

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 1619 of 2013

Lalu Prasad @ Lalu Prasad Yadav..... Petitioner

Versus

State of Jharkhand Through CBI.....

Opp. Party

.....

Coram: The Hon'ble Mr. Justice R.R.Prasad

.....

For the petitioner : Mr. Ram Jethmalani, Sr. Advocate

: Mr. P. Kumar, Advocate

For the CBI

: Mr. (MD.) Mokhtar Khan, ASGI

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ORDER

C.A.V. On 28/06/2013

Delivered on 01/07/2013

2/01.07.2013 This application has been filed for transferring the case bearing R.C. Case No. 20 (A)/1996, from the Court of the Special Judge-IV, CBI, (AHD), Ranchi to any other Court of competent jurisdiction.

2. The case, which has given rise to this transfer petition relates to illegal withdrawal of a sum of Rs. 35,66,42086/- from the Treasury of Chaibasa in the year 1994-95, was instituted for commission of the offences punishable under Sections 460, 409, 420, 468, 471, 477 A, 201/511 read with Section 120 B of the Indian Penal Code and Section 13 (2) read with 13 (1) (c) & (d) of the Prevention of Corruption Act, 1988, against number of accused persons including the petitioner.

After investigation, the charge sheet was submitted in the year 1997. Upon which, cognizance of the various offences under the IPC and P.C. Act, was taken against the accused persons, on 24/06/1997. Almost, after 3 years, charges were framed against the accused persons in the year 2000. The prosecution took almost 12 years in examining its 350 witnesses. Upon closure of the prosecution case, the statements of the accused persons were recorded under Section 313 Cr.P.C. Thereupon, accused persons started adducing their defence witnesses. The petitioner initially submitted a list of 79 witnesses to be examined as defence witnesses.

However, that list under the order of the Court, was shortened to 29, who were examined. After the defence witnesses were examined, except in case of the petitioner, the prosecution started its argument and concluded it on 10/12/2012. Thereupon, arguments were advanced on behalf of the accused persons other than petitioner. The arguments on behalf of 43 out of 45 accused persons got concluded on 25/02/2013. Meanwhile, the petitioner had moved to this Court as some of the witnesses had not been allowed to be examined. On account of some order being passed by this Court, the arguments could not be advanced on behalf of the petitioner. However, the prosecution argued its case against the petitioner from 22/04/2013 to 15/05/2013. Thereafter, the case was posted on 16/05/2013 for arguments to be advanced on behalf of the petitioner on day to day basis. Accordingly, the arguments were advanced from 16/05/2013 to 31/05/2013 for 8 days. After that no pairvi was made on behalf of the petitioner for 6 days and, as such, arguments could not be advanced. However, on 10/06/2013, an order was passed that if on the next date arguments would not be advanced on behalf of the petitioner, it shall be closed. Thereupon, the arguments were advanced for further 5 days till 18/06/2013. On 20/06/2013, a notice came to be issued by the learned Judge informing therein that written arguments may be filed up to 1st July, 2013 as the judgment is to be delivered on 15th July 2013. Thereupon, this application has been filed before this Court under Section 407 Cr.P.C., registered as Cr. M.P. No. 1619/2013, though it should have been a transfer petition, wherein prayer has been made to transfer the case from the Court of Special Judge-IV, CBI (AHD), who is hearing the arguments of the accused persons, to any other Court of the competent jurisdiction.

3. Mr. Jethmalani, learned senior counsel appearing for the petitioner submits that the conduct of the trial judge is as such which gives

reasonable apprehension in the mind of the petitioner that fair and impartial trial may not be had. Secondly, such apprehension is also there in the mind of the petitioner for the reason that Mr. P.K.Shahi, Ex-Advocate General of the State of Bihar and presently, a Minister in the Government of Bihar is a close relative of the judge concerned, who wants to settle his score on account of defeat in a Parliamentary Election recently held, at the hand of a candidate belonging to the party of the petitioner. Elaborating his submission Mr. Jethmalani submitted that the Judge's sister namely Mrs. Minu Devi has been married to 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 Judge concerned happens to be the cousin of Mr. P.K.Shahi, who, on account of his defeat in a Parliamentary Election at the hand of the candidate belonging to the petitioner's party would be quite anxious to settle the score by making his influence to get the petitioner convicted so that there would be a political death of the petitioner. Therefore, the situation stated above has given rise reasonable apprehension in the mind of the petitioner that he may not get justice at the hand of the Judge, who is relative of Mr. P.K.Shahi.

Mr. Jethmalani, senior counsel, submits that apart from the aforesaid facts, conduct of the trial judge is as such that it gives reasonable apprehension of not getting fair justice. In this regard, it was submitted that on one hand the prosecution did examine 350 witnesses, whereas when a list of 79 defence witnesses were given, the learned Judge shortened the list by confining it to 20 without assigning any reason. That order, on being challenged, was set aside by this Court. Thereafter, also whenever an application was filed making a reasonable prayer that was rejected. Sometimes order was modified by this Court or it was set aside. The climax of the matter reached when in the midst of argument being advanced, a

notice was affixed intimating therein that written argument is to be filed by 1st July, 2013 and the matter would be posted for pronouncement of judgment on 15th July, 2013, which action of the learned Judge is unheard of as only on conclusion of the arguments, the matter is posted for judgment. In this regard, it was further submitted that it is quite obvious that the prosecution has taken number of years in examining its witnesses and making arguments, whereas in effect arguments have been advanced on behalf of the petitioner only for 8 days and, therefore, the valuable right of the petitioner of advancing arguments has been curtailed by the aforesaid notice. Thus, from the conduct of the trial judge it is quite obvious that fair opportunities are being not given to the petitioner to defend himself and that there is every likelihood that the petitioner may not get justice and, therefore, it has become imperative to get the case transferred to any other Court of the competent jurisdiction.

4. As against this, Mr. Khan, learned counsel for the CBI submits that on account of several reasons, the trial got delayed, but the fact is that the learned Judge has been conducting the trial since 16/11/2011 but apprehension had never been shown that the petitioner may not get justice even if several petitions had been rejected. But, when on account of delaying tactics adopted by the petitioner in not concluding the arguments, the Court issued such notice informing therein that the written arguments is to be submitted by 1st July, 2013 so that the judgment be pronounced on 15th July, 2013 application for transfer has been filed. That notice seems to have been issued for the reason that the trial had already been protracted and in spite of sufficient opportunities being given, the arguments were not being concluded and at number of occasions without there being any reason, nobody appeared for advancing arguments on behalf of the petitioner, which may create apprehension in anybody's mind that the said tactics is being adopted only to delay the trial and that when the Court

become a bit harsh, the last weapon was used by filing this transfer petitioner taking a plea that Mr. P.K. Shahi, who is said to be a relative of the learned Judge though distantly, would try to influence the Judge in getting the petitioner convicted which apprehension is quite unfounded as nothing has been shown to this Court that the learned Judge ever come in contact of Mr. Shahi though he may be related to Mr. Shahi and, therefore, it becomes quite obvious that this application has been filed simply to delay the trial and, hence, the prayer made in the petitioner never warrants to be allowed.

5. Having heard learned counsel for the parties, it does emerges that the sister of the judge concerned has been married to Jainendra Shahi, grand son of Late Fulena Shahi having three brothers including Late Harishankar Shahi, whose grand son is Mr. P.K.Shahi and in this manner Jainendra Shahi, the husband of the sister of the Judge concerned, happens to be cousin of Mr. P.K.Shahi, who has been advocating for Lalan Singh, a political rival of the petitioner, who has been pursuing some matter against the petitioner. Further, it appears that Mr. P.K.Shahi has recently lost a Parliamentary Election at the hand of a candidate belonging to the petitioner's party.

6. Accepting all it to be true, it is to be considered as to whether it does give reasonable apprehension that a fair and impartial trial maynot be had as it is a paramount importance that the parties before the Court should have confidence in the impartiality of the Court?

7. By putting those facts, proposition which is being carried forward is that either the 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 petitioner as it is the petitioner whose party's candidate defeated Mr. Shahi in a Parliamentary Election, but in absence of any material suggesting even remotely that they had shown their concerned directly or indirectly or that

the Judge is so intimate to Mr. Shahi that he would not go against the wish of Mr. Shahi. Proposition advanced on behalf of the petitioner is hardly to be accepted. It be stated that nothing has been placed that the Judge does have any kind of association, barring the fact that he is distantly related to Mr. Shahi, so as to have have impression in the mind of the party that fair justice may not be had though it is not necessary when supporting an application for transfer to establish that there is any actual bias in the mind of the Judge concerned, still at least some interestedness on the part of the Judge needs to be shown so as to form an opinion that apprehension of the petitioner of not getting justice is reasonable. In the instant case, apart from distant relationship, which the Judge may have with Mr. Shahi, nothing seems to be there to come to conclusion that Judge would act against the interest of the petitioner. In that eventuality raising any doubt over the impartiality of the Judge would never be fair.

8. Under the circumstances, apprehension raised of not getting justice does not seems to be reasonable.

9. Going further in the matter, it be stated that the learned Judge have passed certain orders adverse to the interest of the petitioner, which was either set aside or was modified by this Court when necessary applications were preferred before this Court. But, where the learned Judge takes a particular view of a law or the facts of the case or makes mistakes of law or passed an illegal order or refuses a prayer that alone cannot be a subject matter of transfer. If such adverse order is to be taken as an act of bias then in that event higher Court would be flooded with the transfer petitions. Thus, any prayer of transfer on account of the facts, as stated above, cannot be said to be justified.

10. However, before parting with this order, it be recorded that a notice was affixed in the midst of the arguments informing the parties to file written arguments by 1st July 2013 so that the Judgment be passed on 15th

July, 2013. This action of the Judge seems to be foreign to the scheme framed under the Code. But that act, under the facts and circumstances, seems to have been adopted by the Court in his endeavour not to protract the trial further, rather to conclude it at the earliest.

11. During argument it was stated that the petitioner would be consuming a considerable time in concluding his arguments. That apart, argument is also to be advanced on behalf of one more co-accused. It be stated, as has been recorded earlier that in one stretch arguments were advanced on behalf of the petitioner for 8 days and then in the second stretch after remaining absent for 5 days, argument were advanced for 5 days. However, keeping in view the submission that still arguments are to be advanced, 10 days further time is allowed to the petitioner for concluding the arguments. If by the time, the arguments are not concluded, the Court may pass order in accordance with law, which he deems fit and proper and to proceed further in the matter.

12. Thus, I do not find any merit in this application and, hence, it is dismissed.

(R.R.Prasad, J)

