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HIGH COURT OF CHHATTISGARH, BILASPUR**TPCR No. 3 of 2018**

1. Chiman Lal Sahu S/o Premchand Sahu Aged About 48 Years Junior Engineer, Electricity Center, Thankhamhariya, District Durg Chhattisgarh Present Address Assistant Engineer, T S G-9, Kanker, District North Bastar Kanker Chhattisgarh
2. Shri Satyadhar Bandhe S/o Shri Chaitram Bandhe Aged About 30 Years Designation Assistanat Grade-III, (Contract), Electricity Distributor Center, Thankhamhariya, District Durg Chhattisgarh Permanent Address Baroda, Thana Mana Camp, Raipur Chhattisgarh At Present Bemetara Division Office

---- **Petitioners****Versus**

1. State of Chhattisgarh Through The Superintendent Of Police, Anti Corruption Bureau, Raipur District Raipur Chhattisgarh
2. Ghanshyam Singh Thakur S/o Bhagwan Singh Thakur Aged About 35 Years R/o Village Gatapar, Police Station Thankhamhariya, Bemetara, District Bemetara Chhattisgarh

---- **Respondents**

 Petitioners in person

 For Respondent No.1/State : Shri Ashish Shukla, Dy. AG for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/02/2018**

1. Heard.
2. This is the second round of petition for transfer of a criminal case bearing Special Case No.7/2013 **{State Vs. Chiman Lal Sahu & another}** from the Court of Special Judge (Prevention of Corruption Act), Bemetara.
3. Petitioners are present in person before the Court. They are heard. It is

contended that the trial Court has expressed its mind to convict the accused and after the first transfer petition was dismissed with observation by High Court, the approach of the trial Court appears to have become completely hostile. It is further contended that the manner in which the accused/applicants have been treated the faith of them over the system has completely eroded. The petitioners therefore submit that the case pending before the trial Court may be transferred to any other Court having jurisdiction.

4. Perused the documents, order-sheets & copy of deposition. The first transfer petition bearing TPCR No.01/2018 was preferred on the ground that when the case was not fixed for evidence unnecessary haste was shown and despite genuine prayer made for short adjournment a cost of Rs.5000/- was imposed for not cross-examining the witness. This Court though dismissed the petition for transfer of case however vide order dated 25.01.2018 in TPCR No.1/2018 has observed thus in para 3:-

“3. Perused the order sheets. The Court is unable to accept the submission made on behalf of the petitioners as it would have a serious impact on the way of trial. However, it is expected that the Court below shall not be prejudiced and act fairly and it is expected that the Court cannot lead the part of the prosecutor instead should act as an impartial agency. It is observed that during examination fair opportunity may be given to the petitioners so that they retain their faith in the judicial system as justice not only is to be done but should have appears to have been done.”

5. After dismissal of transfer petition by this Court the order-sheet of 30.01.2018 & subsequent order-sheets of trial Court are placed on record. The order whereby the cost of Rs.5000/- was imposed on the petitioners was subject of challenge in CRR No.1164 of 2017, wherein the co-ordinate Bench of this Court by order dated 02.01.2018 has stayed the imposition of

cost of Rs.5000/-. Perusal of the order-sheet dated 30.01.2018 would show that the Court has observed that since the amount of Rs.5000/- was already been paid as such it was already executed, the same could not be withdrawn. It was further observed that the final order in the criminal revision would be followed and the amount of cost in such case would be refunded if so ordered. The perusal of the order-sheet dated 30.01.2018 would also show that an application was filed by the accused/petitioners that the relative of the counsel Shri T.K. Tiwari namely Sangeeta Tiwari has died on 29.01.2018 at 5.30 pm so, in order to attend the last rituals the counsel could not appear before the Court and a adjournment was prayed for, for 30.01.2018 & 31.01.2018. it was stated that defending advocate was the main advocate who was conducting the case, so to advance the justice and an fair opportunity adjournment was prayed for.

6. In response to such prayer for adjournment, the Court observed that the case was fixed for evidence on 29.01.2018 and evidence was to start from 11 AM and death is shown to have taken place at 5.30 pm and till 1.30 the Court waited for advocate, thereafter, in his absence when the advocate did not come, the local Advocate had to cross-examine the witness. The order further records that one of the prosecution witness namely A.K. Lakhera expressed in Court a day before that accused have requested not to give evidence and today one witness Dr. Vikram Pathak has also disclosed this fact that accused had rang up not to give evidence, therefore, presumption can be drawn that the accused are trying to protract the trial. The order-sheet records that time was not allowed and the cross-examination was conducted through the lawyer present and then the case was fixed on 31.01.2018.

7. The perusal of the order-sheet if are examined by sitting in arm-chair of accused gives an impression of denial of fair opportunity to defend. The learned Court has recorded past and present incidents of disclosure by the witness to point out the conduct of the accused-petitioner which can always give rise a secondary debate in the mind of accused of sense of alienation from justice for him. Perusal of the deposition sheet would show that the evidence when was being recorded of one Ghanshyam Singh Rajput it continued up to 6.30 pm. Thereafter, request was made by the counsel who was cross-examining the witness that he has become tired and is also not well, therefore, cross-examination may be adjourned for the next date, which was refused by the Court and thereafter it continued up to 6.50 pm.

8. The relevant statutory provisions of Cr.P.C. on the subject are set out below:

“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, it may order, (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.”

9. A bare reading indicates that Section 407 enacted with a view to enable the parties to criminal cases to make an application for transfer in case that party apprehends that he cannot get fair and impartial enquiry or trial. The elementary rule of interpretation is that 'Animus Imponentis' i.e. intention of law givers has to be ascertained. At the same time there is another maxim 'Ut Res Magis Valeat Quam Pereat' which connotes that a statute or any enacting provision must be construed to make it more effective. The Parliament has employed the word fair and impartial trial with obvious object that accused should not be prejudiced. The law requires that an application for transfer can be moved when the applicant apprehends that he would not

get equal treatment with the opposite party (here in the prosecution) or that the personal feelings of the Court would influence his judgment. The aforesaid provision emanates from a Latin maxim 'Actus Curiae Neminem Gravabit' which means that an act of the Court shall prejudice no man. "The Courts are deemed to have inherent power to direct the change of venue in order that an accused may have fair and impartial trial. Change of venue can be had only upon some ground specified in the Statute. The right of the accused to a change of venue upon the ground of inability to obtain a fair trial in the country where the indictment is found or because of local prejudice and excitement is universally recognised. It is a fundamental principle of our law that every person charged with crime shall have a right to fair and impartial trial.'

10. It has been held in the case of **Rajinder Singh @ Manu And anr. Vs State Of West Bengal (2004 CRLJ 4023)** thus in para 19:-

“19. It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done . Confidence in the administration of justice is an essential element of good Government, and reasonable apprehension of failure of justice in the mind of the litigant public should, therefore, be taken into serious consideration. Courts should not fail to remember that it is their duty no less to preserve an outward appearance of impartiality than to maintain the internal freedom from bias. Transfer in certain cases is made not because the party approaching the Court will not have a fair and impartial trial but because the party has reasonable apprehension that it will not have such a trial. Examination of the accused under [Section 313](#) Cr.PC amounting to lengthy cross-examination, refusal to give opportunity to cross-examine the witnesses etc. are some of the instances where transfer of a case is justified. When the whole procedure was extremely arbitrary and in direct contravention of law and the Judge displayed plenty of zeal and want of judicial spirit, the apprehension entertained by a party that it will not have a fair trial is justified.”

11. Further in the case of **Kanaklata Vs. State (NCT of Delhi) and Others**

{{(2015) 6 SCC 617}} the Supreme Court has held thus in para 7 :-

“7.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. In as much as it did not do so, we have no option but to interfere and direct transfer of the case to another Court.”

12. In the case in hand it appears that in the earlier round of litigation though the transfer petition was dismissed, however, the Court has observed certain principles and reminded the trial Court to give an impression that the trial is being conducted without any prejudice. The order thereafter on 30.01.2018 shows that the Court has expressed certain opinion on observations made by the prosecution witness thereby has recorded a past incident happened in Court. Further if on any ground of bereavement in the family of advocate any short adjournment is sought for it can always be considered. The refusal of such adjournment and making observation certainly raises an apprehension in the mind of accused that he would suffer injustice. Considering the nature, the facts as have developed, this Court is of the

opinion that it is in the interest of justice and the judicial system to transfer the case to the other Court as justice not only to be done but should be seems to have done. In view of this I am inclined to transfer the case bearing Special Case No.7/2013 **{State Vs. Chiman Lal Sahu & another}** from the Court of Special Judge (Prevention of Corruption Act), Bemetara to the Court of Special Judge (Anti Corruption Bureau), Durg. The parties shall appear before the Court of Special Judge (Anti Corruption Bureau), Durg. With such observation, the petition stands disposed of.

13. It is further observed that no adverse remark has been made against the trial Court and transfer of case should not be construed as an adverse opinion & remark on the trial Court.

SD/-

Goutam Bhaduri
Judge

Ashu