

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11889 of 2013

Arising Out of PS.Case No. -12 Year- 1995 Thana -C.B.I CASE District- -

Dwarika Nath Rai, son of Late Tapeswar Rai, resident of village-Kathrain,
P.S.- Charpokhari in the district of Bhojpur, presently residing at B-12, P.C.
Colony, Kankarbagh, P.S.-Kankarbagh in the town and district of Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Vigilance Department, Govt. of Bihar, Patna
2. The Additional Director General of Police, Vigilance Bureau Investigation, Bihar, Patna
3. The Inspector General of Police(Special), Vigilance Bureau Investigation, Bihar, Patna
4. The Additional Superintendent of Police, Vigilance Bureau Investigation, Government of Bihar, Patna
5. The Deputy Superintendent of Police-cum-Officer Incharge, Vigilance Police Station, Bihar, Patna.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.(I/C Vig.))

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 25-06-2015 Heard the learned senior counsel, Mr. Akhileshwar Prasad Singh for the petitioner and the learned A.P.P.(Vigilance), Mrs. Babita Kumari for the State.

This criminal miscellaneous application has been filed by the petitioner under Section 482 Cr.P.C. for quashing the order dated 30.01.2013 passed by Special Judge, Vigilance I, Patna in Special Case No.7 of 1995 whereby the vigilance case was transferred to the Special Judge, Vigilance Court No.I, Bhagalpur.

The learned counsel for the petitioner submitted that



the confiscation proceeding against this petitioner is pending before the Special Judge, Vigilance Court No.I, Bhagalpur and, therefore, in view of the decision of this Court in 2011(1) PLJR 1168, the same court could not hear the D.A. case against the petitioner which has been transferred from Patna. The learned counsel further submitted that the check period was from the year 1963 to 1989. During that period, the petitioner was not posted at Bhagalpur. The petitioner was posted there in the year 1991 and retired, therefore, Bhagalpur court has no jurisdiction to try the case. The learned counsel further submitted that the trial court who is hearing D.A. case has no jurisdiction to transfer the case and the High Court can only transfer the case.

On the other hand, learned A.P.P. for the Vigilance objected the prayer of the petitioner and submitted that the confiscation case against the petitioner is pending before the Special Vigilance Court No.I, Bhagalpur. Therefore, that objection of the petitioner that court has no jurisdiction to hear the D.A. case has no force. According to the learned A.P.P., subsequent to the Division Bench decision of this Court, the notification was issued by the State Govt. establishing Court at Bhagalpur for speedy disposal of D.A. cases instituted under the P.C. Act. Prior to that, there was no Special Vigilance Court at

Bhagalpur. The notification was made by the Govt. in June, 2011 whereby two Special Vigilance Courts at Bhagalpur was established. Therefore, according to the learned A.P.P., there is no illegality in the order passed by the court below.

From perusal of the notification issued by the State Govt., it appears that the Govt. in exercise of jurisdiction under Section 3 of the Bihar Special Courts Act, 2009 read with Rule 9 of the Bihar Special Court Rules, 2010 in consultation with the High Court of Judicature at Patna had established two Special Courts of Additional District & Sessions Judge for speedy disposal of Disproportionate Asset Cases instituted under the said Act. While issuing this notification, the Govt. has considered the decision of the Division Bench also and has clarified that the authorized officer who has made order relating to confiscation of the property shall not hear the D.A. cases. Here, it may be mentioned that the confiscation case is still pending.

In view of the above facts, it appears that the Vigilance Department filed the application before the Special Court at Patna for transferring the case to Bhagalpur after creation of the Court at Bhagalpur. The petitioner apprehension regarding bias, as has been held by the Division Bench decision is concerned, it appears that the Govt. has taken into note the

observation made by the Division Bench. Therefore, on that ground, the order cannot be said to be vitiated or that has caused any miscarriage of justice.

So far the submission of the learned counsel that the trial court has no jurisdiction to transfer the case is concerned, it may be mentioned here that the trial court is not transferring the case under the P.C. Act. The case is being sent to Bhagalpur for trying the same by the Special Court at Bhagalpur pursuant to the notification of the State Govt. and, therefore, I do not find any force in the submission of the learned counsel for the petitioner.

It is settled principles of law that an accused has no choice of forum. If the forum has been created and the case is pending there, he has to face the same.

Hon'ble Supreme Court in the case of **Som Mittal v. Government of Karnataka, (2008) 3 Supreme Court Cases 753** has held that "it has been consistently held that the power under Section 482 Cr.P.C. must be exercised sparingly, with circumspection. Exercise of inherent power under Section 482 Cr.P.C. is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the

trial is allowed.”

In the present case, there is no question of miscarriage of justice to the petitioner arises because by the impugned order, the case has been sent to the court which has been created by the notification of the State Govt. that too after considering the Division Bench decision of this Court.

Now, therefore, I do not find any merit in this application and, accordingly, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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