

Court No. - 13

Case :- APPLICATION U/S 482 No. - 9338 of 2024

Applicant :- Naseem Javed

Opposite Party :- The State Of U.P. Thru. Prin. Secy. Home, Lko. U.P.

Counsel for Applicant :- Abhishek Singh, Akshat Prakash Tripathi, Zia Ul Qayum

Counsel for Opposite Party :- G.A., Subhash Bisaria

Hon'ble Rajeev Singh, J.

1. Heard Shri Satish Chandra Mishra, learned Senior Counsel assisted by Shri Abhishek Singh, Shri Akshat Prakash Tripathi and Shri Zia Ul Qayum, learned counsel for the applicant, Dr. V.K. Singh, learned Government Advocate assisted by Shri Shivendra Shivam Singh Rathore, learned counsel for the State and Shri Subhash Bisaria, learned counsel appearing for the complainant.

2. The present application has been filed with the following prayer :

“to set aside/quash the impugned orders dated 30.09.2024 and 07.10.2024 so far as it relates to the issue of continuance of the trial before the special court is adjudicated and further be pleased to immediate direct to conduct the trial bearing Sessions Trial No. 1049 of 2022 arising out of F.I.R. No. 60 of 2018 under Sections 147, 148, 149, 341, 336, 307, 302, 504, 506, 124-A I.P.C. and Section 2 of Prevention of Insults to National Honour Act, 1971, P.S. Kasganj, District Kasganj by the Learned Court of competent jurisdiction in the penal sections except section 124-A I.P.C. instead of presently being conducted without jurisdiction by the Learned Special Judge NIA-A.D.J., Illrd, Lucknow which is being currently presided by Shri Vivekanand Sharan Tripathi, H.J.S. and further to conduct de-novo trial of the aforesaid case in the interest of justice.”

3. Learned Government Advocate raised preliminary objection regarding the maintainability of the present application on the ground that statutory remedy of appeal is available to the applicant against the orders passed by the trial court.

4. Learned counsel for the applicant, while replying to the issue of maintainability of the present application, submitted that impugned order is interlocutory order and, therefore, the application is maintainable. In support of his submission, learned counsel for the

applicant relied on the decision of Hon'ble Supreme Court in the case of **V.C. Shukla Vs. State through CBI, 1980 Supp. SCC 92.**

5. Considering the arguments advanced by the learned counsel for both the parties and going through the impugned orders, it is evident that the trial court, by means of impugned orders, has not decided the claim of the parties in Sessions Trial No. 1049 of 2022 finally and, therefore, the preliminary objection raised by the learned Government Advocate that statutory remedy of appeal is available, has no legs to stand and is hereby rejected.

6. Learned counsel for the applicant submitted that firstly, F.I.R. No. 59 of 2018, under Sections 147, 148, 149, 307, 336, 436, 295, 427, 323, 504 I.P.C. and Section 7 Criminal Law (Amendment) Act, P.S. Kasganj, District Kashiram Nagar (erstwhile Kasganj) was lodged against 4 named and 100-150 unnamed persons by Mr. Ripudaman Singh, erstwhile S.H.O. of concerned police station. Thereafter, F.I.R. in question, i.e., F.I.R. No. 60 of 2018 (supra) was lodged on 27.01.2018 at 00:17 hrs. by the complainant-Shushil Gupta against 20 persons and one unnamed person, including the applicant. Learned Senior Counsel appearing for the applicant submitted that two F.I.R.s for the same incident ought not have been lodged, but investigation of both the F.I.R.s was started by the Investigating Agency, in pursuance of which, the applicant was implicated in F.I.R. No. 59 of 2018 (supra). Thereafter, charge sheet dated 25.04.2018 was filed against the applicant and 35 other persons in the said F.I.R. No. 59 of 2018, on which, the court concerned took cognizance and the case was committed to the court of Session. At the same time, i.e., on 26.04.2018, charge sheet was also submitted by the Investigating Officer in F.I.R. No. 60 of 2018 against the applicant and 23 other persons under Sections 147, 148, 149, 341, 336, 307, 302, 504, 506, 124-A I.P.C. and Section 2 of Prevention of Insults to National Honour Act, 1971 (for short 'Act, 1971'). It has also been submitted that the applicant was taken into custody and later on was enlarged on bail by the Allahabad High Court vide order dated 25.07.2018 passed in CrI. Misc. Bail Application No. 27780 of 2018.

7. Learned counsel for the applicant submitted that thereafter, the complainant of F.I.R. No. 60 of 2018 moved a transfer application with the averment that under the influence of one of the co-accused, namely, Munazir Rafi, who is a practising advocate in Civil Court, Kasganj, the

Senior Advocates of the District Kasganj denied to file Vakalatnama on behalf of the informant. On the said Transfer Application (Criminal) No. 537 of 2019, the case was transferred from District Kasganj to District Etah vide order dated 10.03.2022.

The order dated 10th March, 2022 is as under :

“Heard learned counsel for the applicant, learned counsel for opposite party nos. 2 to 31, learned AGA for the State and perused the record.

Applicant has moved this transfer application to transfer the S.T. No. 181 of 2018 (State vs. Saleem and others) and S.T. No. 369 of 2018 (State vs. Asif Qurrasi @ Hitlar and others), arising out of Case Crime No. 60 of 2018, under Sections 147, 148, 149, 341, 336, 307, 302, 504, 506, 124A IPC and Section 3 Prevention of Insults to National Honour Act 1971, P.S. Kasganj, District Kasganj, pending in the court of Additional Sessions Judge, Court No. 2, Kasganj, from District Kasganj to any other nearest districts i.e. Etah, Hathras or Agra.

Submission of learned counsel for the applicant is that opposite party no. 30 Munazir Rafi is practicing advocate at District Kasganj. Due to his influence, the senior advocates of the District Kasganj have denied to do the pairavi and file their vakalatnama on behalf of applicant in this case. Opposite party no. 30, Munazir Rafi, pressurizes the applicant to enter into compromise in this matter. The mob of the advocates supports the opposite party no. 30 at Kasganj and therefore, the applicant is unable to face his trial fairly without fear in District Kasganj. Further submitted that no senior advocate of District Kasganj has filed vakalatnama on behalf of applicant due to influence of opposite party no. 30 Munazir Rafi, hence the case may be transferred from District Kasganj to District Etah.

Per contra learned counsel for opposite party no. 2 to 31 opposed the transfer application and submitted that merely on the ground that under the influence of opposite party no. 30, Munazir Rafi, who is practising advocate at district court Kasganj, the courts at Kasganj will not impart justice to applicant is unsustainable.

Quoting the law laid down by Hon'ble Apex Court in Gurcharan Dass Chadha v. State of Rajasthan, Hon'ble Apex Court has held in Harita Sunil Parab v. State (NCT of Delhi), (2018) 6 SCC 358 that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. The relevant portion is quoted herein

below:

"7. In *Gurcharan Dass Chadha v. State of Rajasthan*, dealing with the issue for transfer of a case, it was observed:

13..... The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension."

Coming to the facts of the present case, applicant has filed affidavit stating therein that no senior advocate of District Kasganj has filed vakalatnama on behalf of applicant due to influence of opposite party no. 30 and groups of Advocates support opposite party no. 30.

In the facts and circumstances of the case, it may be a reasonable apprehension in the mind of the applicant that he will not get justice at Kasganj. Moreover, justice should not only be done but it should be seen to be done.

Keeping in view the entire facts and circumstances of the case, I deem it appropriate to transfer the aforesaid case from District Kasganj to District Etah.

Accordingly, this Transfer Application is allowed.

District Judge Kasganj, is directed to transfer the aforesaid case of applicant to District Judge Etah, within two weeks. It is further directed to District Judge, Etah, to assign the aforesaid case to competent court.

Office is directed to communicate this order to the District Judge Kasganj and District Judge, Etah, through FAX or E-mail to ensure compliance. "

8. Submission of the learned counsel for the applicant is that as Section 124-A I.P.C. is a scheduled offence under Section 2(1)(f) of the National Investigation Agency Act, 2008 (hereinafter referred to as 'NIA Act'), therefore, by virtue of Section 22 read with Section 13 of the NIA Act, the trial of the case was transferred from District Etah to Special Court, NIA, District Lucknow, record of which, was received in Civil Court, Lucknow on 21.04.2022 and thereafter trial was proceeded. It has been submitted that on 11.05.2022, Hon'ble Supreme Court in the case of **S.G. Vombatkere Vs. Union of India, (2022) 7 SCC 433**, on the basis of affidavits filed by the Government of India, has issued interim order

related to Section 124-A I.P.C. with a clear direction that all the pending trials, appeals and proceedings with respect to the charge framed under Section 124-A I.P.C. shall be kept in abeyance with the further direction that the adjudication with respect to other sections, if any, could proceed if the courts are of opinion that no prejudice would be caused to the accused.

The order dated 11.05.2022 passed in **S.G. Vombatkere** is as under :

“1. These petitions are filed challenging the constitutionality of Section 124-A of the Penal Code, 1860 (hereinafter “IPC”) relating to the offence of sedition.

2. Having heard the learned Senior Counsel appearing for the parties and perusing the documents available on record, we may observe that this matter was listed for the first time on 15-7-2021. Thereinafter, this Court, after hearing the parties, issued notice on 15-7-2021 [*S.G. Vombatkere v. Union of India*, 2021 SCC OnLine SC 3236]. When this matter was next taken up, the learned Solicitor General of India prayed for additional time of 2 to 3 days for filing of counter-affidavit. Accordingly, time was granted [*S.G. Vombatkere v. Union of India*, 2022 SCC OnLine SC 659] till the end of the week for filing counter-affidavit. Again, the matter was listed on 5-5-2022 [*S.G. Vombatkere v. Union of India*, 2022 SCC OnLine SC 660] , wherein the Solicitor General again sought additional time to file a counter-affidavit. On that date, this Court while granting the Solicitor General time to file counter-affidavit, directed the parties to file their written submissions on the preliminary issue of the necessity of reference to a larger Bench prior to the next date of hearing.

3. Accordingly, on 7-5-2022, written submissions were filed on behalf of the Solicitor General of India.

4. On 9-5-2022, an affidavit was filed on behalf of the Union of India, averring as under:

“3. I state and submit that so far as Section 124-A is concerned, there are divergence of views expressed in public domain by various jurists, academicians, intellectuals and citizens in general. While they agree about the need for statutory provisions to deal with serious offences of divisive nature affecting the very sovereignty and integrity of the country, acts leading to destabilising the Government established by law by means not authorised by law or prohibited by law. Requiring a penal provision for such purposes is generally accepted by everyone in legitimate State interest. However, concerns are raised about its application and abuse for the purposes not intended by law.

4. The Hon'ble Prime Minister of India has been cognizant of various views expressed on the subject and has also periodically, in various forums, expressed his clear and unequivocal views in favour of protection of civil liberties, respect for human rights and giving meaning to the constitutionally cherished freedoms by the people of the country. He has repeatedly said that one of India's strengths is the diverse thought streams that beautifully flourish in our country.

5. The Hon'ble PM believes that at a time when our nation is marking "Azadi Ka Amrit Mahotsav" (75 years since Independence) we need to, as a nation, work even harder to shed colonial baggage that has passed its utility, which includes outdated colonial laws and practices. In that spirit, the Government of India has scrapped over 1500 outdated laws since 2014-15. It has also ended over 25,000 compliance burdens which were causing unnecessary hurdles to people of our country. Various offences which were causing mindless hindrances to people have been decriminalised. This is an ongoing process. These were laws and compliances which reeked of a colonial mindset and thus have no place in today's India.

6. The Government of India, being fully cognizant of various views being expressed on the subject of sedition and also having considered the concern of civil liberties and human rights, while committed to maintain and protect the sovereignty and integrity of this great nation, has decided to re-examine and reconsider the provision of Section 124-A of the Penal Code, 1860 which can only be done before the competent forum.

7. In view of the aforesaid it is thus respectfully submitted that this Hon'ble Court may not invest time in examining the validity of Section 124-A once again and be pleased to await the exercise of reconsideration to be undertaken by the Government of India before an appropriate forum where such reconsideration is constitutionally."

5. In view of the above, it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigours of Section 124-AIPC are not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. In light of the same, the Union of India may reconsider the aforesaid provision of law.

6. This Court is cognizant of security interests and integrity of the State on one hand, and the civil liberties of citizens on the other. There is a requirement to balance both sets of considerations, which is a difficult exercise. The case of the petitioners is that this provision of law dates back to 1898, and pre-dates the Constitution itself, and is being misused. The Attorney General had also, on an earlier date of hearing, given some instances of glaring misuse of this provision, like in the case of recital of the *Hanuman Chalisa*.

7. Therefore, we expect that, till the re-examination of the provision is complete, it will be appropriate not to continue the usage of the aforesaid provision of law by the Governments.

8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

8.1. The interim stay granted in WP (Crl.) No. 217 of 2021 along with WP (Crl.) No. 216 of 2021 vide order dated 31-5-2021 [*Aamoda Broadcasting Co. (P) Ltd. v. State of A.P.*, (2022) 7 SCC 437] shall continue to operate till further orders.

8.2. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking

Section 124-AIPC while the aforesaid provision of law is under consideration.

8.3. If any fresh case is registered under Section 124-AIPC, the affected parties are at liberty to approach the courts concerned for appropriate relief. The courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

8.4. All pending trials, appeals and proceedings with respect to the charge framed under Section 124-AIPC be kept in abeyance. Adjudication with respect to other sections, if any, could proceed if the courts are of the opinion that no prejudice would be caused to the accused.

8.5. In addition to the above, the Union of India shall be at liberty to issue the directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124-AIPC.

8.6. The above directions may continue till further orders are passed.

9. List these petitions in the third week of July, 2022."

9. Learned counsel for the applicant vehemently submitted that despite the direction of the Hon'ble Apex Court in the case of **S.G. Vombatkere** (supra), trial of the present case was being carried out by the trial court causing prejudice to the applicant, which is also contemptuous to the interim directions issued by the Hon'ble Supreme Court. Thereafter, applicant preferred Application u/s 482 Cr.P.C. No. 8600 of 2024 challenging the proceedings of the case in question, which was disposed of finally by this Court vide order dated 24.09.2024 with the liberty to the applicant to move appropriate application before the trial court based upon the observations made by the Hon'ble Apex Court in the case of **S.G. Vombatkere** (supra). This Court also expected from the trial court that, in case, any such application is moved, the same shall be considered and decided after taking note of the observations made in the said case of **S.G. Vombatkere** (supra) before proceeding further in the matter. Liberty was also given to the applicant to approach this Court on the issue of Notification of the State Government dated 20.04.2021, if required related to Section 22 of NIA Act.

Order dated 24.09.2024 passed in Application u/s 482 Cr.P.C. No. 8600 of 2024 is as under :

"Heard Sri S.C.Mishra, learned Senior Advocate assisted by Sri Abhishek Singh and Sri Zia Ul Qayum, learned counsel for the applicant and learned AGA for the State of U.P. and perused the record.

Present application has been filed for the following main relief:-

"For the facts and circumstances as stated in the accompanying

affidavit, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to immediately direct to conduct the trial bearing Sessions Trial No. 1049 of 2022 arising out of F.I.R. No-60 of 2018 under sections 147,148,149,341,336,307,302,504,506,124-A IPC & 2 of The Prevention of Insults to National Honour Act-1971, Police Station-Kasganj, District Kasganj by the Learned Court of competent jurisdiction in the penal sections except section 124-A IPC instead of the Learned Court of Special Judge, NIA Act, Lucknow which is being currently presided by Shri Vivekanand Sharan Tripathi, H.J.S. and further to conduct de-novo trial of the aforesaid case in the interest of justice."

The relief, quoted above, has been sought on the basis of directions issued by the Hon'ble Apex Court in the case of S.G. Vombatkere vs. Union of India, (2022) 7 SCC 433. The relevant portion of the judgment, referred, reads as under:-

"8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

8.1. The interim stay granted in WP (Crl.) No. 217 of 2021 along with WP (Crl.) No. 216 of 2021 vide order dated 31-5-2021 [Aamoda Broadcasting Co. (P) Ltd. v. State of A.P., (2022) 7 SCC 437] shall continue to operate till further orders.

8.2. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124-AIPC while the aforesaid provision of law is under consideration.

8.3. If any fresh case is registered under Section 124-AIPC, the affected parties are at liberty to approach the courts concerned for appropriate relief. The courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

8.4. All pending trials, appeals and proceedings with respect to the charge framed under Section 124-AIPC be kept in abeyance. Adjudication with respect to other sections, if any, could proceed if the courts are of the opinion that no prejudice would be caused to the accused.

8.5. In addition to the above, the Union of India shall be at liberty to issue the directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124-AIPC.

8.6. The above directions may continue till further orders are passed.

9. List these petitions in the third week of July, 2022."

Considering the aforesaid, this Court is not inclined to accede with the prayer sought in the present application based upon the observations made by the Hon'ble Apex Court in the case of S.G. Vombatkere (Supra).

Accordingly, the application is disposed of with liberty to applicant to move an appropriate application before the Trial Court based upon the observations made by the Hon'ble Apex Court in the case of S.G. Vombatkere (Supra). In case, such an application is preferred by the applicant, it is expected that the Trial Court shall consider and decide the same after taking note

of observations made in the case of S.G. Vombatkere (Supra) before proceeding further in the matter.

In view of submissions advanced as also the grounds taken in the present application based upon the notification issued by the State Government dated 20.04.2021, liberty is given to the applicant to approach this Court if required.

With the aforesaid, the application is disposed of finally. “

10. Learned counsel for the applicant submitted that on the strength of the liberty given by this Court in the aforesaid order, an application was preferred on 30.09.2024 before the trial court, but the same was rejected on the same day without considering the directions of the Hon'ble Apex Court, with the observation that delay tactics is being adopted by the applicant, as the case is being listed for recording the statement under Section 313 Cr.P.C. Thereafter, another application dated 07.10.2024 was filed before the trial court with the prayer that since both the cases belong to same incident, the record of S.T. No. 135 of 2018 arising out of F.I.R. No. 59 of 2018 pending before Additional District & Sessions Judge III, Kasganj may be summoned and both the cases may be tried together in the light of Section 14(1) of NIA Act read with Section 220 Cr.P.C. The prayer made in the said application dated 07.10.2024 is as under :

“Wherefore, for the facts and circumstances as stated in the accompanying application, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to immediately summon the record of FIR No. 59 of 2018 bearing Sessions Case No. 135 of 2018 pending in the court of Additional District Judge IIIrd, Kasganj before this Hon'ble Court and try both the cases arising out of same incident and same transaction in light of the statutory provision of section 14(1) of NIA Act read with Section 220 of CrPC and the law laid down by the Hon'ble Supreme Court in the interest of justice.”

11. Drawing the attention of this Court towards Section 14 of NIA Act as well as Section 220 Cr.P.C., learned counsel for the applicant submitted that Section 14 provides that when trying any offence, Special Court may also try any other offence with which, the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence. Section 220 Cr.P.C. provides the mechanism of trial for more than one offence that if one series of acts so connected together as to form the same transaction, more offences than one are committed by the same persons, he may be charged with, and tried at one trial for, every such offence.

However, the application moved by the applicant was rejected by the trial court on the same day with the observation that as the charge

sheet dated 26.04.2018 in the case was submitted in Sections 147, 148, 149, 341, 336, 307, 302, 504, 506, 124-A I.P.C. and Section 2 of Act, 1971 and since Section 124-A is a scheduled offence under the provisions of NIA Act, this case has been transferred to the said court. The trial court also observed that though the proceeding of Section 124-A I.P.C. is kept in abeyance by the Hon'ble Apex Court in the case of **S.G. Vombatkere** (supra), but the final verdict of Hon'ble Apex Court is still awaited and, therefore, trial of any other Section, which does not come under the category of scheduled offence of NIA Act, may be tried by the Special Court if the court thinks it fit without prejudice to the parties.

12. It has further been submitted that the Presiding Officer, who is holding the court of NIA Act, is not the 3rd Senior most Additional Sessions Judge at Lucknow as he is at serial no. 6 in the seniority list of the Officers posted in District Court, Lucknow. It is, thus, submitted that Mr. Vivekanand Sharan Tripathi, H.J.S.-Presiding Officer of Special Court, NIA Act, Lucknow is, without having jurisdiction, proceeding with the trial.

13. A request for conducting *de novo* trial of the case has also been made by the learned counsel for the applicant, relying on the decisions of Hon'ble Apex Court in the cases of **Pandit Ukha Kolhe Vs. State of Maharashtra, AIR 1963 SC 1531** and **Ajay Kumar Ghoshal Vs. State of Bihar, (2017) 12 SCC 699**.

It has, thus, been submitted that the indulgence of this Court is necessary.

14. On the other hand, learned counsel for the complainant vehemently opposed the prayer of the applicant and submitted that as the charge sheet dated 26.04.2018 was filed under Section 124-A I.P.C. along with other Sections, therefore, the case was transferred to the Special Court NIA Act. On the point of *de novo* trial, learned counsel appearing for the complainant, relying on the decision of the Hon'ble Apex Court in the case of **State of Andhra Pradesh through I.G. NIA Vs. Mohd. Hussain @ Saleem (SLP Crl. No. 7375 of 2012)**, submitted that trial is at the fag end and Special Court, NIA Act is empowered to try the offences under Section 124-A I.P.C. along with other offences. It is vehemently submitted that though thereafter, Hon'ble Apex Court in the case of **S.G. Vombatkere** (supra) stayed the trial proceeding under

Section 124-A I.P.C. in all over the country, but it is left open to the Special courts, NIA Act that they may proceed, if required. It has, thus, been submitted that the trial was proceeded and now at the stage of recording of statement under Section 313 Cr.P.C., *de novo* trial is not permissible.

It has also been submitted that since the court, before which application was moved for summoning of the record of a case which is pending before another court, is not having the jurisdiction of Special Court, cannot summon the record of another trial and though it was open to the applicant to take appropriate remedy for transfer of the trial of another case, but the same was deliberately not availed. It has, thus, been submitted that the application is misconceived and is liable to be dismissed.

15. Learned Government Advocate submitted that earlier this Court declined to grant the relief claimed by the applicant, however, liberty was given to him to raise the grievances before the trial court. Thereafter, the application was moved by the applicant before the trial court, which was rejected. Thereafter, another application was moved by him for summoning of the case of pending trial of F.I.R. No. 59 of 2018 (*supra*). It has also been submitted that the trial court has rightly rejected the application, as in case, the applicant was willing to get the said case transferred, he was having statutory remedy of filing transfer application before the High Court, but it was deliberately not fetched.

It has next been submitted that as the Presiding Officer, who is conducting the trial, is at Serial No. 3 in the seniority list of Additional District & Sessions Judge posted at Lucknow and, therefore, being a Special Judge of NIA Act as per the Notification, he is conducting the trial. Shri V.K. Singh also submitted that Special Judges, who are senior to the Presiding Officer conducting the trial of the case, are excluded from counting of the seniority of Additional District & Sessions Judge and, therefore, the ground taken by the learned counsel for the applicant that Presiding Officer, who is conducting the trial of the case is question, is at Serial No. 6 and, therefore, he is not having the jurisdiction, is incorrect. It has lastly been submitted that the trial is at the stage of defence evidence and the applicant had cooperated in the trial, and as all the witnesses produced by the prosecution were properly cross-examined, the aforesaid applications moved before the trial court at this

stage, are moved only with the intention to linger on the proceedings. It has, thus, been submitted that the present application is liable to be dismissed.

16. Considering the arguments advanced by the learned counsel for the applicant, learned Government Advocate, learned counsel appearing for the complainant and going through the contents of the application as well as other relevant documents, it is evident that earlier an Application u/s 482 Cr.P.C. No. 8600 of 2024 was filed by the applicant with the prayer to direct the trial court to conduct the trial of Sessions Trial No. 1049 of 2022 arising out of F.I.R. No. 60 of 2018, under Sections 147, 148, 149, 341, 336, 307, 302, 504, 506, 124-A I.P.C. and Section 2 of Act, 1971, P.S. Kasganj, District Kasganj immediately by the court having competent jurisdiction in the penal Sections except Section 124-A I.P.C., instead of the court of Special Judge, NIA Act, which is being currently presiding by Mr. Vivekanand Sharan Tripathi, H.J.S. This Court, while declining to grant the prayer made by the applicant in the aforesaid Application u/s 482 Cr.P.C. No. 8600 of 2024, vide order dated 24.09.2024 had given him liberty to move application before the trial court in the light of the decision of the Hon'ble Apex Court in the case of **S.G. Vombatkere** (supra). Evidently, Hon'ble Supreme Court, in the said case, ordered for keeping in abeyance the operation the proceedings related to Section 124-A I.P.C., however, at the same time, granted liberty with respect to the trial of other Sections, if any, if the courts are of the opinion that no prejudice would be caused to the accused. Further, learned counsel for the applicant failed to show any prejudice, which is being caused to the applicant. Moreover, there is no grievance of the applicant that either proper liberty or any legal rights of the accused are being curtailed by the court concerned.

17. In view of above facts and discussions, this Court also came to the following conclusions :

(a) Hon'ble Apex Court, in the case of **S.G. Vombatkere** (supra) has given liberty to the trial courts to proceed in the offences except Section 124-A I.P.C., if there is no prejudice to the parties and in the case in question, the trial is now at the stage of defence evidence. Therefore, it cannot be said that there is violation of the directions of Hon'ble Apex Court issued in the case of **S.G. Vombatkere** (supra).

(b) The Presiding Officer is no doubt, at serial no. 6 in the seniority list of HJS officers posted at District Judgeship, Lucknow, but the Officers senior to him, are notified Special Judges, therefore, they are excluded from the counting of the working of Additional Sessions Judges, due to which, present Presiding Officer, Mr. Vivekanand Sharan Tripathi came at serial no. 3 as Additional Sessions Judge in Lucknow. Therefore, there is no force in the submission of the learned counsel for the applicant that present Presiding Officer is not having the jurisdiction to try the case in question.

(c) The application moved for summoning of the case of another trial, which is pending in Kasganj with the request that trial of both cases be tried together, has rightly been rejected vide impugned order, as the Special court, Lucknow has no power to order for calling the record of another trial, which is pending in District Court, Kasganj.

18. In view of above facts and circumstances, the application is misconceived and, accordingly, stands dismissed.

Dated : December 20, 2024
VKS