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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TR.P.(CRL.) 30/2018, CRL.M.A. 9773/2018, CRL.M.A. 9774/2018

TULSI RAM

..... Petitioner

Through: Mr. Amarjeet Singh Sahni and Ms.
Shagufta Yasmin, Advs.

versus

C.B.I

..... Respondent

Through: Mr. Anupam S. Sharma and Mr. Prakash
Aran, Advs.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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02.07.2018

1. This petition under section 407 read with section 482 of the Cr.P.C. seeks transfer of the CC No. 150/2016, R.C. No. 2/2016 titled: *CBI vs Tulsi Ram* from the court seized of it to any other competent court of law. By the impugned order dated 05.04.2018, the Ld. District and Session Court had dismissed a similar relief sought by the petitioner.
2. The transfer is sought on the ground that the trial of the case is proceeding expeditiously i.e. the shortest possible dates are being given in the matter, and therefore, it reflects a bias against the petitioner/accused. The Court is unable to see as to how expeditious trial of a case, by itself, could be construed as a ground of bias. The argument is untenable and is rejected.
3. It is argued that the petitioner is being pressurized to attend the proceedings even when he has matters pending simultaneously in other CBI Courts. This argument too is untenable because nothing has been brought

on record to show that such pressure was being imposed upon the petitioner or that he was required to be in another Court on the date when he was called before the Trial Court in CC No. 150/2016. If the petitioner was prevented or prejudiced from appearing before the trial court because of pendency of any other litigation or a prosecution against him in another Court, he could have easily brought the matter to the notice of the trial court to seek exemption on such particular date. This petition, however, lacks such particulars.

4. Another grievance of bias is sought to be made out on the ground that when a prosecution witness was unable to depose according to the statement recorded under section 161 Cr.P.C., suggestions were often put to the Public Prosecutor that perhaps the latter would want to record further evidence on another day, such suggestion was readily accepted by the Public Prosecutor and the case was adjourned. It is contended that the interim period was used by the Public Prosecutor to brief the witness(es) before the next date of hearing; whereas to the questions posed by counsel for the petitioner, the Trial Court would often query as to why such questions were being asked and a longish address was made by the Trial Court, which itself gave sufficient indication to the nature of answers to be given by the witness; that the statement of the witness was not recorded verbatim as is required to be, instead the statement of the witness was ignored and the statement recorded under section 161 Cr.P.C. was preferred or followed. Additionally, the Trial Court used to dictate the answers along with other statements of the witness, which often would make the latter's statement such that it could only be interpreted in favour of the prosecution.

5. The Court finds each of these arguments untenable because, as has

been rightly recorded in the impugned order, it was for the petitioner to have raised such objections on that very date or otherwise to have moved an application immediately thereafter, to bring specific instances of grievance on record so that appropriate legal remedial measures could have been taken. Interestingly, the prosecution's witness was closed on 20.12.2017 and the case was listed for recording of statement of the defence/accused on 08.01.2018, which was completed on 15.02.2018. The petitioner had chosen to lead evidence in his defence, the matter was fixed on 23rd and 24th of February, 2018. In the interim, he filed an application seeking permission to examine 12 defence witnesses, of which only three were allowed by the Court. The grievance of the appellant is that his application was disposed-off without proper hearing being granted to him. The defence evidence was closed on 24.02.2018 after which the petitioner had moved an application seeking ten days time to appeal to the High Court against the order of 20.02.2018, which had limited his defence evidence only to three witnesses. This application was dismissed on the ground that there was no such procedure in the Cr.P.C. for the Trial Court to keep its order pending till filing of a Revision Petition, by a party aggrieved before the High Court. The case was fixed for final arguments on 09.03.2018.

6. The impugned order has opined that if there was a grievance of precipitate bias or apprehension of bias, then the matter should have been immediately brought to the notice of the Trial Court or other remedial measures ought to have been taken immediately. No such steps were taken by the petitioner during the recording of the prosecution evidence from 31.07.2017 to 20.12.2017. Therefore, the impugned order concluded that the motive behind the application for transfer of the case was a dilatory

device, especially in view of the fact that the case has been listed for final arguments. Accordingly, it had rejected the application. Apropos the contention that the petitioner apprehended that he would not get justice from a particular judge, the impugned order has relied upon the judgment in **Raja Ram vs Ashok Kumar, 2015 STPL 2058 Allahabad**, which held *inter alia*:

“..... In the instant matter, only plea raised for transfer of the case from the Court that the presiding officer is influenced by the opposite party nos. 1 & 2 and from the averments as made in the transfer petition, the position which emerges out is that only bald allegation has been made in the petition and no any other cogent evidence has been given for the said purpose. So, on the said grounds, the transfer application/ petition cannot be allowed because the transfer of a case from one Court to another indirectly casts doubt on the competence and integrity of the Judge from whom the case is sought to be transferred. Mere presumptions or possible apprehensions are not sufficient therefor; only good and sufficient grounds, clearly set out in the order, may justify the transfer and a transfer should not readily be granted for any fancied notion of a litigant, it should be granted to ensure that the applicant gets fair and impartial justice....”

In view of the above, the petitioner's application was dismissed.

7. The learned counsel for the petitioner has argued that a substantive ground for bias is made out, inasmuch as the petitioner was not granted even a fair chance to argue his application for examining 12 defence witnesses; that on the day when the application was listed for hearing, his counsel had started feeling unwell on account of fever, therefore, the case ought not to have been taken up but it was dismissed instead. The Court would note that the reference to indisposition of counsel on the said date is neither supported by an affidavit of counsel nor any document to show that he was unable to

assist the Court on that date. Furthermore, as per the petitioner himself the counsel was present in the court in the forenoon but he left during the lunch recess because he allegedly felt unwell; if that were so, then the petitioner's counsel ought to have informed the Trial Court that he was running fever and felt reasonably indisposed and would be unable to assist the Court on that date, so that the matter could have been adjourned to any short date thereafter. However, no such request is either seen to have been made to the Court by the petitioner's counsel nor has it been so recorded and rejected. Therefore, the argument that counsel was running temperature and hence, he was unable to assist the Court on that date, is untenable.

8. In view of the above, the Court finds no reason to interfere with the impugned order or to allow the request of transfer of the case. The petition is without merit and is dismissed.

NAJMI WAZIRI, J

JULY 02, 2018/kk