

HIGH COURT OF CHHATTISGARH, BILASPUR**TPCR No. 19 of 2016**

Balram Dubey S/o Shri Laxmi Narayan Dubey Aged About 40 Years R/o
Balaji Nagar, Aghanpur, Jagdalpur, District- Bastar, Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Station House Officer, Police Station-
City Kotwali Jagdalpur, District- Bastar, Chhattisgarh.
2. Tarun Chauhan S/o Late Shri H.S. Chauhan Aged About 46 Years R/o
Behind Maitri Sangh, Kumharpara, Jagdalpur, District- Bastar,
Chhattisgarh.

---- **Respondents**

For Petitioner	:	Shri V.R. Tiwari & Shri Atul Kumar Kesharwani, Advocates
For Respondent 1	:	Smt. Shobha Kashyap, Dy. G.A.
Respondent 2 not noticed.		

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

26/10/2016

1. Learned counsel for the petitioner submits that the matter requires immediate consideration of this Court. Further prayed that looking to the facts shown by the petitioner and the documents, the matter is under enquiry and there is no necessity or requirement to hear respondent 2 as the concerned Investigating Officer of P.S. Jagdalpur have registered the case conducting enquiry. The matter is at remand stage, hence respondent 2 need not be noticed and the matter may be disposed of finally at the motion stage itself.

2. With the consent of the parties, the matter is heard finally at the motion stage itself.

3. Learned counsel for the petitioner submits that the petitioner had filed an application under Section 407 of the Code of Criminal Procedure, 1973 (for short the Code) praying that the remand proceedings pending before the C.J.M. Jagalpur arising out of Crime No.330/2016 under Section 307 IPC against the petitioner may be transferred to the competent Court at another appropriate District for proper conductance of further proceedings under the law. He submits that the petitioner on the basis of FIR dated 4.10.2016 by a local counsel of the District Bar Association Jagdalpur, Crime No.330/2016 under Section 307 IPC has been registered. The petitioner was arrested on 5.10.2016 at 9.30 am. He was medically examined by the police and thereafter the police prayed for and the concerned criminal court granted remand under Section 167 of the Code. The court gave the next date for presentation of the charge sheet on 19.10.2016. He submits that in the order sheet dated 5.10.2016 the memo has been filed on behalf of the victim i.e. Member of the District Bar Association by the President and all the Advocates of the said Bar Association. In news published in the daily newspaper the Bar Association had passed a resolution against the incident and also resolved not to appear for a day in the Court in any of the case to mark their protest. Further resolved that no Member of the Bar shall defend the petitioner. With this, there are serious apprehension that the petitioner may not get any Lawyer of his choice to defend himself and there is every possibility that if the petitioner engaged any outside counsel, he may also be faced protest by the local bar. It is an appropriate fact regarding consideration of the transfer of said remand proceedings to another appropriate civil district. Learned counsel further argued that though the petitioner had submitted a written report against the victim and one another person on 5.10.2016 at 1.20 am, and the police of Jagdalpur in a written request sent the petitioner for medical

examination to Maharani Hospital, Jagdalpur. The petitioner got examined by the concerned medical officer at 2.05 am on 5.10.2016 where the Doctor conducting MLC noticed 6 injuries and referred for x-ray of the concerned part of the body. Despite this fact the concerned criminal court allegedly asked the petitioner that whether he was assaulted or not and whether he received any injury and observed that on being asked, the petitioner states that he was not beaten nor he was having any injury over his body. On behalf of the petitioner, it is submitted that the petitioner was not asked for the said facts nor he replied as mentioned in the order sheet. Even otherwise when the petitioner was examined by the concerned medical officer conducting MLC on the request of the petitioner to the concerned police on the basis of a written report filed, the concerned court ought to have looked into the diary papers and initially satisfy whether there is any MLC of the petitioner or not. It goes to show that the concerned criminal court may be under any pressure with the resolution and the memo filed by the Members of the District Bar Association, Jagdalpur. Learned counsel further added to his argument and submits that as the petitioner has been deprived to defend himself through a lawyer of his choice and also looking to the entire conduct, the resolution passed, he had an apprehension in his mind that he may not get justice within the territorial jurisdiction. Consequently, prayed that the said remand proceedings may be transferred to another appropriate district for further enquiry and trial as per provisions of law.

4. Learned counsel for respondent 1 duly assisted the Court and objected the prayer made in this behalf by learned counsel for the petitioner.

5. Perused the petition and the documents annexed by the petitioner.

6. From perusal of the entire material it appears that on a complaint made by the member of the District Bar Association, Jagdalpur on 4.10.2016 at 8.35 pm, the police of Jagdalpur has registered crime No. 330/2016 under Section 307 IPC. He was arrested on 5.10.2016. He was brought before the C.J.M. Jagdalpur on 5.10.2016. Application under Section 167 of the Code has been filed. The said criminal Court allowed the prayer of judicial custody of the petitioner till 19.10.2016 and gave next date for presentation of the challan. From perusal of the documents it appears that the alleged dispute between the petitioner, the victim was on account of some financial dispute with the family members of the victim. From perusal of the documents it appears that the District Bar Association has resolved not to appear before the Courts of Jagdalpur for a day in protest. Further resolved that no Member of the Bar Association shall defend the petitioner. It further appears that at 1.20 am, the petitioner submitted a written report before the Kotwali Police. It appears that on 5.10.2016 itself, the Kotwali Police requested the medical officer of Maharani Hospital, Jagdalpur in a written request for conducting medical examination of the petitioner wherein it is mentioned that the petitioner was assaulted by the alleged victim and his friends by some arm made of iron like knife and with this assault the petitioner received injuries over the left wrist and other parts of the body. From perusal of the documents it appears that the petitioner was examined on 5.10.2016 at 2.05 am by the medical officer of the concerned Maharani Hospital, Jagdalpur and the Doctor conducting MLC noticed 6 injuries and further referred for the examination of x-ray of various parts of the body.

7. Upon considering the entire material adduced before this Court without commenting anything on its merits, in the considered view of this Court, the

prayer made by the petitioner for transfer of the said remand proceedings to any appropriate district appears to be acceptable. Though for the moment it cannot be held that the allegations made by the petitioner are correct in absence of any material and response but as a settled law justice not only be done but it appears to be done.

8. Without any appreciation regarding any fault, lapses and other facts to maintain the requirement of law settled by many pronouncements by the apex court, I am inclined to allow the petition under Section 407 of the Code. Consequently, the petition filed on behalf of the petitioner is hereby allowed. The said enquiry proceedings pending before the Court of C.J.M. is transferred to the Court of C.J.M. Kondagaon (CG). The C.J.M. Jagdalpur is directed to transmit the entire proceedings immediately towards the C.J.M. Kondagaon (CG). He is directed further to inform the concerned police to take part in the said proceedings and if required obtain further remand for judicial custody or file charge sheet as required under the law before the C.J.M. Kondagaon. The C.J.M. Kondagaon is directed to continue with the further proceedings of the case as required under the law.

9. The petition stands disposed of. The petitioner may file a copy of this order before the concerned criminal court for compliance.

10. Registrar (J) is directed to send the copy of this order to the concerned court through usual and fax mode.

11. Certified copy today.

Sd/

(Chandra Bhushan Bajpai)
Judge