

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.18420 of 2019 &
Crl.M.P.Nos.9336 & 9337 of 2019

Shri Rabindra Kumar Bhalotia .. Petitioner

Vs

1. State, represented by
Inspector of Police,
CBI, ACB, Chennai.
2. Sri V.Venkatesan,
3. Sri. N. Balamurugan .. Respondents

Prayer: Criminal Original Petition filed under Section 407 of Cr.P.C., praying to withdraw C.C.No.2 of 2015 from the file of the II Additional District Judge, Coimbatore for CBI Cases and Transfer the same to be heard along with C.C.No.17 of 2015 pending on the file of the Principal Special Judge for CBI Cases, Chennai.

For Petitioner: Mr. Vishnu Mohan

For Respondent : Mr. K. Srinivasan
Spl. Public Prosecutor for CBI cases
for R1.
Mr. A.V.Somasundaram for R2
Mr.B.Kumarasamy for R3

ORDER

The petitioner is an accused in C.C.No.2 of 2015 which is pending trial on the file of II Additional District Judge for CBI Cases, Coimbatore. The petitioner is also A2 in C.C.No.17 of 2015 pending on the file of Principal Special Judge, CBI Courts, Chennai.

2. The 2nd respondent is A1 in C.C.No.17 of 2015 and the 3rd respondent is A1 in C.C.No.2 of 2015. Both the respondents 2 and 3 are the public servants employed in Southern Railway.

3. The respondents 2 and 3 are employed as Senior Depot Material Superintendent and Depot Material Superintendent respectively in Southern Railway. The petitioner is a supplier of stores materials engaged by Southern Railways.

4. The case of the prosecution is that the petitioner had paid money for expeditious processing of the bills and challans to the respondents 2 and 3 in respect of supplies made to the concerned depot, for which a case came to be registered in RC.MA.1 2014/A/0026 on 20.6.2014. In the FIR, the petitioner and the respondents were shown as accused. On completion of investigation, two charge sheets came to be registered, one in C.C.No.2 of 2015 which is pending before the II Additional District Judge, Coimbatore, CBI Cases and another in C.C.No.17 of 2015 pending before the Principal Special Judge, CBI Cases, Chennai on the point of jurisdiction.

5. The contention of the petitioner is that the cause of action and the allegations are similar in nature and except for supplies made to two different depots, the other allegations made against the petitioner are similar in nature and the witnesses in both the cases, except for few witnesses, all are common, hence for better appreciation of evidence, it would be convenient that both the cases are tried together in the same Court.

6. Learned counsel for 2nd respondent, who is A1 in C.C.No.17 of 2015 states that he has no objection in trying C.C.No.2 of 2015 pending on the file of II Additional District Judge, Coimbatore, CBI Cases along with C.C.No.17 of 2015, pending before the Principal Special Judge, CBI Cases, Chennai.

7. Learned counsel for the 3rd respondent who is A1 in C.C.No.2 of 2015, though accepted the principles of community of witnesses and for better defence, it would be appropriate that both the cases to be tried

together, the only apprehension and difficulty of the 3rd respondent is that now he is working as Superintendent of Materials at a depot in Ernakulam and it would be very arduous for him to travel from Ernakulam to Chennai to attend each and every hearing of the case, other than this impediment, he has got no serious objections.

8. The learned Special Public Prosecutor, CBI Cases appearing for the 1st respondent would submit that both the cases arise out of a common FIR and during investigation, it was found the modus operandi of the cases are more or less similar. Except regarding the supply of break shoe to Arakkonam Depot and Erode Depot, the issues involved in both the cases are common. LW1 to 15 are common in both the cases and it would be convenient for the prosecution to conduct the cases together for effective adjudication and the same would also avoid conflicting views.

9. In view of the submissions made by the learned counsel for petitioner and the learned counsel appearing for the respondents 1 to 3, this Court is inclined to transfer C.C.No.2 of 2015 from the file of II Additional District Judge, Coimbatore to the file of Principal Special Judge, CBI Cases, Chennai to be tried along with C.C.No.17 of 2015.

10. It is made clear that both the cases, trial has to be conducted separately and the evidence had to be recorded, appreciated independently. The only condition is that the judgment of both the cases shall be delivered on the same day. In all other aspects, both the cases has to be viewed independently.

11. This Court feels that the apprehension of the 3rd respondent could be met by not insisting the appearance of the 3rd respondent on all hearing dates before the trial court except on the date when his presence is absolutely necessary. On all other hearings, petition for condoning his absence shall be considered liberally.

12. Learned counsel for the petitioner submitted that the petitioner is a senior citizen, aged about 67 years, residing at Kolkata, he is unable to appear before both the Courts which need exclusive travel and

he is unable to travel all the way from Kolkatta. The long travel is detrimental to his health and it is one of the reason seeking transfer of cases.

13. Considering the age and health condition, this Court directs the Principal Special Judge, CBI Cases, Chennai not to insist the presence of the petitioner on all hearings except on the dates when his presence is indispensable and necessary.

14. With the above directions, this Criminal Original Petition is allowed. Consequently connected Crl.M.P.Nos.9336 and 9337 of 2019 are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msr

To

1. The II Additional District Judge, Coimbatore for CBI Cases
2. The Principal Special Judge for CBI Cases, Chennai.
3. The Inspector of Police, CBI, ACB, Chennai.
4. The Special Public Prosecutor, CBI Cases, High Court, Madras.

+1cc to Mr.S.Gunalan, Advocate SR.No. 78606

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A.SK(07/11/2019)

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