137 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-10779-2021
Date of Decision: 05.03.2021

Sanjay Kumar @ Sanjay Thakur

......Petitioner

Vs.

Intelligence Officer, Director of Revenue Intelligence (Regional Unit), 51-D, Sarabha Nagar, Ludhiana

.........Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gagan Oberoa, Advocate,
for the petitioner.

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AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By this petition, the petitioner essentially challenges the order passed by the learned Sessions Judge, Ludhiana, dated 26.02.2021 (copy Annexure P-8), by which he has directed that the trial in the case in question be transferred to the court of the learned Additional Chief Judicial Magistrate, Ludhiana, for trial in accordance with law, in view of the reference moved by the Chief Judicial Magistrate to the effect that earlier in the case he was deputed as a Judicial Magistrate Ist Class to record the inventory of items, and therefore he may be recused from trying the case, with in fact an application to that effect having been filed by the petitioner himself.

Learned counsel for the petitioner submits that the said order of the learned Sessions Judge is actually contradictory to the order of his predecessor dated 16.11.2005 (copy Annexure P-7), whereby all criminal cases pertaining to the Directorate of Revenue Intelligence or Central Excise (or their officers), would be triable exclusive by the learned Chief Judicial

Magistrate. However, in the present case, it has been transferred to the court of the learned Additional Chief Judicial Magistrate.

He also refers to a circular stated to have been issued by the Department of Central Excise, stating to the effect that all cases relating to that Department would be heard only by a learned Chief Judicial Magistrate and not by any other court.

However, firstly, no such circular has been placed on record and secondly, he has not stated that the said circular is actually a notification issued by the Government itself. Therefore, he would be required to show as to how any such circular issued by the Department of Central Excise, would be binding on the Sessions Judge (if at all issued in the first place).

Further, he has also drawn attention to the notification dated 21.08.1975 (copy Annexure P-9), issued pursuant to a decision taken by this court, that all Judicial Magistrates of the Ist Class in the State of Punjab, would be deemed to have been appointed as *ex-officio* Additional Chief Judicial Magistrate in their respective jurisdictions, and would exercise all powers of Chief Judicial Magistrates, other than powers conferred by Sections 26, 27 and 29 of the Code of Criminal Procedure, 1973.

Learned counsel further submits that as per Section 29 (1) of the said Code, the court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years; with the maximum sentence awardable in the context of the charges framed against the petitioner in the present case, being 07 years, and as such, he submits that an Additional Chief Judicial Magistrate cannot try the case against the petitioner in any case.

Having considered the arguments, I see no ground, even in terms of the aforesaid notification, as to how an Additional Chief Judicial Magistrate is debarred from hearing a case which is triable by a Chief Judicial Magistrate, i.e. one in which he can pass a sentence of imprisonment upto 07 years, because the notification in question applies to Judicial Magistrates of the First Class (posted as the Senior Subordinate Judges), as *ex-officio* Additional Chief Judicial Magistrates.

Thus, nothing has been shown to this court as to how an Additional Chief Judicial Magistrate, substansively so appointed, is debarred from hearing a case that is triable by a Chief Judicial Magistrate.

Be that as it may, simply in order to determine as to whether the circular referred by learned counsel for the petitioner, stated to have been issued by the Department of Central Excise, is in fact a circular issued by the Department, or a notification issued by the Government, let notice of motion be issued to the respondent, returnable on 22.03.2021.

Process ***dasti*** also.

Liberty is also granted to serve the respondent through its standing counsel appearing before this court.

However, it is made absolutely clear that in the absence of any valid notification or statutory provision to that effect that an Additional Chief Judicial Magistrate, substantially appointed, cannot hear any criminal case pertaining to the Directorate of Revenue Intelligence or Central Excise, there is absolutely no stay operating at this stage on the proceedings before the trial court, i.e. the Additional Chief Judicial Magistrate, Ludhiana.

At this stage, learned counsel for the petitioner submits that even if this court is not inclined to stay proceedings before the trial court, the petitioner may be exempted from personal appearance before that court on

08.03.2021.

Obviously, if the petitioner has any genuine reason for not appearing before the trial court on that date, an appropriate application would be filed before that court, which would consider it wholly on its own merits and pass appropriate orders.

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After the aforesaid order had been entirely dictated by this court, learned counsel for the petitioner at this stage submits that he may be permitted to withdraw the present petition.

Obviously, he is not interested even in showing before this court as to whether any notification has been issued by the Government, pertaining to cases of the Department of Central Excise being only triable by a Chief Judicial Magistrate.

Consequently, no further comment is to be made by this court in that context.

Dismissed as withdrawn.

March 05, 2021 **(AMOL RATTAN SINGH)**
nitin **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No.