

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

*Judgment delivered on 13.01.2020*

**+ TR.P.(CRL.) 98/2019 & CrI.M.A. 42926/2019(stay).**

**MOHD ZAFAR**

**..... Petitioner**

Through Mr. Amardeep Singh with  
Ms. Surati Khosla, Advocates

versus

**STATE**

**..... Respondent**

Through Mr. G.M. Farooqui, APP for  
the State with SI Ramavtar  
Gurjar, P.S.: DBG Road

**CORAM:  
HON'BLE MR. JUSTICE BRIJESH SETHI**

**J U D G M E N T**

**BRIJESH SETHI, J.(Oral)**

1. This is a petition for transfer of Criminal appeal titled Mohd. Zafar v. State, bearing no 229/2019 which was lastly pending before the court of Mr. Ramesh Kumar, Ld. ASJ, Central District, Tis Hazari Courts to the same presiding officer i.e. Mr. Ramesh Kumar who is presently posted as ADJ South District, Saket courts, New Delhi.

2. Ld. Counsel for the petitioner has submitted that the Criminal Appeal in question was listed for the first time on 01.05.2019 before the Ld. ASJ. After hearing part arguments, the Ld. Court had suspended the sentence of the petitioner till the disposal of the appeal. Thereafter, detailed arguments on behalf of the petitioner were heard on 11.07.2019, 27.08.2019 and 25.09.2019. The matter was thereafter listed on 19.11.2019 for remaining/closing of arguments as well as submissions of the case law/judgments on behalf of the petitioner. On 19.11.2019, Ld. Counsel for the petitioner was not feeling well and had sought adjournment. The hearing of the matter was, thereafter, adjourned for 11.12.2019. However, before the next date, Ld. ASJ along with 31 other judicial officers were transferred to different courts in Delhi on 06.12.2012. Mr. Ramesh Kumar, Ld. ASJ was transferred from Tis Hazari Courts to District Courts, Saket as an ADJ. It is submitted that no judicial officer has been appointed/assigned to preside over the said court and the appeal is now pending for 15.01.2020. It is submitted that FIR in question relates to the year 2001 and it is an 18 year old matter, thus, re-hearing of the entire appeal shall only cause

unnecessary delay and wastage of judicial time. It would, therefore, be expedient in the interest of justice if the matter/appeal is transferred to the Ld. ASJ under Section 407 Cr.P.C. In this regard, Ld. Counsel for the petitioner has placed reliance on **State v. D.V.Malhotra, 2016 (2) JCC 856**.

3. I have gone through the above case law cited by Ld. Counsel for the petitioner. There is no quarrel with the proposition of law laid down therein. However, the said case does not help the petitioner in the present petition because of its peculiar facts and circumstances.

4. Ld. APP for the State has submitted that there are no grounds to transfer the appeal. Ld. ASJ, now stands transferred from Central District, Tis Hazari Courts to the South District at Saket Courts. Ld. Counsel for the petitioner can make the submissions before the court concerned at Tis Hazari courts. No useful purpose would be served by sending all the records of the appeal to the Ld. ASJ who is holding a court in a different district.

5. I have considered the rival submissions and perused the record. Vide a judgment of conviction dated 28.03.2019 and order

on sentence dated 10.04.2019 passed by Mr. Ashu Garg, Ld. CMM, Central District, Tis Hazari Courts, Delhi, the appellant was convicted under Section 420 and 471 IPC in case titled as State v. Mohd. Zafar, FIR bearing no. 254/2001 PS D.B.G. Road. The petitioner was sentenced to SI for a period of three years and to pay a fine of Rs. 50,000/- for the offence punishable under Section 471 IPC. He was further sentenced to SI for a period of three years and to pay a fine of Rs. 50,000/- for the offence punishable under Section 420 IPC. An appeal was filed and was listed before the Ld.ASJ Sh. Ramesh Kumar who had suspended the sentence vide order dated 01.05.2019. The case was, thereafter, listed for 11.07.2019, 27.08.2019 and 25.09.2019 when part arguments were heard. Thereafter, the matter was listed for 19.11.2019 on which date the Ld. Counsel for the petitioner had prayed for an adjournment and the matter was adjourned for 11.12.2019. In the meantime, the Ld. ASJ stood transferred vide order of the High Court bearing no. 60/DHC/Gaz./V.I.E.2(a)/2019 dated 5<sup>th</sup> December, 2019 as District Judge, Commercial Court, South District, Saket.

Copy of the order has been placed on record by Ld. Counsel for the petitioner. The note no. 2 at the end of the said order runs as under:-

*The judicial officer under transfer shall notify the cases in which they had **reserved judgments/orders** before relinquishing the charge of the court in terms of the posting/transfer order. **The judicial officers shall pronounce judgments/orders in all such matters on the date fixed or maximum within a period of 2-3 weeks thereof, notwithstanding the posting/transfer.** Date of pronouncement shall be notified in the cause list of the court to which the matter pertains as also of the court to which the judicial officer has been transferred and on the website.*

6. Perusal of the above note reveals that transfer order contemplates that the judicial officers shall notify the cases in which they had reserved judgments/orders before relinquishing the charge of the court. The judicial officers were also directed to pronounce the judgments/orders in all such matters on the date fixed or maximum within a period of 2-3 weeks thereof. **In the present case, Ld. ASJ had only heard arguments in part. He had not reserved the judgment in the said case.** Thus, as per the said order, he was not required to pronounce the judgment on the date fixed or within a period of 2-3 weeks thereafter. The transfer order,

therefore, does not help the Ld. Counsel for the petitioner. This court is further of the opinion that it will not be in the interest of justice to transfer the appeal under Section 407 Cr.P.C. from Tis Hazari Courts to the present posting of Ld. ASJ who is now District Judge, Commercial Court, South District, Saket Courts and dealing with Civil (Commercial) matters. Since the Ld. ADJ has only heard the arguments in part and not finally heard the appeal, the arguments can now be addressed to the incumbent. Ld. Counsel for the petitioner has, however, argued that there will be delay in disposal of the case if the same is not heard by the Ld. ASJ (now District Judge-Commercial). In this regard, it may be made clear that all the judicial officers are making earnest efforts to dispose of the old appeals at the earliest. In the opinion of this court, no useful purpose would be served by transferring the case from one District to another along with record and to ask the Ld. District Judge (Commercial) to hear final arguments in the appeal and pronounce the judgment as it will not only result in administrative inconvenience but the Ld. APP who has argued the appeal will also have to be transferred to Saket Courts or will have to leave his work

at Tis Hazari to make his submissions at Saket Courts. This court is, therefore, of the considered opinion that there is no such exigency which warrant transfer of the appeal from Central District, Tis Hazari Courts to South District, Saket Courts to Ld. District Judge (Commercial).

7. In view of the above discussion, I find no grounds for transfer of the Criminal appeal titled Mohd. Zafar v. State, bearing no 229/2019. The transfer petition is, therefore, dismissed and stands disposed of accordingly along with pending application.

**BRIJESH SETHI, J**

**JANUARY 13, 2020**

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