

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13679 of 2019

In
Miscellaneous Jurisdiction Case No.2569 of 2018

Arising out of P.S. Case No.-29 Year-2017 Thana- KALER District- Jehanabad

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Avani Bhushan Prasad Singh, Son of Ram Keshwar Prasad Singh, R/o
Mohalla- Mirza Hayat Beg, Urdu Bazar, P.S- Laheriasarai, Dist.- Darbhanga,
Bihar

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Shantanu Kumar, Advocate

For the Opposite Party/s : Mr. Ajit Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A. V. JUDGMENT

Date : 5-8-2019

1. This application has been filed for transfer of Excise Trial No. 1217 of 2018 arising out of Excise Case No. 115 of 2017, Kaler P.S. Case No. 29 of 2017, G.R. No. 931 of 2017 (State Versus Kuldeep Singh & Others), under Sections 30(A) of the Bihar Prohibition and Excise Act, 2016 from the Court of learned Additional Sessions Judge-II-Cum-Jehanabad-cum-Special Judge (Excise), Jehanabad to any other Court having competent jurisdiction out of District Jehanabad.

2. The case in short is that petitioner is a Sub Inspector of Police Force, Sitamarhi, has been made Non- FIR accused in Excise Case No. 115 of 2017 and was arrested on 14.10.2017. Further case is that he was granted bail, vide order dated



30.10.2017 and his bail bonds was accepted and he was released on 31.10.2017. However, after three days, petitioner received a call from Jehanabad who asked him to come to Jehanabad and meet 'Saheb'. When he showed his inability, the phone was cut. It is also submitted that in the third week of December, 2017, one of the friend of the petitioner from Patna sent him a copy of the news report on Whatsup, then the petitioner came to know a Nonailable Warrants of arrest was issued against him. Further case is that he immediately contacted his lawyer, who informed that he has no knowledge about the same. After inspection, he informed the petitioner that on 05.12.2017 itself, a Nonailable Warrants of arrest has been issued against him by the Court on the ground that he has never been granted bail nor his bail bonds has been accepted and F.I.R. has been instituted against office Clerk of the Court, Sri Prabhat Kumar, being Town P.S. Case No. 854 of 2017. Further case is that without receipt of service report of Nonailable Warrants process under Section 82 as well as under Section 83 of Cr.P.C. have been issued against him. It is also his case that as his father-in-law was critically ill, he could not surrender nor file anticipatory bail application. He has also surrendered on 23.01.2018, sent to jail. It is also his case that his prayer for bail was rejected, vide order dated



27.02.2018. In the meanwhile, a complaint was sent to the Hon'ble Patna High Court by the family members of the office Clerk, namely, Prabhat Kumar, on which, an enquiry was initiated. Due to the above, the Presiding Officer, i.e., Special Judge, Excise losses his control and threatened him of dire consequences. This is also his case that his petition for discharge has also been rejected without hearing the learned Special Public Prosecutor and as such, petitioner has also filed a formal complaint before the Hon'ble the Chief Justice of Patna High Court on 29.06.2018.

3. A supplementary affidavit has also been filed later on, by the petitioner stating that these types of things happens in the Court of Special Judge, Excise and he has given some instances, annexing order passed in Criminal Misc. No. 6715 of 2018 passed by a Co-ordinate Bench of this Court.

4. Learned counsel for the petitioner contended that due to the facts (i) his bail bonds was cancelled by the Presiding Officer after release of the petitioner, (ii) enquiry is being conducted with respect to same proceeding by Hon'ble Court in administrative side and (iii) the Presiding Officer has threatening him in open court, as such, he has genuine apprehension that he will not get justice in that court and a fair



trial is not possible.

5. In this case, comment of the Presiding Officer was also called for by this Court, vide order dated 14.05.2019 and the learned Presiding Officer has submitted his show cause in detail stating that it is false to show that petitioner was granted bail on 30.10.2017 whereas the fact is that his prayer for bail was rejected on 30.10.2017, but due to mistake of office clerk Shri Prabhat Kumar, released order has been issued after accepting the bail bonds for that Sri Prabhat Kumar has been show caused also and later on, Town P.S. Case No. 854 of 2017 has been lodged against him under Sections 467, 468, 471, 420 of IPC and he is under suspension. The learned Presiding Officer has also submitted that the petitioner himself surrender in the Court on 23.01.2018 made an application for bail on 24.01.2018, in which he had categorically mentioned that his earlier petition for bail was rejected by this Court, as such, it is admission of the petitioner that his prayer for bail was rejected and by mistake bail bonds has been accepted and release order has been sent. He has also stated that allegation regarding call being made from office to the petitioner, it is stated that is not related to him as itself speak against the office and the allegation is denied. Further submission is that the discharge petition filed by the



petitioner was disposed of after hearing the advocates from both sides, vide order dated 22.06.2018 and 15 days time was granted to the petitioner to challenge the order, if so advice. The order itself speaks so. He also denied that he used any ill voice against the petitioner during the court proceedings. He has also stated that due to the error of his Steno Shri Birendra Jha due to cut and paste earlier mistake occurred in bail order which appears from the order dated 28.06.2018 of Hon'ble Court in Criminal Misc. No. 6715 of 2018. As such the allegation levelled against him is false and concocted.

6. Having heard the learned counsel for the petitioner and learned APP for the State and also perused the documents available on record, it appears that the release order has been issued in favour of the petitioner after acceptance of bail bonds. However, the learned Presiding Officer in his comment has specifically stated that as a matter of fact, his prayer for bail was rejected but due to mistake of office Clerk, he got the bail bonds accepted and release order has been issued, for that, show cause has been issued to the office Clerk. He was put under suspension and a criminal case has also been lodged against him. It further appears from the documents sent by the Presiding Officer that even in bail petition filed by the petitioner dated



24.01.2018, he has stated that his prayer for bail was rejected earlier. It further appears that there is no allegation that the Presiding Officer has changed the order, rather allegation is that after release order, the bail bonds was cancelled and Non Bailable Warrants of arrest has been issued and without waiting for the execution report, process under Sections 82 & 83 of Cr.P.C. has been issued.

7. Learned counsel for the petitioner has also brought on the record an order of a Co-ordinate Bench of this Court itself showing that the other instances also in which, the learned Presiding Officer has committed such type of error, but from perusal of the order dated 28.06.2018 passed in Criminal Misc. No. 6715 of 2018, it appears that learned Co-ordinate Bench has found following error in other order passed by the Special Judge in bail application.

“ Considering the aforesaid facts and circumstances of the case, I do not inclined to enlarge the petitioner Vikash Kumar is directed to be enlarged on bail on executing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the court.”

that apparently appears to be typing mistake and it is said to be due to the cut and paste and the Special Judge was directed to be



cautious in signing the order so that such mistake cannot occur in future.

8. So far allegation and threatening to the petitioner by the learned Special Judge and discharge petition being rejected without hearing Special P.P. The learned Special Judge has specifically stated that the discharge petition was rejected after hearing both the parties and 15 days time was allowed to move against the order, if petitioner so desires.

9. Considering the facts as stated above, it appears that the allegation levelled against the Presiding Officer, is without any substance and it appears that the above mistakes/misunderstanding occurs due to the circumstances as mentioned above.

10. However, the question remains that a situation of distrust appears in the mind of the petitioner against the Special Judge Excise in the light of above circumstances, especially as his bail bonds was cancelled and he was taken in custody after the release order. Further, as a complaint has been made against the Special Judge by the petitioner as well as by the office Clerk and criminal case has been lodged against the office Clerk also. In such a situation, the question arises that under the above circumstances, the apprehension of the petitioner is appears to



be genuine that he will not get a fair, just and impartial trial from the Court.

11. Hon'ble Apex Court in the case of ***Gurcharan Das Chadha Vs. State of Rajasthan***, reported in ***1966 SCR (678)*** has held that;

“The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged.”

12. In the above circumstances and the settled principles of law when the petitioner has a genuine apprehension of not getting justice or fair trial from the Court, it appears desirable to this Court that case be transferred from the Court of learned Additional Sessions Judge-II-Cum-Jehanabad-cum-Special Judge (Excise), Jehanabad.

13. From the above judgment of ***Gurcharan Das Chadha*** (supra) as discussed above, it appears that such type of transfer from the Special Judge conducting the trial of a particular type of case may be transferred to the Special Judge another district conducting the trial of such type of cases.



14. Accordingly, this transfer application is allowed. The Excise Case No. 115 of 2017, Kaler P.S. Case No. 29 of 2017, G.R. No. 931 of 2017 (State Versus Kuldeep Singh & Others), under Sections 30(A) of the Bihar Prohibition and Excise Act, 2016 is directed to be transferred to the Court of learned Special Judge (Excise), Gaya. The trial court is directed to send the complete records to the learned Special Judge, Excise, Gaya for trial and disposal of the same.

15. It is also made clear that as a case has been lodged against the office Clerk Shri Prabhat Kumar, being Jehanabad Town P.S. Case No. 854 of 2017, as such, either attested photo copy of relevant documents or its original as the Court thinks proper, be retained by the Special Judge in order to produce the same in the above case when required.

(Vinod Kumar Sinha, J)

sunil shukla/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06-08-2019
Transmission Date	06-08-2019

