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

+ TR.P.(CRL.) 28/2016 and CrI. M.A. No.7928/2016

CHANDER PAL SINGH & ANR Petitioners

Through: Mr. J.C. Mahindro, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Narender Mann, SPP and
Mr. Manoj Pant, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

31.01.2017

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1. The petitioners have preferred the present transfer petition assailing the order dated 27.04.2016 passed by the learned District & Sessions Judge (HQs), Delhi dismissing the petitioners' application seeking transfer of the case from the Court of the learned Special Judge, PC Act, namely Sh. Pitamber Dutt, the learned ASJ, (PC Act) CBI-02, Tis Hazari Courts, Delhi. The petitioners also seek transfer of the said case to some other Court of competent jurisdiction.

2. The petitioners are three of the eight accused in the case CC No.21/2011 in RC-07(A)/2000. The case relates to FIR No.34/1999. The same led to registration of the aforesaid regular case on 15.03.2000 and charge-sheet was filed on 26.11.2002. However, it appears that the trial commenced only in 2010. PW-1 was partly examined by the prosecution on

02.02.2010. His further examination then took place only on 16.10.2015, when he was further examined in chief and was cross-examined and discharged on the same day.

3. Soon thereafter, an application under Section 311 Cr.P.C. was moved by the prosecution for recalling PW-1 on 01.12.2015. That application was allowed on 02.12.2015. Mr. Mahindro submits that the Trial Court has also permitted taking on record additional documents in evidence by the prosecution which had not been relied upon. The first ground taken by the petitioner to establish bias against the learned Special Judge is that this application was allowed without giving adequate opportunity to the petitioners accused to oppose the same. In this regard, I may observe that the said order was assailed before this Court in CrI.Rev. Petition No.71/2016, which was dismissed by this Court on 20.12.2016 by holding that recall of PW-1 does not cause any prejudice to the petitioners and on the aspect of production of additional documents also, this Court did not interfere.

4. The petitioners further point out that on 05.02.2016, the learned Special Judge, without any application, summoned Ms. Sidhushree Khullar, who was the Commissioner (Transport) at the relevant time. The petitioners state that she was not cited as the witness. Even bailable warrants were issued for her production returnable on 14.03.2016. Learned counsel submits that this procedure adopted by the Trial Court was unjustified. Since Ms. Sidhushree Khullar was not even cited as a witness, she could not have been summoned, and that too, by directing issuance of bailable warrants against her. Mr. Mahindro submits that the Trial Court is also

seeking to intimidate the witnesses to depose against the accused.

5. Once again, I may observe that the said order was assailed by the petitioners in Crl. Revision Petition No.209/2016, which was decided on 20.12.2016. This Court once again held that there was no merit in the petitioners' petition. Ms. Sidhushree Khullar was summoned since she was the sanctioning authority under Section 19 of the PC Act and it was she who had granted sanction for prosecution of the petitioners. Thus, no prejudice was caused to the petitioners since the prosecution only sought to lead in evidence the process of sanction.

6. Mr. Mahindro submits that the learned Special Judge is openly requiring the prosecution to produce evidence against the petitioners so that he could convict the petitioners.

7. Apart from the mere statement of the petitioners in this regard, there is no other material brought on record by the petitioners. The proceedings undertaken by the Trial Court do not evoke a sense in this Court that the learned Special Judge is conducting the proceedings in a manner which would reflect any bias on his part. The impugned order passed by the learned District & Sessions Judge (HQs) shows that there are 62 prosecution witnesses enumerated in the list of witnesses. When the learned Special Judge took over, about 14 witnesses had been partly examined. During his tenure, he has expedited the trial and 41 witnesses have been examined. He has also observed that out of the 8 accused, only 3 accused appear to be aggrieved by the manner in which the trial is being proceeded with further. Therefore, the possibility of the petitioners seeking to derail the ongoing

trial by seeking transfer of the case cannot be ruled out.

8. In these circumstances, the petition is dismissed.

JANUARY 31, 2017
B.S. Rohella

VIPIN SANGHI, J