

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

TRANSFER CRIMINAL PETITION No.170 OF 2017

ORDER:

The present Transfer Criminal Petition is filed under Section 407 of the Code of Criminal Procedure, 1973 (for short 'Code'), by accused in C.C. No.7 of 2013 pending on the file of the Principal Special Judge for SPE & ACB Cases - cum - IV Additional Chief Judge, City Civil Court, Hyderabad, Telangana State, requesting to transfer the said C.C. from the aforesaid Court to the Court of the Principal Special Judge for SPE & ACB Cases at Vijayawada, Krishna District, State of Andhra Pradesh.

2. The petitioner herein, who is accused in the aforesaid C.C., is charged with the offence punishable under Section 13 (2) read with 13 (1) (e) of the Prevention of Corruption Act, 1988 (for short 'Act, 1988'), by the ACB, CIU, Hyderabad. In fact, the charge sheet was laid by the Deputy Superintendent of Police, ACB, Eluru Range, Eluru, West Godavari District, State of Andhra Pradesh.

i) The petitioner, in his affidavit, would contend that the ACB alleging that he acquired assets disproportionate to the known sources of his legal income, registered a case in Crime No.10/RCA-CIU-HYD/2011 on 29.03.2011; search was conducted at his residential house on 31.03.2011 bearing door No.4-4-96/1, Street No.2, Chandramouli Nagar, Koritipadu, Guntur, Guntur District, State of

Andhra Pradesh, and finally charge sheet was laid on 27.02.2013, which was numbered as C.C. No.7 of 2013 on the file of the Principal Special Judge for SPE & ACB Cases, Hyderabad, State of Telangana.

ii) He would submit that while C.C. No.7 of 2013 was pending, the composite State of Andhra Pradesh was bifurcated on 02.06.2014, and the new State of Telangana was formed and consequently, all the pending cases before the Principal Special Judge for SPE & ACB Cases at Hyderabad in so far as ACB Cases arising within the territory of residuary Andhra Pradesh State were transferred to the Special Judge for SPE & ACB Cases at Vijayawada except his case, which according to him, may be due to inadvertence.

iii) He states that all important witnesses are located at within the territory of residuary Andhra Pradesh State while a few witnesses are from the States of Chennai and Telangana. He refers to other reasons, such as absence of Special Public Prosecutor being appointed to conduct the cases at Hyderabad. But, however, he would contend that the Investigating Officer is located at West Godavari District, State of Andhra Pradesh and, therefore, it is necessary to transfer the aforesaid C.C. from the Court of Principal Special Judge for SPE & ACB Cases at Hyderabad, Telangana State to the Court of Special Judge for SPE & ACB Cases at Vijayawada, Andhra Pradesh State, in view of the convenience to the parties and the witnesses.

3. The said request is resisted to by the respondent - ACB, Eluru Range, Eluru, by filing counter. While answering the allegations mentioned in paragraph No.3 of the affidavit in support of the petition, the respondent would state that the Public Prosecutor was appointed and the case was being conducted by the Public Prosecutor and thirteen (13) witnesses were examined by the date of filing the counter, and only a few witnesses remained to be examined. Then he mentions thus:

“...Though the other cases were transferred to the Court of Special Judge for SPE & ACB Cases, Vijayawada and other courts on point of jurisdiction, this case was not transferred as the trial in this case is going to be completed and as the Honourable Court of Prl.Special Judge for SPE & ACB Cases - cum - IV Additional Chief Judge, City Civil Court, Hyderabad, State of Telangana is the competent jurisdictional court for trial of this case as the FIR, seized documents etc., were filed before this Honourable Court besides the offence was took place while the State is united and the charge sheet filed by the investigating officer pertains to ACB, CIU, who is having jurisdiction all over the state at the time of filing the charge sheet and as major properties existing at Hyderabad. Hence, transferring this case at this state is not required as the trial is going to be completed in short time...”

and, therefore, sought to dismiss the petition.

4. Reply affidavit is filed by the petitioner referring to ‘point of jurisdiction’ stating that the aforesaid C.C. is required to be tried by

the Special Judge for SPE & ACB Cases at Vijayawada. The petitioner states that in the counter, the respondent admitted that all other cases were transferred to the Special Judge for SPE & ACB Cases at Vijayawada and other Courts on point of jurisdiction and, therefore, the present C.C. is also liable to be transferred on the same ground of jurisdiction, inasmuch as the stage of the case does not confirm the jurisdiction on the Principal Special Judge for SPE & ACB Cases at Hyderabad.

i) He would state in paragraph No.4 of the reply affidavit that under Section 105 of the Andhra Pradesh Reorganization Act, 2014 (for short 'Act, 2014') every proceeding pending immediately before the appointed day before a Court (other than High Court), Tribunal, Authority or Officer in any area which on that day falls within the State of Andhra Pradesh, shall, if it is a proceeding relating exclusively to the 'Territory' which as from that day or the 'Territories' of the State of Telangana, stands transferred to the corresponding Court, Tribunal, Authority or Officer of that State, and, therefore, it is not the stage of the case pending before the Principal Special Judge for SPE & ACB Cases at Hyderabad, that decides or confers the jurisdiction, but it is the case, in which the proceedings would have been laid if it had been instituted after the appointed day.

ii) He would also state that only two assets are situated at Hyderabad as per the list of assets, whereas other 25 assets are situated in the territorial limits of Andhra Pradesh State.

5. Heard Sri T. Lakshminarayana, learned counsel for the petitioner - accused, and Sri P. Udaya Bhaskara Rao, learned Standing Counsel - cum - Special Public Prosecutor for ACB Cases, for respondent.

6. It is not in dispute that 13 witnesses were examined by the date of filing the present petition by the petitioner. A perusal of the copy of charge sheet filed along with petition would show that the charge sheet was laid by the Deputy Superintendent of Police, ACB, Eluru Range, Eluru, West Godavari District, which district falls within the territorial limits of the residual Andhra Pradesh State. Except item Nos.1 and 2 of Annexure-I of assets out of 27 items, all other items are located in Guntur District of Andhra Pradesh State. The first two items are located in Hyderabad of Telangana State. The number of witnesses cited are as many as 61 witnesses, out of them, it appears only 13 witnesses have been examined so far.

7. Now, the question is, whether the Court can assume jurisdiction though, ceased to have jurisdiction only on the ground that the trial is likely to be completed within a short time?

8. The submission of the learned counsel for the petitioner is that by virtue of Section 105 of the Act, 2014, the Court at Hyderabad ceases to have jurisdiction, more particularly, when all other cases were already transferred to the Court at Vijayawada and other places of the residuary Andhra Pradesh State from Telangana State, and retaining the present C.C. is only on the mere ground that 13 witnesses were examined and the trial would be completed shortly.

9. One-thing is clear that when all other cases were transferred even according to the counter affidavit filed which portion is extracted in the above, and when the Investigating Officer is no other than the Deputy Superintendent of Police, ACB, working at Eluru Range, Eluru of West Godavari District, though, at Hyderabad during composite State, certainly, irrespective of the fact that “the case being a part-heard matter” where trial is partly held has to go to the concerned Court in the State of Andhra Pradesh, on the same lines the other matters which stood transferred by virtue of Section 105 of the Act, 2014.

i) In the present context, it would be profitable to refer to the ruling in **C.B.I., A.H.D., Patna v. Braj Bhushan Prasad and others with R.K. Rana v. C.B.I., Patna and others**¹, wherein, almost in alike situation, the Hon’ble Supreme Court opined that all the 36 cases involved in the said appeals stood transferred to the corresponding

¹. (2001) 9 SCC 432

court situated within the territories of the Jharkhand State on the appointed day (i.e., 15.11.2000 by the operation of Section 89 of the Bihar Reorganization Act, 2000), and directed the Registrar of the High Court of Patna to instruct the officers concerned for dispatching the records of all those 36 cases, to the corresponding courts at Jharkhand State forthwith, and also directed the Registrar of the High Court of Jharkhand to do whatever is needed for reaching such records in the appropriate courts, and also observed that the evidence already recorded in any of the 36 cases will be treated as evidence recorded by the proper court having jurisdiction. It would be appropriate to refer to the expression of the Hon'ble Apex Court contained in paragraph Nos.20, 26 to 29 and 33 thus:

“20. Section 89 of the Act deals with what should have happened on the appointed day i.e. 15.11.2000 in respect of every proceeding "relating exclusively to the territory" of Jharkhand State. Every such proceedings "shall stand transferred to the corresponding court, tribunal, authority or officer" of Jharkhand State. Here the words "relating exclusively to the territory of Jharkhand State" are the decisive words. What is meant by the word "exclusively" in this context, has now to be determined.

26. We pointed out the above different shades of meanings in order to determine as to which among them has to be chosen for interpreting the said word falling in Section 89 of the Act. The doctrine of *noscitur a sociis* (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the imports of words in a statutory provision. The said doctrine has been resorted to which advantage by this

Court in a number of cases vide *Bangalore Water Supply & Sewerage Board v. A. Rajappa* [(1978) 2 SCC 213: 1978 SCC (L&S) 215], *Rohit Pulp and Paper Mills Ltd. v. CCE* [(1990) 3 SCC 447], *Oswal Agro Mills Ltd. v. CCE* [(1993) 3 SCC 716], *K. Bhagirathi G. Shenoy v. K.P. Ballakuraya* [(1999) 4 SCC 135], *Lokmat Newspapers (P) Ltd. v. Shankarprasad* [(1999) 6 SCC 275: 1999 SCC (L&S) 1090].

27. If so, we have to gauge the implication of the words "proceeding relating exclusively to the territory" from the surrounding context. Section 89 of the Act says that proceeding pending prior to the appointed day before "a court (other than the High Court), tribunal, authority or officer" shall stand transferred to the "corresponding court, tribunal, authority or officer" of the Jharkhand State. A very useful index is provided in the section by defining the words "corresponding court, tribunal, authority or officer in the State of Jharkhand" as this:

"The court, tribunal, authority or officer in which or before whom the proceeding would have laid if it had been instituted after the appointed day."

28. Look at the words "would have laid if it had been instituted after the appointed day". In considering the question as to where the proceeding relating to the 36 cases involved in these appeals would have laid, had they been instituted after the appointed day, we have absolutely no doubt that the meaning of the word "exclusively" should be understood as "substantially all or for the greater part or principally".

29. We cannot overlook the main object of Section 89 of the Act. It must be forgotten that transfer of criminal cases is not the only subject covered by the section. The provision seeks to allocate the files or records relating to all proceedings, after the bifurcation if they were to be

instituted after the appointed day. Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner. For the purpose of criminal cases, we should bear in mind the subject matter of the case to be transferred. When so considering, we have to take into account further that all the 36 cases are primarily for the offences under the PC Act and hence they are all triable before the courts of Special Judges. Hence, the present question can be determined by reference to the provisions of PC Act.

33. For that purpose it is useful to look at Section 3(1) of the PC Act. It empowers the Government to appoint Special Judge to try two categories of offences. The first is, "any offence punishable under this Act" and the second is, "any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified" in the first category. So when a court has jurisdiction to try the offence punishable under the PC Act on the basis of the place where such offence was committed, the allied offences such as conspiracy, attempt or abetment to commit that offence are only to be linked with the main offence. When the main offence is committed and is required to be tried it is rather inconceivable that jurisdiction of the court will be determined on the basis of where the conspiracy or attempt or abetment of such main offence was committed. It is only when the main offence was not committed, but only the conspiracy to commit that offence or the attempt or the abetment of it alone was committed, then the question would arise whether the court of the Special Judge within whose area such conspiracy etc. was committed could try the case. For our purpose it is unnecessary to consider that

aspect because the charge proceed on the assumption that the main offence was committed.”

ii) In the present case, though, the charge sheet was filed in the Court of the Principal Special Judge for SPE & ACB Cases at Hyderabad, during composite State, but the charge sheet was laid by the Deputy Superintendent of Police, ACB, Eluru Range, Eluru of West Godavari District, and the major chunk of the properties involved in the case at hand are situated within the territorial limits of the residuary Andhra Pradesh State except two properties, as mentioned in the above. Further, as could be seen from the counter filed by the respondent in paragraph no.2, he admits that the other cases were transferred to the Court at Vijayawada and other Courts on point of jurisdiction, but the present C.C. alone was not transferred as the trial in the said case is going to be completed shortly and as the Principal Special Judge for SPE & ACB Cases at Hyderabad, Telangana State is the competent jurisdiction Court for trial of the said case as the FIR and seized documents were filed before the said Court. It is true, the petitioner worked in Hyderabad in the office of Engineer-in-Chief, R & B Department, Hyderabad from 01.01.2000 to 23.08.2006 and on promotion as Deputy Executive Engineer in the same office till 24.10.2008 and then he was transferred to Repalle Sub-Division, Guntur District, and since 25.10.2008, he has been working as Deputy Executive Engineer at Repalle Sub-Division of

Guntur District. Earlier thereto, he worked in various stations from 1979 till 31.12.1999 in Guntur District.

iiii) Keeping in view, the aforesaid ruling of the Hon'ble Apex Court and the fact that the investigation was done by the Deputy Superintendent of Police, ACB, Eluru Range, Eluru of West Godavari District and laid charge sheet and majority of witnesses are from the residuary Andhra Pradesh State, more particularly, the other cases were already transferred to the concerned Courts of the residuary Andhra Pradesh State, it is desirable that the present Calendar Case is also transferred to the Special Judge for SPE & ACB Cases at Vijayawada, on point of jurisdiction.

8. Therefore, the present Transfer Criminal Petition is allowed. However, it is observed that the evidence already recorded in the Calendar Case will be treated as the evidence recorded by the Special Judge for SPE & ACB Cases at Vijayawada, and the said Court need not call the witnesses already examined and keep what is already come on record and continue the trial.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the transfer criminal petition, stand closed.

A. SHANKAR NARAYANA, J

January 24, 2018.
Mgr