complainant which cannot be lightly  
brushed aside. The question is whether the  
apprehension of the complainant is reasonable to direct  
a transfer. Justice must not only be done but must seem

to have been done. A lurking suspicion in the mind of the complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a preconceived notion about it. On that test the High Court ought to have directed a transfer. In as much as it did not do so, it is directed to transfer the case to another Court. [para 5] [565-F-H; 566-A-H; 567-A-B]

**HELD: (Minority opinion) (Per Banumathi, J)**

1. Earlier when the revision petition was allowed by the High Court and the matter was remitted back to the trial court, no apprehension of bias was expressed nor any request was made for a transfer of the case from the Special Court to some other court. Under Section 482 Cr.P.C., in order to secure ends of justice, the High Court has inherent power to pass appropriate order. Having accepted the order of remand to the trial court for consideration of the matter afresh, the appellant is not justified in seeking transfer. The appellant has neither challenged the said order of remand nor raised the apprehension that the trial court may not adopt a fair approach. The case was registered by the complainant who were the tenants against the respondents-landlords numbering as many as nine persons and the matter is pending trial since 2009. By filing transfer petition in 2013, the appellant seemed to appear to be interested only in delaying the matter. In considering the transfer application, it is to be kept in mind that whether a litigant could reasonably apprehend a bias attributable to a presiding Judge. Transfer of a case from one court to another has serious effects on the Judge from whom the case is sought to be transferred. Mere presumptions or possible assumptions are not sufficient for transfer

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A of a case. Only on good and sufficient grounds a transfer  
 can be ordered. The appellant has not made out any  
 good and sufficient ground for transfer. Any casual  
 observations made by a presiding officer of trial court  
 would not be a sufficient ground for transfer for the  
 B reason that the trial courts work in a charged atmosphere  
 and they do not have the benefit of a detached  
 atmosphere of the higher courts so as to think coolly  
 and decide patiently. Appellant did not make out any  
 sufficient ground for transfer and the request for transfer  
 C is bereft of merits. [Paras 5 to 9] [569-C-H; 570-A-C; 571-  
 C]

D *K.P. Tiwari v. State of M.P.* 1994 (Supp. 1) SCC 540 : 1993  
 (3) Suppl. SCR 497 – relied on.

#### Case Law Reference

Per Banumathi, J.:

E 1993 (3) Suppl. SCR 497 relied on Para 8

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No.  
 222 of 2015

F From the Judgment and Order dated 29.08.2013 of the High  
 Court of Delhi at New Delhi in Transfer Petition (Crl) No. 31 of  
 2013

Pankaj Kumar for the Appellant.

G Pinky Anand, ASG, P. K. Dey, Sadhna Sandhu, R. K. Tripathy,  
 D. S. Mahra for the Respondents.

The Judgments of the Court were delivered by

H **T. S. THAKUR, J.** 1. Leave granted.

2. This appeal arises out of an order dated 29th August, 2013 passed by a learned Single Judge of the High Court of Delhi whereby the High Court has dismissed T.P. (Crl.) No.31 of 2013 filed by the appellant seeking transfer of Sessions Case No.1006 of 2009 from the Court where it is presently pending to any other Sessions Court at Rohini or Tis Hazari.

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3. Sessions Case No.1006 of 2009 arises out of FIR No.156/2008 registered at P.S. Mukherjee Nagar for commission of offences punishable under Sections 323/354 of the IPC and Sections 3(i) (X) (XI) (XV) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989. Additional Sessions Judge, Rohini, before whom the matter is currently pending, appears to have heard the parties on the question of framing of charges and by an order dated 22nd March, 2010 discharged the accused persons for the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989. The case was in that view made over to the illaqa Magistrate for consideration whether charges under the Indian Penal Code need to be framed in the case.

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4. The complainant questioned the discharge order passed by the trial Court before the High Court in a revision petition which was allowed by the High Court by its order dated 10th December, 2012 with a direction to the trial Court to pass a fresh order on the subject after hearing both the parties. It was at this stage, that the complainant expressed an apprehension about the fairness of the approach which the trial Court may adopt in view of the findings recorded in the order of discharge earlier passed by her. The complainant (appellant herein) expressed these fears first in T.P. (Crl.) No.31 of 2013 filed before the Sessions Judge, Rohini which was dismissed by the said court by order dated 22nd May, 2013 holding that since no other officer in North West District in Delhi has been

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A notified for trial of cases under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 the prayer for transfer in essence was tantamount to asking for a transfer to another district which could be allowed only by the High Court. It was in the above backdrop that the complainant filed  
B T.P. (Crl.) No.31 of 2013 before the High Court seeking transfer of the case to any other Court competent to try the same outside Rohini District. That application, as noticed above, has been dismissed by the High Court in terms of the order  
C impugned in the present appeal primarily on the ground that the order passed by the High Court has made it sufficiently clear that the observations made in the order passed by the trial Court shall not influence any fresh order which the said Court may pass pursuant to the remand made by the High  
D Court. The High Court has also observed that the complainant (appellant herein) had while filing Crl. R.P. No.242 of 2010 against the discharge order expressed no apprehension nor sought transfer of the case from the Court where it is pending to any other Court.

E 5. We have heard learned counsel for the parties at some length. It is true that the trial Court had while discharging the accused persons under the Special Act mentioned above, made certain observations about the alleged misuse of the  
F provisions of the said Act by unscrupulous elements and also certain suggestions for remedying that situation. It is also true that the trial Court had come to the conclusion that there is no real basis for it to frame any charge against the accused persons under the said Act. But it is equally true that while  
G setting aside that order and directing a fresh order on the question of charge, the High Court has clearly mentioned that the trial Court shall remain uninfluenced by the observation made in its earlier order. That observation is, in the opinion of  
H the High Court, a sufficient safeguard against any possible

prejudice to the complainant-appellant herein making transfer of the case from the Court at Rohini to any other Court unnecessary. Now in the ordinary course if an order passed by the Court is set aside the observations and findings recorded therein also get obliterated for all intents and purposes. So also if the High Court makes the position clear that any such observation shall not influence the Court concerned while making a fresh order the same should ordinarily put the matter beyond the pale of any controversy. Having said that, there may still be situations where the nature of the observations made by the court concerned create a reasonable apprehension in the mind of the litigant that the Court has so committed itself to a given approach or thought process that it may not be possible for it to retrace its steps to take a fair and non-partisan view in the matter. The present appears to be one such case where despite the safeguards provided by the High Court's observations, the apprehension of the complainant continues to subsist. We do not think that such apprehension is wholly misconceived nor can it be dubbed as forum shopping in disguise. The earlier order passed by the trial Court is so strongly worded that it could in all likelihood give rise to a reasonable apprehension in the mind of the complainant which cannot be lightly brushed aside. We must hasten to add that we are not in the least suggesting that the Presiding Officer of the trial Court is totally incapable of adopting a fair approach while passing a fresh order but then the question is not whether the Judge is biased or incapable of rising above the earlier observations made by her. The question is whether the apprehension of the complainant is reasonable for us to direct a transfer. Justice must not only be done but must seem to have been done. A lurking suspicion in the mind of the complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a

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A preconceived notion about it. On that test we consider the present to be a case where the High Court ought to have directed a transfer. In as much as it did not do so, we have no option but to interfere and direct transfer of the case to another Court.

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6. We are mindful of the fact that the transfer ordered by us may cause inconvenience and harassment to the accused persons but that can, in our opinion, be taken care of by directing that in case an application for exemption from personal appearances is filed, the Court concerned shall consider the same and pass appropriate orders in accordance with law.

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7. In the result, we allow this appeal, set aside the order passed by the High Court and direct that Sessions Case No. 1006 of 2009 pending in the Court of Additional District and Sessions Judge, Rohini shall stand transferred from that Court to the Court of Sessions Judge, Tis Hazari, who shall try the same himself or make it over to any other Court duly notified and competent to do so. Record of the case shall be transmitted to the transferee Court expeditiously.

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**R. BANUMATHI, J.** I have had the benefit of going through the judgment proposed by his Lordship Justice T.S. Thakur. For the reasons which I have indicated below, I am unable to agree with the proposed final decision and in my view, the present appeal is liable to be dismissed.

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2. The appellant seeks transfer of Sessions Case No. 1006/2009 arising out of FIR No. 156/2008 registered at Police Station Mukherjee Nagar, Delhi. As per the allegations made by the complainant/appellant in the FIR dated 4.5.2008, they have been the tenants under the accused persons and on 3.5.2008, accused/respondent Nos. 2 to 10 obstructed and

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abused them by uttering objectionable caste based remarks against them. On the basis of the complaint lodged by the complainant, FIR was registered under Sections 323/341/354 and 34 IPC and Section 3(i) (x), (xi) and (xv) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On the discharge petition filed by respondent Nos. 2 to 10, learned Additional Sessions Judge, Rohini Courts, vide Order dated 22.3.2010 discharged all the respondents. Being aggrieved, the complainant moved the High Court in revision petition being Criminal Revision No. 242/2010 challenging the order of discharge. Vide Order dated 10.12.2012, the High Court set aside order of discharge and remitted the matter back to the trial court to consider the matter afresh being uninfluenced by the observations made in the earlier order dated 22.3.2010. Thereafter, the complainant moved a transfer petition before the District & Sessions Judge, Rohini Courts and also the High Court. Both the petitions were dismissed vide Order dated 22.5.2013 and 29.8.2013 respectively. Being aggrieved, the complainant has filed this appeal by way of special leave, seeking transfer of the Sessions Case No. 1006/2009 expressing apprehension that in spite of the direction of the High Court, the trial court might proceed on a pre-conceived notion.

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3. We have heard the learned counsel for the appellant and Ms. Pinky Anand, learned Additional Solicitor General of India for respondent No. 1 and Ms. Susmita Lal, learned counsel for respondent Nos. 2 to 10.

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4. An application for transfer of a case pending against the accused cannot be permitted merely because the learned Sessions Judge had made certain observations and recorded finding in the earlier order dated 22.3.2010 while allowing the discharge petition. The said order dated 22.3.2010 was set

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A aside by the High Court and the matter was remanded to the  
Sessions Court to consider the matter afresh being  
uninfluenced by any observation made in the earlier order.  
When the earlier order has been set aside by the High Court  
and the matter was remitted back to the Sessions Court for  
B consideration of the matter afresh, apprehension of the  
appellant that the learned trial judge may not adopt a fair  
approach is untenable.

5. As rightly pointed out by the High Court, earlier when the  
C revision petition was allowed by the High Court and the matter  
was remitted back to the trial court, no apprehension of bias  
was expressed nor any request was made for a transfer of the  
case from the Special Court to some other court. On behalf of  
D the appellant, it is now contended that in the said revision  
petition, the appellant could not have asked for transfer of the  
criminal case. In my considered view, such contention cannot  
be countenanced. Under Section 482 Cr.P.C., in order to  
secure ends of justice, the High Court has inherent power to  
E pass appropriate order. Having accepted the order of remand  
to the trial court for consideration of the matter afresh, the  
appellant is not justified in seeking transfer. The appellant  
has neither challenged the said order of remand nor raised  
the apprehension that the trial court may not adopt a fair  
F approach.

6. It is pertinent to note that the case has been registered by  
the complainant who were the tenants against the respondents-  
landlords numbering as many as nine persons and the matter  
G is pending trial since 2009. By filing transfer petition in 2013,  
the appellant seems to appear to be interested only in delaying  
the matter.

7. In considering the transfer application, it is to be kept in  
H mind that whether a litigant could reasonably apprehend a bias

attributable to a presiding Judge. Transfer of a case from one court to another has serious effects on the Judge from whom the case is sought to be transferred. Mere presumptions or possible assumptions are not sufficient for transfer of a case. Only on good and sufficient grounds a transfer can be ordered. In my considered view, the appellant has not made out any good and sufficient ground for transfer.

8. It is also pertinent to note that any casual observations made by a presiding officer of trial court would not be a sufficient ground for transfer for the reason that the trial courts work in a charged atmosphere and they do not have the benefit of a detached atmosphere of the higher courts so as to think coolly and decide patiently. In this regard, we may usefully refer to the decision of this Court in *K.P. Tiwari v. State of M.P.*, 1994 (Supp. 1) SCC 540, in which this Court has observed as under:-

“...The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the judges and hence provides for appeals and revisions. A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers

- A mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks — more correctly up to their nostrils. They do not have the benefit of a detached
- B atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive....”
- C 9. Appellant has not made out any sufficient ground for transfer and the request for transfer is bereft of merits. The High Court has rightly dismissed the transfer petition and same does not warrant any interference by this Court. The appeal is dismissed.

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Devika Gujral

Appeal allowed.

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