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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(CRL.) 12/2016**

TARSEM LAL VERMA

..... Petitioner

Through: Mr. Azhar Qayum, Advocate with
petitioner in person.

versus

CBI

..... Respondent

Through: Mr. Narender Mann, Spl. P.P. and
Mr. Manoj Pant, Advocate for CBI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

20.09.2016

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The petitioner has preferred the present petition to seek the transfer of CC No. 09/2012 pending in the court of Shri M.K.Nagpal, Special Judge, CBI, Central District, Tis Hazari Courts, Delhi, to another Special Judge, CBI, by claiming that the presiding officer is proceeding with a bias against him.

The case of the petitioner is that he has no source of income and the erstwhile Special Judge Mr. A.K.Mendiratta had appointed Mr. Rajesh Kumar, Advocate, as an Amicus Curiae to represent the petitioner. The case was transferred to the court of Mr. M.K.Nagpal, Special Judge, CBI. On 18.05.2015, Mr. Rajesh Kumar, Advocate, got late in coming to the Court

and the petitioner sought a passover while informing that the learned Amicus Curiae would be reaching in about 30 minutes. The petitioner submits that the learned Judge, however, did not grant him the passover and proceeded to close the right of the petitioner to cross-examine the prosecution witnesses by recording 'Nil. Opportunity given'. The petitioner submits that thereafter Mr. Rajesh Kumar, Advocate, gave up his brief and the petitioner could not find any other counsel to represent him. The trial court proceeded to examine witnesses after witnesses on behalf of the prosecution and the petitioner could not cross-examine them. The petitioner had attributed several statements to the learned Judge, which, according to the petitioner, were made in open court, during the course of hearing. The petitioner submits that he had a service dispute with the husband of the Chief Public Prosecutor-Ms. Anita Hooda. According to the petitioner, the petitioner was involved in the case in question with a view to settle scores with the petitioner on account of his service dispute with the husband of Ms. Anita Hooda. The husband of Ms. Anita Hooda has since passed away and she blamed the petitioner for his death. The petitioner has claimed that Ms. Anita Hooda had come to the chamber of learned Judge and met him and thereafter the presiding officer had become biased against the petitioner. The petitioner has placed on record the proceedings which have been undertaken before the learned Judge from date to date.

A perusal of the petition shows that the allegations made therein both against Ms. Anita Hooda as well as the learned Judge are absolutely vague and unsubstantiated. While the petitioner claims that Ms. Anita Hooda met the learned Judge in chamber, the petitioner is blissfully silent about the date and time when the said meeting took place. He has not even disclosed the

circumstances in which he was present at the location from where he had witnessed Ms. Anita Hooda meeting the learned presiding officer. Learned Amicus Curiae representing the petitioner has drawn the attention of the court to the order dated 14.10.2015 passed by the learned Judge. So far as it is relevant, the said order reads as follows:

“A-3 was earlier provided assistance of Shri Rajesh Kumar, Amicus Curiae by this Court, but he has withdrawn himself from this case. A-3 then informed the court that he was in process of taking assistance of legal aid counsel from the office of DLSA, but no legal aid counsel has turned up before this court to represent him so far. He has been asked if he requires the assistance of any of the two regular advocates appearing for the other two accused as Amicus, to which he has refused. He has been told that if he suggests the name of any other counsel of his choice, who may be available in this court to represent him on each and every date, then that counsel can be appointed as Amicus to represent him, as per the rules. Till then, he has been permitted to defend himself in person and it is found that earlier also, he had been representing himself upto the Hon’ble Supreme Court in different proceedings.”

The submission of learned counsel for the petitioner is that the learned Judge, on the premise that the petitioner has been representing himself in court proceedings including before the Supreme Court in different proceedings, proceeded with the recording of evidence of the prosecution witnesses and did not adjourn the proceedings to enable the petitioner to appoint another counsel.

Learned counsel for the petitioner has sought to place reliance on the judgment of the Supreme Court in ***Kanaklata Vs. State of (NCT) of Delhi & Ors.*** 2015(2) SCALE 182, to submit that even if there is a lurking doubt in the mind of the accused that he may suffer injustice at the hands of the

presiding judge, the matter should be transferred to another court. In para 5 of this decision, the Supreme Court observed as follows:

“Having said that, there may still be situations where the nature of the observations made by the court concerned create a reasonable apprehension in the mind of the litigant that the court has so committed itself to a given approach or thought process that it may not be possible for it to retrace its steps to take a fair and non-partisan view in the matter. The present appears to be one such case where despite the safeguards provided by the High Court's observations, the apprehension of the complainant continues to subsist. We do not think that such apprehension is wholly misconceived nor can it be dubbed as forum shopping in disguise. The earlier order passed by the trial court is so strongly worded that it could in all likelihood give rise to a reasonable apprehension in the mind of the complainant which cannot be lightly brushed aside. We must hasten to add that we are not in the least suggesting that the Presiding Officer of the trial court is totally incapable of adopting a fair approach while passing a fresh order but then the question is not whether the Judge is biased or incapable of rising above the earlier observations made by her. The question is whether the apprehension of the complainant is reasonable for us to direct a transfer. Justice must not only be done but must seem to have been done. A lurking suspicion in the mind of the complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a preconceived notion about it. On that test we consider the present to be a case where the High Court ought to have directed a transfer. Inasmuch as it did not do so, we have no option but to interfere and direct transfer of the case to another court.”

The aforesaid order dated 14.10.2015 itself shows that the petitioner was granted an opportunity to name the counsel that he would like to appoint as per his choice, who may be available in court to represent him.

He did not do so. It is, in these circumstances, that the learned Judge proceeded with the matter. At this stage, I may also take note of the submissions of Mr. Mann, learned Special Public Prosecutor for the CBI, that the prosecution witnesses whose evidence is presently being recorded, (and in respect of whom the grievance of the petitioner is that he had not been granted opportunity to cross-examine) are witnesses who are relevant to the case of other co-accused and they are not relevant for the case of the petitioner. He has further pointed out that these witnesses have been thoroughly cross-examined by the counsel representing the interested co-accused. He, therefore, submits that no prejudice has been suffered by the petitioner in any event. He has also submitted that neither the order dated 14.10.2015, nor any of the other orders placed on record betray a sense that the learned Judge is acting with any bias against the petitioner. Attention has also been drawn to the orders dated 04.05.2016 and 01.06.2016 passed by the learned Special Judge, which are to the same effect.

Having heard learned counsels, and perused the petition and the proceedings undertaken before the trial court, I am of the view that there is nothing to suggest that the presiding officer has proceeded with a bias against the petitioner or with undue haste. It cannot be said that the presiding officer has not granted opportunity to the petitioner to defend himself in just and proper manner.

I do not find that the aforesaid decision in *Kanaklata* (supra) is applicable in the facts of the present case. None of the orders passed by the presiding judge placed on record show that he had made up his mind, even tentatively, against the petitioner. There are no observations made by the learned Judge, on a reading of which, it could be said that the petitioner may

genuinely and reasonably entertain a doubt about his getting an impartial trial or hearing. There has to be some reasonable basis for a litigant to entertain a doubt with regard to the independence of the Judge before he makes such serious allegations of his being biased, and of his expressing apprehension that he would not get justice.

The submission of learned counsel for the petitioner is that even after the present petition was filed, the learned Judge did not adjourn the proceedings and since the petitioner did not cross-examine the witnesses, his right to cross-examine the prosecution witnesses examined during the said period was closed. No fault can be found with the manner in which the learned Judge has proceeded in the matter. Mere filing of this petition did not tantamount to stay of the proceedings before the Trial Court.

In the aforesaid circumstances, I am not inclined to transfer the trial which is proceeding before the learned presiding officer to any other court. However, in the interest of justice and by giving the benefit of doubt to the petitioner, that he may have genuinely entertained the belief that the filing of the petition was a reason good enough for him not to cross-examine the prosecution witnesses, the petitioner is permitted to cross-examine those of the prosecution witnesses who have been examined after the filing of the present petition i.e. 20.01.2016. The said witnesses shall be produced by the prosecution for their cross-examination by the petitioner. However, the petitioner shall conduct their cross-examination on the day they are produced and shall not seek or be granted any adjournment.

It is made clear that the aforesaid does not take away the right of the petitioner to make an application under Section 311 Cr.P.C. in respect of other PWs examined by the prosecution. Any such application, if moved,

shall be considered on its own merits by the court.

The petition stands disposed of.

VIPIN SANGHI, J

SEPTEMBER 20, 2016

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