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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 30.11.2015

TR.P.(CRL.) 42/2015 & CRL.M.A.13562/2015 & CRL.M.A. 15314/2015

JOGINIDER SINGH & ORS.

..... Petitioners

Through: Mr Colin Gonsalves, Sr. Advocate
Mr H.S.Phoolka, Sr. Advocate with
Ms Kamna Vohra, Mr Jagjit Singh
Chhabbra, Mr Divyajyoti,
Mr Gurbaksh Singh and Ms Shilpa
Dewan, Advocates for Petitioners.

Mr Avtar Singh and Mr Lakhmi
Chand, Advocates with Mr J.S. Jolly
for Petitioner No.3/DSSMC.

versus

C.B.I. & ORS.

..... Respondents

Through: Mr D.P.Singh, Ms Tarannum Cheema,
Mr Raj Kiran Vats and Ms Hiral
Gupta, Advocates for CBI.

Mr Anil Kumar Sharma, Advocate for
R-2 & R-3.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Section 407 of the Code of Criminal Procedure, 1973 (in short 'the Code') essentially praying for transfer of Sessions Case No.27/2010 titled *CBI v. Sajjan Kumar and Ors.* pending before District and Sessions Judge, Karkardooma Courts, Delhi, to some other competent court having jurisdiction.

2. At the outset, counsel appearing on behalf of the transfer petitioners as well as counsel appearing on behalf of all the respondents state that they withdraw any and all allegations made against the District and Sessions Judge before whom the subject matter is pending as well as any allegations made against counsel appearing on behalf of the parties before the Sessions Court as well as before this court, unconditionally. Counsel appearing on behalf of the parties state that the pleadings in this behalf may be expunged. Ordered accordingly.

3. The present case relates to the unfortunate incidents that occurred in the aftermath of the assassination of Mrs. Indira Gandhi, the then Prime Minister of India. The case is yet to attain closure.

4. The provisions of Section 407 of the Code read as follows:

“407. Power of High Court to transfer cases and appeals. - (1) Whenever it is made to appear to the High Court -

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

- (i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;
- (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;
- (iii) that any particular case be committed for trial to a Court of Session; or
- (iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate- General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub- section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with copy of the grounds on which it is made; and no order shall be made on of the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court

shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under subsection (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under subsection (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.”

5. A plain reading of the above provision reveals that it stipulates that the High Court may transfer any case under this provision if it considers it expedient so to do to meet the ends of justice. The provision further stipulates that any case can be transferred from a criminal court subordinate to the High Court to any other criminal court of equal or superior jurisdiction.

6. In the present case it is observed that all the allegations levelled against the concerned judicial officer have been unconditionally withdrawn by the petitioners. This withdrawal is emphasized and underlined.

7. It is one of the cardinal principles of administration of justice that *“Justice must not only be done but must be seen to be done.”*

8. After having heard counsel for the parties, it is my considered opinion that in view of the dictum afore-stated it would be necessary and expedient to transfer the subject case in the interest of justice, in view of the avoidable controversy that has been unnecessarily generated and list it before another criminal court of equal jurisdiction. It is made clear that the transfer of this case from the court of District and Sessions Judge, Karkardooma Courts, Delhi, is warranted in order to protect and uphold the dignity and majesty of the judicial system and to ensure the faith of citizens in courts of law. The direction proposed to be issued is with a view to render the judicial officer immune from controversy and to protect his impeccable reputation. It is, therefore, reiterated that the present order is not a comment on the conduct of the judicial officer hearing the present case save and except to reaffirm the faith that the public reposes in that judicial officer.

9. In view of the foregoing, with the consent of the parties and after recording their no objection in this behalf, the Sessions Case No.27/2010 titled *CBI v. Sajjan Kumar and Ors* pending before District and Sessions Judge, Karkardoom Courts, Delhi is transferred to the court of District and Sessions Judge, Patiala House Courts, New Delhi, forthwith. The District and Sessions Judge, Karkardooma Courts, is directed to transmit the papers and proceedings of the subject case to the court of District and Sessions Judge, Patiala House, forthwith.

10. With the consent of the parties appearing before this court the District and Sessions Judge, Patiala House is requested to video-graph the entire proceedings in the subject trial to be conducted before it. Counsel appearing on behalf of the private respondents undertakes to cover the entire costs of the said video recording. The offer is accepted and the private respondents are directed to file an undertaking in this behalf before the District and Sessions Judge, Patiala House, on the next date of hearing.

11. The parties and their counsel are directed to appear before the District and Sessions Judge, Patiala House, in the first instance on 08.12.2015 for further proceedings in accordance with law.

12. It is made clear that the above order has been occasioned in the interest of justice and with the consent of parties appearing before this court.

13. A copy of this order be transmitted to the District and Sessions Judge Karkardooma Courts, Delhi as well as to the District and Sessions Judge, Patiala House Courts, New Delhi, by Express Messenger today.

14. With the above directions the present petition is disposed of.

NOVEMBER 30, 2015

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SIDDHARTH MRIDUL, J