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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25.11.2019

+ CRL.M.C. 5872/2019 & CRL.M.A. 40600/2019

ANIL NARANG

..... Petitioner

Through

Mr. Siddharth Aggarwal with Mr.
Nitin Mehta, Mr. Siddharth Satija,
Mr. Harish Kumar Gupta, Mr. Gaurav
Gupta and Mr. Arpit Rawat, Advs.

versus

STATE & ORS.

..... Respondents

Through

Mr.Panna Lal Sharma, APP for State.
Insp. Narender Singh, Complaint
Branch, North West District
Dr. M. K. Gahlaut, Adv. for R-2&3

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks directions as under:-

- (i) To set aside the order dated 15.11.2019 passed by the Ld. Add.,
District & Session Judge, North West District, Rohini Courts,
Delhi and order dated 14.11.2019 passed by Ms. Preeti
Aggarwal Gupta, Ld. ASJ, Spl. FTC, Rohini Courts, in case
FIR no. 985/2015, Police Station Shalimar Bagh;

- (ii) Direct the trial to be conducted by the Ld. ASJ, Special Fast Track Court, North-West, Rohini.
- (iii) Direct the trial court to expedite the trial in terms of the order of the Hon'ble Supreme Court.

2. The present petition is preferred due to allocation the matter to some other court on the application of the respondent no.2 & 3 (complainant and & her father) on the basis that she does not have any faith upon the court. It was consequently directed to transfer the case file for adjudication to the court of, Ld. ASJ (electricity), North-West, Rohini.

3. Vide the present petition, the petitioner seeks direction qua adjudication and disposal of the case only by the trial court i.e the court Ld. ASJ, (Fast Track Court), North-West, Rohini.

4. Heard, learned counsel for the parties.

5. FIR No. 985/2015 was registered at Police Station Shalimar Bagh at the instance of respondent no.2 against the petitioner and his parents punishable under Section 498A/406/506/377/307/34 IPC.

6. It is not in dispute that in the month of July, 2017, chargesheet was filed and the charges were framed on 12.10.2018.

7. Vide order dated 11.02.2019, the Hon'ble Supreme Court directed the

trial Court to expedite the hearing of the trial in this matter and disposed of within one year from that date.

8. Thus, the trial Court has to complete the trial on or before 10.02.2020.

9. Ordersheet produced by the petitioner reveals that on 20.12.2018, the present case was listed for prosecution evidence. However, on the said date, PW3/complainant filed an application for exemption and the same was granted. On 07.02.2019, the statement of PW3 was partly recorded. Thereafter, on 05.03.2019, PW3 did not appear despite service and took the ground that she was out of station. On 29.03.2019, PW3 was not present and her counsel sought adjournment stating that she was unwell. On 03.04.2019, she was further examined in chief, deferred as it was 04:00 pm. On 05.04.2019, PW3 was further examined in chief, deferred as it was 04:30 pm. On 9.04.2019, the same happened. On 16.04.2019, PW3 was not present. On 25.04.2019, she was further examined in chief, however, deferred as it was 04:00 pm. On 27.04.2019 also examined and deferred at 04:00 pm.

10. It is pertinent to mention here that on 29.04.2019, adjournment was sought on behalf of PW3 stating that she is having tooth ache and she will not be able to speak. Learned trial Court recorded on the said date that

statement of PW3 was recorded on 6 separate dates but her statements are not coming to an end and every day the statements are recorded for about 2 hours.

11. It is further mentioned by the trial Court that it was decided on the last date of hearing that on next date (29.04.2019) whole day would be devoted for completing the record of the evidence of this witness, but witness has come up with the aforementioned plea. Further, PW3 examined in chief on 14.08.2019, however, deferred, at the request of the complainant. On 20.08.2019, further examination in chief was deferred at the request of the complainant as she was not feeling well. On 27.08.2019, she was partly examined in chief and further examination in chief is deferred at her request. On 29.08.2019, the said witness was partly examined in chief and further examination in chief was deferred at her request. On 03.09.2019, she sent request for deferment of the examination on the ground that he was not well on that day. On 05.09.2019, PW3 was bound down but did not appear nor any request was received by the Court. Accordingly, bailable warrants were issued against PW3. On 11.09.2019, she was partly examined and her examination in chief was deferred for want of passing an appropriate order with respect of jewellery articles which were given to her by her in-laws at

the *shagun* ceremony on 02.07.2017.

12. It is further pertinent to mention here that on 14.11.2019, PW3 made request before the trial Court for deferring the recording of her examination in chief due to bad throat. The Court tried to persuade her for cooperating but she expressed her unwillingness. On said date, PW48 (Pradeep Juneja) father of PW3/complainant expressed inability to depose after lunch as he was having chronic back pain and requested for adjournment.

13. It is pertinent to mention here that on the said date i.e. on 14.11.2019, an application for transfer was filed by the complainant by stating that she was not even allowed to make any remarks or to make her submission and was constantly forced to sign on her evidence. The process of recording was not legal according to her and the court itself was not allowing her to record her statement and she was not even allowed to herself to use words such as '*demand*', '*dowry*' etc, which had also been used previously in her and her father's statement. It is further alleged that the court had constantly interpreted herself being a Judge and did not allow deposing her statement freely. The court was showing undue favour towards the accused persons by not allowing her to depose her evidence freely and in a fair manner. Moreover, the court also taunted the father of the complainant and regarding

her case bearing FIR No.985/2015. It is further alleged that on the said allegations, the learned Trial Court observed that, “*you have taken transfer from a previous court, now only my court is left and you have no other choice left.*” The court even talked rudely to the witnesses that came on that day. Accordingly, the complainant submitted that it is the prerogative of the witness that what evidence has to be deposed in court and under which manner, but if the court is deciding the length and width (of her statement) then she, as a witness has no faith and trust in the court proceedings. Under huge pressure the complainant and his father cannot depose freely and in a fair manner before the court and has no trust on this court. To this effect, the complainant and her father informed to the learned Prosecutor that the Court was regularly creating hindrance in her evidence.

14. It is also not in dispute that on 15.11.2019, the complainant made an application before learned District and Session Judge, North-West District, Rohini, to transfer the matter from the court of learned ASJ, North-West District, Rohini to some other court and the said application has been allowed vide order dated 16.11.2019 in T.P. (CRL.M.A.) No. 34/2019 and parties were directed to appear before the learned ASJ (Electricity), N/W Rohini, Delhi.

15. Learned counsel for respondent No.2 and 3 submits that initially the matter was posted before the Court of M.R. Sethi, ASJ, who was transferred from the court on Administrative Order and the matter was posted before Harish Kumar, learned ASJ. The complainant made an application to transfer her case from the said court and due to intervention of this Court, the case was transferred from Harish Kumar, ASJ to Ms. Raj Rani, ASJ. Thereafter, the said Judge was also transferred on Administrative Order and posted to POCSO Court which was created at that time. Thereafter, the matter was posted before Deepak Garg, ASJ, who recused twice to hear the matter on his personal reasons.

16. Finally, the matter was posted before Ms. Preeti Aggarwal Gupta, learned ASJ, North-West Rohini on 30.10.2019. Learned counsel for respondent No.2 and 3 has admitted that the chief of father of the complainant was examined, which is well in the half way and the said court never recorded the statement of the complainant.

17. Counsel for respondent No.2 and 3 also submitted that since the court of Ms. Preeti Aggarwal Gupta, ASJ was not properly recording the statement, therefore, the complainant and her father (respondent No.2 and 3) moved an application to the District Judge for transfer by alleging against

ASJ as noted above. Thus, the complainant and respondent No.2 personally submitted that they do not want their case to be tried by Ms. Preeti Aggarwal Gupta, ASJ.

18. The present case is listed for prosecution evidence on 20.12.2018. The Hon'ble Supreme Court vide order dated 11.02.2019 directed to expedite the hearing and dispose of the matter within one year. Thereafter, vide order dated 08.03.2019, again the same order was passed. Thereafter on 02.07.2019 directed to comply with the order dated 11.02.2019 and dispose of the matter within one year and report the compliance of the same.

19. It is submitted by counsel for the petitioner that fourth accused namely Astha Narang was discharged from all the offences by the Trial Court and the same was challenged by the State before this court. This court had set aside the order. Being aggrieved, the said accused challenged the same before the Hon'ble Supreme Court and the Court has directed the Trial Court not to take coercive steps and matter is pending in SLP No. 5231/2019 for adjudication.

20. Counsel for respondent No.2 and 3 informed this court that another co-accused Anil Narang was also discharged from the offence punishable

under Section 406 IPC and 498-A, 377 and 307 IPC. However, the State had filed the revision challenging the discharge of said accused for the offence punishable under Section 406 IPC and the same has been allowed by this court. Being aggrieved, the said accused filed SLP vide No. 5231/2019 wherein the Hon'ble Supreme Court has directed the Trial Court not to take coercive steps and pending before adjudication.

21. It is not disputed by counsel for respondent No.2 and 3 that respondent No.2, who is complainant, moved an application for deferring the remaining examination and cross-examination of the complainant. The same has been dismissed vide order dated 14.08.2019 by recording that since there is a direction of the Supreme Court to dispose of the matter within one year and about 5 months have already been elapsed on the said date.

22. Be that as it may, the respondent No.2 complainant on earlier occasion moved an application to transfer her case from the Court of Mr. Harish Kumar, learned ASJ and same was allowed by this court. Thereafter, finally the matter was posted before Ms. Preeti Aggarwal Gupta, ASJ, who is in mid of recording the examination in chief of respondent No.3/ father of the complainant. At no occasion, as is admitted by respondent No.2 that the

said Judge ever examined respondent No.2 – PW-3 complainant. Therefore, there was no occasion to make allegation against the said Judge by respondent No.2 complainant.

23. I note in order dated 14.11.2019, Ms. Preeti Aggarwal Gupta, ASJ has observed in its order that she had earnestly made sincere efforts to expedite progress of the trial despite the unprecedented current situation before the court, where neither the lawyers, nor police officers were appearing or cooperating with the judicial process. She further observed that the matter has been crystallised for regulating and conclusion of trial. The prosecution witnesses have already been admitted/dropped by the prosecution with special effort of the court. On said date of hearing (on 14.11.2019) the court made an effort to continue with the trial by way of recording further chief examination of the complainant, who expressed her inability owing to sworn. No objection has been offered by the accused persons for recording of chief examination of the complainant and her father, by learned APP for the State under strict guidance of the court. However, in view of the request made by the complainant she was accommodated on the said date.

24. Learned Judge further recorded that the available witness PW-48 namely Pradeep Juneja, who is father of the complainant (respondent No.3

herein) has been further examined at length before lunch. The court tried to continue with recording of further chief examination of the deposing witness PW-48, who then expressed his inability to depose further, owing to a chronic back ache.

25. It has also been observed by the court that the complainant and her father made an application jointly to express lack of faith and trust in the court proceedings, stating that the court is creating hindrance to their deposition which is not possible for the applicant to depose before this court as they have no faith and trust in this court and the case shall not be taken up in a fair manner.

26. Accordingly, her (Ld. Judge) judicious conscious was pricked and the complainant and his father (the respondent No.2 and 3) did not allow the Court to proceed with the matter further in an impartial and unbiased manner. Accordingly, she referred the matter to the District and Session Judge with a request for allocation of the matter to some other court.

27. In case of *Harsh Mandar versus Union of India and Others*, the Hon'ble Supreme Court vide order dated 2nd May 2019, in Writ Petition (C) No. 1045/2018 has held as under:-

“Shri Harsh Mander, who has filed Civil Writ Petition No. 1045 of 2018, by this application has sought recusal of the Chief Justice from the Bench hearing the matter on the grounds stated in his application.

Having perused the said grounds, we would like to say that a litigant should not be permitted and allowed to question a Judge on perceived bias especially after hearing has commenced and orders on different dates have been passed. Normally, this should be left to the Judge himself who is bound by the oath of office to administer justice to all persons alike without fear, favour and prejudice. The litigant, without any firm basis, cannot be permitted to raise such objection on the basis of the court hearing. To do so, would encourage parties to ask for change of the Judge in the hope that someone else is more likely to agree with them and not take a contrary view. Choosing judges in such a manner during the course of hearing would directly interfere with the administration of justice. The grounds stated by Shri Harsh Mander in his application for recusal of the Chief Justice from the Bench therefore have the potential of causing damage, harm and stall judicial adjudication. We would also observe that judicial functions, sometimes, involve performance of unpleasant and difficult tasks, which require asking questions and soliciting answers to arrive at a just and fair decision. If the assertions of bias as stated are to be accepted, it would become impossible for the Judge to seek clarifications and answers. {see observation of Kurian Joseph, J. in Supreme Court Advocates-on-Record Association v. Union of India (Recusal Matter), (2016) 5 SCC 808}. Therefore, it would be in the institutional interest for the present Bench to hear the matter which we propose to do on the next date fixed. We dismiss the recusal petition on the above-stated grounds. The application for permission to appear and argue as petitioner in person also stands disposed of.

Further, while keeping Civil Writ Petition No. 1045 of 2018 pending, we direct the Registry to strike off the name of Shri Harsh Mander as the petitioner and substitute Supreme Court Legal Services Committee as the petitioner instead.”

28. It is not in dispute that no litigant has option to have his case to be tried by a particular court. Making allegation without any basis is also not acceptable. Rather, such types of allegations amount to contempt of courts. The respondent nos. 2 & 3 have made allegations against two courts below, but I hereby refrain from taking any legal action against the said respondents with caution that no witness shall be allowed to create hindrance in justice dispensation system failing which legal action, available under the law, shall be taken.

29. Accordingly, in view of the facts and circumstances, and the legal position of the law, I hereby set aside the order dated 14.11.2019 passed by Ms. Preeti Aggarwal Gupta, ASJ to the extent request made for transfer the case and the order dated 15.11.2019 passed by the learned District and Sessions Judge, North West Delhi.

30. Accordingly, the parties are directed to appear before the court of Ms. Preeti Aggarwal Gupta, ASJ on 30.11.2019 for further proceedings.

31. I hereby direct the Trial Court to hear the matter on day to day basis and no adjournment for whatsoever reasons shall be granted to any of the witnesses, including respondent No.2 and 3.

32. In view of the above, the petition is allowed and disposed of.

33. Pending application also stands disposed of.

34. A copy of this order be given dasti under signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 25, 2019/ms/pkb

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