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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th November, 2013

+ **CRL.M.C. 1479/2013**

MAHESH MANI Petitioner
Through: Mr. Sidharth Aggarwal and Mr.
Rahul Kumar, Advocates
versus

UNION OF INDIA Respondent
Through: Mr. Jatan Singh, CGSC for UOI.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition u/s 407 Cr.P.C read with Section 482 Cr.P.C filed on behalf of the petitioner Mahesh Mani for transfer of CC No.105/1/09 pending in the Court of Sh. Sudesh Kumar, learned ACMM to the Court of Sh. Gautam Manan, learned Senior Civil Judge–cum-Rent Controller, Dwarka Courts, New Delhi on the ground that proceedings under the Indian Extradition Act, 1962 was initiated against the petitioner whereby the learned ACMM was requested to enquire into the extraditability of certain offences alleged to have been committed by the petitioner in the United Kingdom. The enquiry was concluded on 11.02.2013. Final arguments

were heard by Sh. Gautam Manan, learned ACMM, Patiala House Courts and the matter was reserved for orders on 04.03.2013.

2. Pursuant to administrative order/circular dated 19.02.2013, Sh. Gautam Manan, learned ACMM has been transferred as SCJ-cum-RC, South West, Dwarka Courts. The circular contained a direction that the judicial officers under transfer shall pronounce the judgment/orders in the case in which they had reserved judgments/orders before relinquishing the charge of the Court. However no judgment has been pronounced and the matter is listed for final arguments before the Court of Sh. Sudesh Kumar, learned ACMM. Sh. Gautam Manan had the opportunity of presiding over the enquiry at the time of cross examination as well as at the time of final arguments, as such he is in a better position to pass a judgment. It would be expedient for the ends of justice if the matter is transferred to the Court of Sh. Gautam Manan, SCJ-cum-RC, Dwarka Courts for the purpose of pronouncement of judgment.

3. Learned counsel for the petitioner submitted that Sh. Gautam Manan, learned SCJ-cum-RC had the occasion to observe the witness closely during the cross examination and he had also heard the final arguments, as such the matter be transferred to him. Reliance was placed on *Sushil Sharma vs. State*, 92(2001) DLT 238 and *Javed Ahmed Tantray & Anr vs. Delhi High Court & Anr.*, in W.P(C)5661/2013 dated 17.09.2013. It was further

submitted that even if Sh. Gautam Manan is now posted on civil side, that will not come in the way of transferring the case to him. Moreover as per the transfer order, the Court of Sh. Gautam Manan was to be presided over by Sh. Amit Bansal, the successor Court. However Sh. Amit Bansal, CMM, New Delhi has transferred the case to Mr. Sudesh Kumar, ACMM, Patiala House Courts, as such the case be transferred.

4. The application is opposed by learned counsel for the respondent on the ground that only part cross examination was recorded by Sh. Gautam Manan and thereafter only the arguments were heard by him. That being so, there is no ground for transfer of the case and the petition is liable to be dismissed.

5. I have perused the record. As per the case of the petitioner, the enquiry was being conducted by Sh. Gautam Manan, learned ACMM regarding the extradition petition filed by the respondent. Vide order dated 19.02.2013 on administrative side, this Court transferred Sh. Gautam Manan as SCJ-cum-RC, Dwarka and the work pertaining to his Court was assigned to Sh. Amit Bansal, CMM, New Delhi, who in exercise of his powers transferred the matter to Sh. Sudesh Kumar, learned ACMM, Patiala House Courts. It is not the case of the petitioner that Sh. Sudesh Kumar, to whom the matter has been assigned is not vested with jurisdiction to try the matter in question. Although as per the circular, vide which Sh. Gautam

Manan, ACMM, Patiala House Courts was transferred, there was a direction that before relinquishing the charge, the Court should endeavour to pronounce the judgments in which arguments have been heard. However, in the instant case, may be for certain reasons, the judgment could not have been pronounced by Sh. Gautam Manan, but that by itself does not mean that the case is liable to be transferred to his Court for the pronouncement of judgment inasmuch as it is the case of the petitioner himself that the respondent had examined only one witness and as per the certified copy of the order-sheet placed on record by him, this witness was examined and cross examined on three dates before the predecessor Court of Sh. Ajay Pandey, ACMM on 13.07.2009, 07.09.2009 and 14.12.2009. It was only on 09.10.2012 that the statement of this witness was completed before Sh. Gautam Manan, learned ACMM. Thereafter the arguments were heard and the matter was reserved for orders. The parties were given opportunity to file written submissions within one week, as such it cannot be said that Sh. Gautam Manan, learned ACMM had the occasion to notice the demeanour of the witness who was cross examined before him only on one date when in fact he was examined and cross examined before the predecessor Court on three dates.

6. ***Sushil Sharma*** (supra) relied upon by learned counsel for the petitioner does not help him in as much as, in that case the prosecution had

filed the list of witnesses comprising of 105 witnesses out of which 85 witnesses were examined before Sh. G.P.Thareja, Additional District & Sessions Judge, Delhi. The order reflects that while examining the witnesses, Sh. G.P.Thareja had been liberally putting court questions to the witnesses, exercising discretion u/s 311 Cr.P.C and making directions and observations in regard to the production of records by the prosecution. He had been recording and noticing the demeanour of the witness. 20 witnesses were given up by the prosecution and only 2-3 witnesses remained to be examined before he was posted as Additional Rent Control Tribunal. Under those exceptional circumstances, the application u/s 407 read with section 482 of the Cr.P.C was allowed.

7. Similarly *Javed Ahmed* (supra) was a case where the entire witnesses were examined before Sh.Atul Kumar Garg, learned Additional District & Sessions Judge, Delhi and after hearing arguments, the order was reserved. Keeping in view the fact that since all the witnesses had been examined before him, the entire trial process including recording of statement of the accused and submission of the parties had taken place before him, therefore, the case was ordered to be transferred to him.

8. However, things are substantially different in the instant case, in as much as, only part cross examination of PW-1, that too at its fag end was recorded before Sh. Gautam Manan, learned ACMM who thereafter heard

arguments. No prejudice is going to be caused to the petitioner in case fresh arguments are addressed before the concerned Court.

9. Under the circumstances, there is no ground to transfer the proceedings to Sh. Gautam Manan, who is now posted as SCJ-cum-RC Dwarka Courts, Delhi. The petition is accordingly dismissed.

**SUNITA GUPTA
(JUDGE)**

NOVEMBER 20, 2013

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