

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Transfer Petition (Criminal) No.1 of 2016

1. Chandrabhal Mishra, son of Shri R.P. Mishra, aged about 37 years, resident of Sattipara, Ambikapur, P.S. and Tahsil Ambikapur, District Surguja, Chhattisgarh (In Jail)
2. Amit Dubey, son of Shri Anil Dubey, aged about 27 years, resident of Nawki Mod Rajpur, P.S. and Tahsil Rajpur, District Balrampur – Ramanujanj (On Bail)

---- Petitioners

versus

State of Chhattisgarh, through the District Magistrate Surguja, Ambikapur, District Surguja, Chhattisgarh

---- Respondent

For Petitioners	:	Shri V.K. Pandey, Advocate
For State/Respondent	:	Shri Majid Ali, Panel Lawyer
For Intervener	:	Shri Manoj Paranjpe, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

23.9.2016

1. By means of this petition, the Petitioners have prayed that Sessions Trial No.10 of 2014 be transferred to any other Court within the Sessions Division, Ambikapur from the Court of the Third Additional Sessions Judge, Ambikapur.
2. The grievance of the Petitioners is that on 4.12.2015 when the case was listed for recording of the evidence of some of the prosecution witnesses, brother of the deceased was present in the Court. This brother happens to be the Deputy Mayor of the Municipal Council, Ambikapur. The allegation made is that before recording of the evidence started the Presiding Officer told the brother of the deceased that his official house is not in good condition and the P.W.D. is not providing any funds nor taking any action for the same and, therefore, he should help in this regard. It appears that when the evidence was

being recorded, the Counsel for the accused raised an objection that the evidence was not being recorded properly. Thereafter, he filed an application before the Trial Judge on the same day pointing out that he would not get justice from the Court since the Judge is asking for favour from the brother of the deceased. The Trial Court taking into consideration the said application did nothing further in the matter. The Petitioners filed an application for transfer of the case before the Sessions Judge, Ambikapur, but the said application was dismissed on 31.12.2015. Thereafter, the Petitioners filed this transfer petition before this Court on 29.1.2016.

3. In the meantime, since there was no stay order, the Trial Court fixed the case for evidence of the prosecution witnesses. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. The statements of the defence witnesses were also recorded and finally arguments in the case were heard on 26.4.2016 and the case was fixed for judgment on 4.5.2016. In the present transfer petition, no stay order was passed and the proceedings in the Trial Court continued. On 2.5.2016, the Counsel for the Petitioners filed some application for placing on record certain document before the Trial Court and again prayed for transfer of the case on the same ground that on 4.12.2015 the Learned Presiding Officer had sought favour from the brother of the deceased. It would be pertinent to mention here that comments of the Officer were called for on two occasions and the detailed comments were received in the Registry on 3.6.2016.
4. At this stage, I am not inclined to go into the correctness of the allegations. However, the fact of the matter is that on 4.12.2015 itself, the Counsel for the defence by filing an application before the Learned Trial Judge made such allegations. At this stage, it would not be proper to go into whether these allegations are correct or not.

Assuming that they are not correct then also if the Petitioners have slightest doubt that they may not get justice from the Judge, I am of the opinion that keeping in view all the facts of the case, it would be even better for the Judge not to hear the case. The case is lying pending for the last 3-4 months. No purpose has been served. Therefore, I allow the transfer petition without in any way casting any aspersions on the Learned Presiding Officer. It is made clear that the transfer of the case is made only because the trial has remained stayed for so long. The evidence of both the sides in the case has been recorded. Only arguments have to be heard. Therefore, the Sessions Trial No.10 of 2014 is transferred from the Court of the Third Additional Sessions Judge, Ambikapur to the Court of the Sessions Judge, Ambikapur, who is directed to hear the arguments and decide the matter latest by 2.11.2016.

5. The Registrar (Judicial) to communicate this order to the concerned Courts. Parties to the lis are directed to appear before the Learned Sessions Judge, Ambikapur on 6.10.2016.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE