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

+ **TR.P.(CRL.) 16/2019**

VINOD

.....Petitioner

Through: Mr.Sunil Mehta, Advocate and Mr.
Kundan Kumar, Advocate.

Versus

THE STATE(GOVT. OF NCT OF DELHI)....Respondent

Through: Mr. GM Farroqui, APP for the
State with SI, Ashwani Kumar,
Crime Branch.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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20.03.2019

TR.P.(CRL.) 16/2019

1. The present petition has been filed under Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.PC') read with Section 482 of Cr.PC seeking transfer of the Case pending before the court of Shri J.K. Mishra, Special Judge NDPS ACT 1985, (North District) Rohini Courts with the prayer that:

'(a). Transfer the case titled as "Vinod V/s State" P.S. Crime Branch, FIR No. 106/20187 U/s 21 NDPS Act, pending before the Hon'ble Court of Sh. J.K. Mishra, special Judge, NDPS Act 1985,(North District) Rohini to the designated court of (North West District) or to any other court of Competent Jurisdiction.'

2. Mr. Sunil Mehta, Advocate for the petitioner contended that the present petition has been filed under Section 482 Cr.P.C. as this

Court is well within its inherent power to transfer a case from one
TR.P.(CRL.) 16/2019

Special Court to another. He further contended that there is only one designated Court for NDPS cases in the North District, Rohini Courts, Delhi, and since the learned Judge designated for the said Court has recused from the case, it would be appropriate to transfer the case to the designated court of North-West District, Rohini Courts or to another Court of competent jurisdiction.

3. On the other hand, Mr. G. M. Farooqui, learned APP for the State contended that the present petition is a total abuse of process of law and has only been moved to delay the trial.
4. Heard
5. At the outset, I deem it appropriate to mention the order dated 15.03.2019 of District and Session Judge(North), Rohini court.

“File has been received from the court of Sh. Jitendra Kumar Mishra, Judge (NDPS) North, Rohini Courts, Delhi with a request to assign this case to some other court as he does not want to try this case due to personal reasons

Sh.Anil Kumar Gupta, Ld. Chief Public Prosecutor for State. Accused Vinod produced from JC represented by Ld. Counsels Sh. Sunil Mehta and Sh. Kundan Kumar.

Heard. It is submitted by Ld. Chief Public Prosecutor that the court of Sh. Jitendra Kumar Mishra, Spl. Judge(NDPS) North is the only designated court for NDPS Cases and there is no other court which has been designated to try the NDPS Cases in North District and another court of Ld. ASJ dealing with the cases of NDPS is working in North West District but inter district transfer of the cases cannot be entertained by the District & Sessions Judge.

At this stage, Ld. Counsels for the accused have submitted that they will move to Hon'ble High Court for transfer of this matter to some other Ld.ASJ dealing with NDPS matter.

As prayed, put up for further proceeding on 19.03.2019”

6. The perusal of the above order shows that on the submissions of the learned prosecutor and the counsel for the accused the matter has been kept in abeyance by the District & Sessions Judge, Rohini Courts (North District), whereafter, the learned counsel for the accused has moved the present petition for transfer of SC No. 617/2018 titled as “*State Vs Vinod*” to some other Court.
7. In order to decide the present petition seeking transfer from Rohini Court (North District) to Rohini Courts (North-West District) or to another Court of competent jurisdiction, it is relevant to place on record some administrative directions issued by High Court of Delhi from time to time.
8. **Vide office order No. 5527/DHC/Gaz./G-1/2015 dated 06.10.2015** this Court while dealing with request of District & Sessions Judge for transfer of cases from one District to another District, Hon'ble the Chief Justice and Hon'ble Judges of this Court vide above office order dated 06.10.2015 were pleased to authorize the concerned District and Sessions Judges to consider the request for transfer, upon recusal or for any other reason from one District to another. The office order dated 06.10.2015, reads as under:-

“No. 5527/DHC/Gaz./G-1/2015 Dated: 06.10.2015

Subject: Transmission of entire case record of GP No. 27/2015 titled as “Tushima Mashelkar nee Tushima Shali Vs. Amey Mashelkar”.

Sir,

I am directed to refer to your letter No. 6720/Judl./FC/DWK/2014 dated 06.08.2015, on the above subject, and to say that Hon'ble the Chief Justice and Judges of this Court have been pleased to transfer the case bearing GP No. 327/2015 titled as "Tushima Mashelkar nee Tushima Shali Vs. Amey Mashelkar pending in the court of Shri Deepak Jagotra, Principal Judge, Family Courts, South-East, Saket, New Delhi to the court of Ms. Poonam A. Bamba, Principal Judge, Family Courts, South, Saket, New Delhi.

The Hon'ble the Chief Justice and Hon'ble Judges of this Court have further been pleased to authorise you to consider request(s) for transfer of the case(s) from the Family Court Judges on their recusal to hear the cases and to assign the same to another Family Court in the same district or in the nearest district, as deemed fit."

9. In supersession of Office Order No. 5527/DHC/Gaz./G-1/2015 dated 06.10.2015, another **Office Order No. 5325/DHC/Gaz./G-1/2017 dated 07.11.2017** was issued by this Court. Relevant portion of the same, reads as under:-

"No. 5325/DHC/Gaz./G-1/2017

Dated: 07.11.2017

Sir,

In supersession of earlier directions of this Court conveyed vide the Court's letter No. 5527/DHC/Gaz./G-1/2015 dated 06.10.2015, I am directed to inform you that Hon'ble the Acting Chief Justice and Hon'ble Judges of this Court have been pleased to resolve that henceforth the request(s) received from District and Sessions Judges and Principal Judges, Family court for transfer of case from one District to another District, subordinate to this Court and competent to try or dispose of the same, upon recusal or for any other reason, shall be placed by the Registry by way of reference before the concerned Bench.

This is for your information and necessary compliance.”

10. Thus, while reconsidering the office order No. 5527/DHC/Gaz./G-1/2015 dated 06.10.2015, it was decided vide Office Order No. 5325/DHC/Gaz./G-1/2017 dated 07.11.2017, by the Hon’ble the Chief Justice and Hon’ble Judges of this Court that henceforth the request received from concerned District and Sessions Judges for transfer of cases from one District to another District shall be placed by way of reference before the concerned Bench.
11. The aforesaid directions issued by this Court vide Office Order No. 5325/DHC/Gaz./G-1/2017 dated 07.11.2017 were reiterated by this Court vide **Office Order No. 1326//DHC/Gaz./G-1/2018 dated 24.03.2018**, which reads as under:-

*“No. 1326//DHC/Gaz./G-1/2018 Dated: 24.03.2018
Sub: Transfer of MCD Appeal No. 1/16 titled “Modi Apollo
International vs. DDA & Others”.*

Sir,

I am directed to refer to your letter No. 73/18 dated 17.03.2018, on the above subject, and to inform you that while considering your earlier letter dated 24.05.2017 for transfer of MCD Appeal No. 1/16 (wrongly mentioned as MCD No. 1/14) titled “Modi Apollo International Vs. DDA & Ors.”, this Court has resolved that henceforth the request received from District and Sessions Judges and Principal Judges, Family Court for transfer of case from one District to another District, subordinate to the High Court and competent to try or dispose of the same, upon recusal or for any other reason, shall be placed by the Registry by way of reference before the concerned Bench for appropriate consideration and orders.

I am further directed to inform you that the above directions were also in respect of your request for transfer of MCD Appeal No. 1/16.

You are, therefore, requested to take appropriate steps accordingly.”

12. Since, the matter is fixed before the District & Sessions Judge, Rohini Courts (North District) on 25.03.2019 for consideration, his attention is drawn to office orders so mentioned for taking necessary action.
13. With these observations, the present petition is disposed of.
14. Copy of the order be given *Dasti* under signatures of Court Master.
15. Registrar General, Delhi High Court is directed to circulate a copy of this order to the District & Sessions Judges of all the District Courts.

SANGITA DHINGRA SEHGAL, J.

MARCH 20, 2019

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