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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1298 of 2018

Shankar Das, son of Baliram Das, aged about 50 years, Forest Range Officer, Dhamdha, District Durg (Chhattisgarh), resident of Pandripani, Police Station Narharpur, District Kanker, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Incharge, Anti Corruption Bureau, Raipur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Goutam Khetrapal , Advocate
For State/Respondent	:	Shri Adil Minhaj, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

2.1.2019

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the order dated 22.11.2018 passed by the Sessions Judge, Durg in Case No.27 of 2018, whereby the Sessions Judge has rejected the application of the present Applicant moved under Section 408 of the Code of Criminal Procedure for transfer of Special Case No.1 of 2018.
3. Facts of the case, in brief, are that on the basis of information received from an informant on 15.11.2016, officials of Anti Corruption Bureau, after obtaining a search warrant, conducted a raid in the house of the present Applicant and seized some gold and silver ornaments, cash and other articles. It was found that the present Applicant had owned disproportionate property of

Rs.45,63,328/-. On completion of the investigation, Anti Corruption Bureau submitted a charge-sheet before the Special Judge under the Prevention of Corruption Act, Durg. The Presiding Judge of the said Special Court was Mr. Ajit Kumar Rajbhanu. On 14.8.2018, charges were frames. Thereafter, vide an official order, in the month of October, 2018, the said Special Case No.1 of 2018 was transferred to the Court of Mrs. Garima Sharma, another Special Judge under the Prevention of Corruption Act/4th Additional Sessions Judge, Durg. Thereafter, an application under Section 408 of the Code of Criminal Procedure was filed by the present Applicant before the Sessions Judge, Durg for transfer of said Special Case No.1 of 2018 on the ground that his Counsel does not have cordial relation with the Presiding Judge Mrs. Garima Sharma and, therefore, the Counsel has also issued no objection certificates to his 3-4 clients for engaging another Counsel in their cases and he wants to prosecute his case through that Counsel only. The prayer made for transfer of Special Case No.1 of 2018 was from the Court of above-named Presiding Judge to any other competent Court at Durg. The Sessions Judge, vide the impugned order dated 22.11.2018, has rejected the application on the ground that trial of the special case has started and, therefore, the provisions of Section 408 of the Code of Criminal Procedure are not applicable. It was also observed by the Sessions Judge that the allegation levelled against the above-named Presiding Judge are also *prima facie* not established.

4. Shri Goutam Khetrapal, Learned Counsel appearing for the Applicant submits that the Sessions Judge has failed to appreciate that due to some personal reasons the original Counsel Mr. Sanjay

Agrawal does not appear before the above-named Presiding Judge. The Sessions Judge has also failed to appreciate that in other cases also in which the power of the said Counsel was filed and subsequently those cases were transferred to the Court of the said Presiding Judge, i.e., the Special Judge/4th Additional Sessions Judge, the Counsel has given his no objection certificate to his clients for engaging another Counsel in their cases. The present Applicant has a right to engage a Counsel of his choice. There are total 4 Special Courts functioning at Durg. The prayer made for transfer of Special Case No.1 of 2018 was not to transfer the same to a specific Court at Durg and, therefore, the case could have been transferred to any of the remaining 3 competent Special Courts at Durg. He further submits that under Section 408 of the Code of Criminal Procedure, there is no bar for withdrawal of the said special case from the said Special Court and to transfer the same to any other Special Court functioning at the station.

5. Shri Adil Minhaj, Learned Panel Lawyer appearing for the State/Respondent supports the impugned order.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. The Sessions Judge has rejected the application on two grounds, namely, (i) since trial has commenced, the provisions of Section 408 of the Code of Criminal Procedure are not applicable at the stage and (ii) the allegations levelled against the Presiding Judge are *prima facie* not established.

8. As regards the first ground, in **2006 SCC OnLine Chh 132 (Avinash Singh v. State of Chhattisgarh)**, it was observed by this Court as under:

“12. A perusal of Sections 408 and 409 of the Code would make it clear that the powers under these two sections are independent. Section 408 deals with the power of Sessions Judge to transfer the cases and appeals, whenever it is made to appear that an order under sub-section (1) is expedient for the ends of justice. It has further been provided that the Sessions Judge may act either on the report of the lower Court or on the application of a party interested or on his own initiative. Section 409 provides for withdrawal of cases and appeals by the Sessions Judge which he has made-over to any Assistant Sessions Judge or the C.J.M. subordinate to him. Sub-section (2) of Section 409 indicates that the Sessions Judge, would exercise this power at any time before the trial of the case or hearing of the appeal has commenced before the Addl. Sessions Judge. Sub-section (3) provides that after calling of the case back, the Sessions Judge may either try the case in his own Court or hear the appeal himself or make it over in accordance with the provisions of the Code to another Court for trial or hearing, as the case may be. A perusal of both these sections would show that the power exercisable u/S. 408 is a judicial power whereas the power exercisable u/S. 409 is an administrative power and for exercising a power u/S. 408, there is no such embargo on the Sessions Judge to see as to whether the trial of the case or the hearing of an appeal, as the case may be, has commenced or not. I am in respectful agreement with the views taken by the Allahabad High Court and also by the M.P. High Court in the above referred cases and hold that in the present case, the Sessions Judge was fully competent to exercise his jurisdiction u/S. 408 of Cr.P.C. for withdrawal of the earlier sessions trial from the Court of 9th Addl. Sessions Judge and to transfer the same to the Court of third Addl. Sessions Judge, even if out of 21 witnesses, 18 were already examined by the 9th Addl. Sessions Judge.”

9. From the above observation, it is clear that even if trial has commenced, the Sessions Judge is fully empowered and

competent to exercise jurisdiction under Section 408 of the Code of Criminal Procedure for withdrawal of a special case from a Special Court and transfer the same to another Special Court functioning at the station.

- 10.** As regards the second ground, it was prayed by the present Applicant that his Counsel does not have cordial relation with the Presiding Judge and, therefore, he has also given no objection certificates to his clients in 3-4 cases for engaging another Counsel in their cases, but he wants to prosecute his case through that Counsel only, therefore, he wants transfer of said Special Case No.1 of 2018 from the Court of said Presiding Judge to any other competent Court at Durg. Apart from the above, no specific allegation was made by the Applicant in his application against the Presiding Judge. As submitted by Learned Counsel for the Applicant, presently, there are 4 Special Courts functioning at Durg for trial of cases relating to the Prevention of Corruption Act. The prayer was not made for transfer of the special case to a specific Court. The Applicant has a right to prosecute his case through a Counsel of his choice. If that Counsel is not appearing before a specific Court and there are other Special Courts functioning at Durg, in these circumstances, for a fair trial of the said special case, the Sessions Judge should have transferred the case to any other Special Court functioning at the station.
- 11.** In the aforesaid premises, the impugned order dated 22.11.2018 is set aside. The instant revision is allowed. The Sessions Judge, Durg is directed to withdraw aforesaid Special Case No.1 of 2018 from the Court of Mrs. Garima Sharma, Special Judge under

the Prevention of Corruption Act/4th Additional Sessions Judge,
Durg and transfer the same to any of the other remaining 3
functioning competent Special Courts at Durg.

Sd/-

(Arvind Singh Chandel)
Judge