34 to 37

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 02.03.2016

TR.P.(CRL.) 55/2015

STATE ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate (SPP) with Mr. Rahul Mehra, Standing Counsel (Criminal), Ms. Nandita Rao, ASC (Criminal), Ms. Aakashi Lodha and Ms. Vedika Mittal, Advocates

versus

D.V MALHOTRA ..... Respondent

Through: Mr. Pawan Narang, Advocate with Ms. Prachi Agarwal, Advocate

TR.P.(CRL.) 56/2015

STATE ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate (SPP) with Mr. Rahul Mehra, Standing Counsel (Criminal), Ms. Nandita Rao, ASC (Criminal), Ms. Aakashi Lodha and Ms. Vedika Mittal, Advocates

versus

SUSHIL ANSAL ..... Respondent

Through: Mr. Harsh Bora, Advocate

TR.P.(CRL.) 57/2015
STATE ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate (SPP) with Mr. Rahul Mehra, Standing Counsel (Criminal), Ms. Nandita Rao, ASC (Criminal), Ms. Aakashi Lodha and Ms. Vedika Mittal, Advocates

versus

GOPAL ANSAL ..... Respondent

Through: Mr. Vijay Kumar Aggarwal, Advocate with Mr. Neeraj Kumar Jha and Mr. Sanjay Narain, Advocates

TR.P.(CRL.) 58/2015

STATE ..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate (SPP) with Mr. Rahul Mehra, Standing Counsel (Criminal), Ms. Nandita Rao, ASC (Criminal), Ms. Aakashi Lodha and Ms. Vedika Mittal, Advocates

versus

ANOOP SINGH ..... Respondent

Through: Ms. Seetab Ali Fatima, Advocate

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present petitions under Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') seek transfer of the

following Criminal Revision Petitions pending before the Additional Sessions Judge-03, Patiala House Courts, New Delhi:-

(i) Criminal Revision Petition No.127/2014 titled as '*D.V. Malhotra vs. State.*'
(ii) Criminal Revision Petition No.136/2014 titled as '*Anoop Singh vs. State.*'
(iii) Criminal Revision Petition No.13/2014 titled as '*Gopal Ansal vs. State.*'
(iv) Criminal Revision Petition No.141/2014 titled as '*Sushil Ansal vs. State.*'

2. Mr. Dayan Krishnan, learned Senior Counsel appearing on behalf of the State as well as Mr. Pawan Narang, learned counsel appearing on behalf of D.V. Malhotra, Mr. Harsh Bora, learned counsel appearing on behalf of Sushil Ansal, Mr. Vijay Kumar Aggarwal, learned counsel appearing on behalf of Gopal Ansal and Ms. Seetab Ali Fatima, learned counsel appearing on behalf of Anoop Singh, in unison state that they have instructions from their respective clients that the above-mentioned Criminal Revision Petitions, pending before the Additional Sessions Judge-03, Patiala House Courts, New Delhi as afore-stated be transferred to this Court for further hearing and adjudication in accordance with law in terms of the provisions of

Section 407 (1)(c)(iv) of the Code. The relevant provisions of the Code reads 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
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> (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."

3. Mr. Dayan Krishnan, learned Senior Counsel on instructions from Ms. Nandita Rao, learned Additional Standing Counsel (Criminal) appearing on behalf of the transfer petitioners further states that they unconditionally withdraw any and all allegations made against the concerned Additional Sessions Judge before whom the subject Criminal Revision Petitions are pending.

4. Pleadings on behalf of the transfer petitioners in this regard are accordingly expunged from the record.

5. The above order, apart from being rendered in view of the consent of the parties as above mentioned, is also necessitated because this Court considers it expedient so to do to meet the ends of justice.

6. As observed by this Court in ***Joginder Singh & Ors. vs. C.B.I. & Ors.*** reported as **2016 (1) JCC 120** "*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.*"

7. Furthermore, the subject proceedings, that are being transferred to this Court by way of the present order, arise as an offshoot of an unfortunate incident, which may be referred to as the *Uphaar Theatre Fire Tragedy* that occurred, as far back as on 13.06.1997. The present transfer is warranted in order to protect and uphold the dignity and majesty of the judicial system and to ensure the faith of the citizens in Courts of Law.

8. The transfer is in the aforesaid circumstances, strictly in terms of the provision of Section 407 of the Code, inasmuch as, any case can be transferred from a criminal court, subordinate to a High Court to any other court of an equal or superior jurisdiction, if it considers it expedient so to do

to meet the ends of justice. This view is buttressed by the following decisions:-

(i) ***Romesh Chandra Arora vs. State*** reported as **AIR 1960 SC 154**.
(ii) ***A.R. Antulay vs. R.S. Nayak and Another*** reported as **(1988) 2 SCC 602**.

9. In ***Romesh Chandra Arora*** *(supra)* the Hon'ble Supreme Court observed as follows:-

> "10. Now, as to the order of transfer. The provisions of Section 527 of the Criminal Procedure Code, appear to us to be a sufficient answer to the contention urged on behalf of the appellant. It states, inter alia, that whenever it is made to appear to the High Court that such an order is expedient for the ends of justice, the High Court may order that any particular case or appeal be transferred and tried before itself. This is stated in express terms in Section 526(*i*)(*e*)(*iii*) and sub-section (3) of Section 526 states expressly that the High Court may act on its own initiative in passing such an order. In this particular case the High Court had the further circumstance that it had earlier issued a rule for enhancement of sentence, without knowing perhaps that an appeal had been filed to the Sessions Judge of Delhi a few days earlier. When this latter circumstance was brought to the notice of the High Court, it thought it expedient for the ends of justice to transfer the appeal to the High Court. We are unable to agree with learned counsel for the appellant that the High Court committed any illegality in passing the order of transfer. It is true that the record does not disclose that any notice was issued to the appellant before the order of transfer was made. It was open to the High Court to act on its own initiative and the appellant can make no grievance of the order of transfer on the ground of prejudice, because the appellant was fully

> heard both as to the correctness of his conviction and the propriety of the sentence originally passed against him by the learned Magistrate."

10. In view of the foregoing, Criminal Revision Petition No.127/2014 titled as '*D.V. Malhotra vs. State*', Criminal Revision Petition No.136/2014 titled as '*Anoop Singh vs. State*', Criminal Revision Petition No.13/2014 titled as '*Gopal Ansal vs. State*' and Criminal Revision Petition No.141/2014 titled as '*Sushil Ansal vs. State*' pending before the Court of Additional Sessions Judge-03, Patiala House Courts, New Delhi are transferred to this Court forthwith. The District and Sessions Judge, Patiala House Court, New Delhi is directed to transmit the papers and proceedings of the afore-mentioned Criminal Revision Petitions to this Court, within a period of one week from today along with the relevant Trial Court Record in case FIR No.207/2006, under Sections 120-B/109/201/409 IPC, registered at Police Station- Tilak Marg, titled as '*State vs. Dinesh Chand Sharma and Another.*'

11. The afore-stated Criminal Revision Petitions be listed before this Bench on 31.03.2016 for hearing and disposal in accordance with law, subject to obtaining necessary orders from Hon'ble the Chief Justice.

12. It is made clear that the transferred Criminal Revision Petitions shall be heard on a day-to-day basis till disposal.

13. With the above directions, the transfer petitions are allowed and disposed of accordingly.

SIDDHARTH MRIDUL, J

MARCH 02, 2016
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