

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-34703 of 2021
Reserved on: 01.10.2021
Pronounced on: 5.10.2021**

Jagseer Singh

Petitioner

Versus

Central Bureau of Investigation and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.S. Bains, Senior Advocate with
Mr. Loveneet Thakur, Advocate for the petitioner.

Mr. Sumeet Goel, Senior Advocate with
Mr. A.K. Ranolia, Advocate for the respondent No.1-CBI
assisted by Mr. Anubhav Tyagi, Inspector, CBI.

Mr. M.K. Dogra, Advocate for the respondent No. 2.

Mr. Venktaramani, Senior Advocate with
Mr. Amit Tiwari, Advocate and
Mr. Gurdas Singh Sarwara, Advocate
for the respondent No. 3.

Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate for respondents No. 4 and 5.

Mr. Venktaramani, Senior Advocate with
Mr. Harish Chhabra, Advocate and
Mr. Chitvan Singhal, Advocate for the respondent No. 6.

AVNEESH JHINGAN, J.

[1] This is a petition seeking transfer of case No. CHI/1864/2013,
titled as 'CBI v. Baba Gurmeet Ram Rahim Singh and others' in FIR No.
312 dated 10.7.2002, under Sections 302 and 120-B IPC read with Section

34 IPC, registered at Police Station Sadar Thanesar, District Kurukshetra and Case No. RC8(S)/2003/SCB/CHD dated 3.12.2003 of Central Bureau of Investigation (for short, 'CBI') from Special Judge, CBI, Panchkula (hereinafter referred to as 'Special Judge') to any other Special CBI Court in the States of Haryana, Punjab or Union Territory, Chandigarh.

[2] The petitioner is son of Ranjit Singh, for whose murder the trial is going on. Respondent No. 1 is CBI, respondent No. 2- Mr. K.P. Singh, Public Prosecutor, CBI (hereinafter referred to as 'respondent No.2') is arrayed by name and respondents No. 3 to 6 are accused in the FIR.

[3] On directions of this Court on 10.11.2003, the investigation of FIR No. 312 of 2000, Police Station Sadar Thanesar pertaining to murder of Ranjit Singh was transferred to CBI. After investigation, Jasbir Singh, Sabdil Singh, Krishan Lal, Inder Sain and Gurmeet Ram Rahim Singh were nominated as accused.

[4] The petition is filed, as petitioner has an apprehension that the Special Judge is unduly influenced by the accused through respondent No. 2 who is not entrusted with the trial, yet takes interest in the proceedings.

[5] Notice of motion was issued on 24.8.2021. Comments of the Special judge were sought. CBI was directed to file a specific affidavit regarding appointment of respondent No. 2 for CBI Court at Panchkula and in meantime final pronouncement of the judgment was stayed.

Contentions on behalf of the petitioner

[6] Mr. R. S. Bains, Senior Advocate appearing for the petitioner argued that the apprehension of the petitioner of not having fair trial is based upon various instances, some of them are not directly related to the trial in present case. Reliance is placed upon a complaint made against the Special Judge in another case (annexed as Annexure P-2 with the petition) to submit that conduct of the Special Judge is not above board. It is argued that Special Judge in his comments filed, has chosen to remain silent on complaint made against him.

[7] The submission is that there is unusual proximity of the respondent No. 2 with the Special Judge. The Special Judge was earlier posted at Chandigarh and respondent No. 2 was Public Prosecutor in his court. As soon as the Special Judge was transferred to CBI Court at Panchkula, respondent No. 2 also got transferred to Panchkula. To fortify the contention, it is argued that the respondent No. 2 was there in the office with the Special Judge on 7.8.2021, which was second Saturday court holiday and the fact could have been verified from the CCTV footage. It is argued that the CCTV footage of 14.8.2021 has been stated to be preserved and copy sent with the comments filed by the Special Judge. However, in comments it is stated that the CCTV footage of 7.8.2021 for the camera inside the court room are not available, as back up was only for 15 days. Learned senior counsel submits that the report submitted by the Special Judge is contradictory to the document annexed with the comments as Annexure-9, wherein it has been mentioned that there was an upgradation of server storage and from 17.7.2021 storage capacity is of 21 days.

[8] The submission is that the trial was at the arguments stage since 16.9.2017, the Special Judge is now showing undue hurry. The application moved by Special Public Prosecutor seeking two weeks time for getting assistance from a retired investigating officer, was rejected and six days time was fixed for passing the final order.

[9] It is argued that interference by respondent No. 2 in court working is evident from the order dated 5.7.2021 passed in the case of *Assistant Director, Directorate of Enforcement v. Associates General Limited and others*. Senior counsel objected to presence of respondent No. 2 and requested that he should be directed to leave the court room or his presence be marked in the case. Ultimately, respondent No. 2 was told to sit on the chairs meant for the lawyers in the court room.

[10] Learned senior counsel relies upon the judgment of the Supreme Court in *Kaushalya Devi v. Mool Raj and others, 1964(4) SCR 884*. The submission is that the Special Judge has filed his comments and as per the decision of the Supreme Court without considering the merits of the transfer petition, the case should be transferred. He further argues that the prayer made by the Special Judge in his comments is harsh.

[11] While concluding the arguments the contention is that considering the sensitivity of the case and involvement of high profile accused, the case be transferred.

Contentions on behalf of CBI

[12] Mr. Sumeet Goel, learned senior counsel for CBI relies upon the pleadings of the reply filed. He submits that vide order dated 31.3.2021,

along with transfer of respondent No. 2, Mr. P. K. Dogra, Senior Public Prosecutor was transferred to Chandigarh. It was an administrative decision and there was no question of any body influencing the transfer.

[13] Learned senior counsel submits that respondent No. 2 is a designated Public Prosecutor in CBI Court, Panchkula whereas Mr. D. S. Chawla, Senior Public Prosecutor and Mr. HPS Verma Special Public Prosecutor were specifically appointed for the purpose of trial in this case.

Contentions on behalf of respondents No. 4 and 5

[14] Mr. Vinod Ghai, learned senior counsel appearing on behalf of respondents No. 4 and 5 refutes the contentions raised on behalf of the petitioner that sensitivity of the case and involvement of high profile accused can form the basis of apprehension of petitioner. He defends the prayer made by the Special Judge and submits that if baseless allegations are made against Judicial Officer, the prayer for initiation of contempt proceedings is justified, as it is a reflection on judiciary. He relies on the pleadings in para No. 15 of the petition to submit that allegations are being made on mere assumption that the judgment in the case stands drafted on 7.8.2021.

[15] The contention is that there are bald statements made but there is no material whatsoever worth put forth by the petitioner to show proximity of respondent No. 2 with the accused. He prays that a serious view should be taken of the pleadings made without any foundation.

[16] Pleadings in the petition alleging that the petitioner gathered information from reliable sources that witness-Khatta Singh will be dis-

credited, is contested by arguing that if due credit is given to the witness then the petitioner has no grievance. The petition is being used as a tool to create circumstances that the outcome of the trial is as per the wishes of the petitioner.

[17] The contention that Special Judge is in hurry to decide the trial is rebutted by submitting that it is an old case, reasonable adjournments were granted to CBI as and when asked for. Reliance is placed upon a zimni order dated 12.8.2021 to show that the case was adjourned to 18.8.2021 giving an opportunity to the Special Public Prosecutor for CBI to raise rebuttal arguments. Lastly, it is argued that granting of adjournments is prerogative of the court. In the present case, the date of pronouncement was changed from 24.8.2021 to 26.8.2021 on an application moved by the District Attorney stating the reason that there is Vidhan Sabha session fixed, hence it would not be possible to ensure the presence of the accused. This itself shows the reasonable approach by the Special Judge.

Contentions on behalf of respondents No. 3 and 6.

[18] Mr. R. Venkataramani, Senior Advocate appearing on behalf of respondents No. 3 and 6 argues that there is no foundation for the allegation of interference in the judicial process. There is nothing before the Court to have even a fragile feeling that the judicial process is being interfered and no case is made out for transfer of the trial. The contention is that the minimum onus required to be discharged by the petitioner is that there are obvious things which on a minimum probe by the court would satisfy it for transfer of trial. It is further argued that the proximity between the accused

and the Public Prosecutor is baseless. The submission is that reliance upon the prayer made by the Special Judge cannot be a ground in itself for seeking transfer of the trial. Lastly, it is argued that the trial is at the fag end, it is at the stage of pronouncement of judgment. The petitioner all through watched, waited and participated in the trial. On 18.8.2021, the matter was kept for 24.8.2021 for final order. Thereafter on 20.8.2021 the present petition was drafted and on 24.8.2021, final pronouncement of the judgment was stayed by this Court. It is contended that the onus to be discharged at this belated stage would be much higher than what is required at the stage of enquiry or pending trial.

Legal Position:

[19] Section 407 of Cr.P.C. empowers the High Courts to transfer cases.

407. Power of High Court to transfer cases and appeals.—

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to

its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the applications unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of Justice, order that, pending the disposal of the application the

proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the Subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

[20] It would be appropriate to quote relevant paragraphs of the decisions of the Supreme Court with regard to transfer of trial.

[21] Supreme Court in ***Gurcharan Dass Chadha v. State of Rajasthan, 1966 AIR (Supreme Court) 1418*** has held as under:-

"The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation

that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.”

[22] Supreme Court in ***Maneka Sanjay Gandhi v. Rani Jethmalani***, 1979 AIR (Supreme Court) 468 has held as under:-

“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weight the circumstances.”

[23] Supreme Court in State of ***West Bengal v. Shivananda Pathak***, 1998(5) SCC, 513 held as under:-

“29. As pointed out earlier, an essential

requirement of judicial adjudication is that the Judge is impartial and neutral and in a position to apply his mind objectively to the facts of the case put up before him. If he is pre-disposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a judge. But Frank, J. of the United State In re Linahan. 138 F. 2nd 650 says :-

"If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even, at infancy, is no blank piece of paper. We are born with predispositions....much harm is done by the myth that, merely by....taking the oath of office as a judge, a man casts to the human and strips himself of all predilections, becomes a passionless thinking machine."

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33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias." de Smith in Judicial Review of Administrative Action, 1980 Edn., 262, 264 has explained that "reasonable suspicion" test looks mainly to outward appearance while "real likelihood" test focuses on the court's own evaluation of the probabilities."

[24] Supreme Court in ***Abdul Nazar Madani v. State of Tamil Nadu, 2000 (6) SCC 204*** held as under:-

“The purpose of the criminal trial is to dispense

fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Criminal Procedure Code. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any Court on even at any place, the appropriate Court may transfer the case to another Court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case.”

[25] Supreme Court in ***Capt. Amarinder Singh v. Prakash Singh Badal***, 2009 (6) SCC 260 held as under:-

“12. It is a well-established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, undoubtedly, the proceeding has to be transferred elsewhere by exercise of power under Section 406 Criminal Procedure Code. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On

the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

13. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Criminal Procedure Code. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the Court to be a reasonable one."

[26] Supreme Court in *Ashish Chadha v. Smt. Asha Kumari, 2012*

(1) SCC 680 has held as under:-

"It is also significant to note that while the order was being dictated by learned Special Judge, respondent No. 1 moved an application for transfer of the case since allegedly an opportunity of being heard through an advocate of her choice was denied to her. This application was rightly rejected by Special Judge for want of jurisdiction. Learned Special Judge then framed charges against respondent No. 1 and other accused. Respondent No. 1 then requested the High Court to

transfer her case from the file of learned Special Judge Chamba to the Court of Special Judge, Kangra on the ground that she had reasonable apprehension that she will not get a fair trial. The High Court, in our opinion, wrongly transferred the case as desired by respondent No. 1. Apprehension expressed by respondent No. 1 that she would not get a fair trial was baseless. We have already noted the number of dates on which learned Special Judge adjourned the proceedings. It is only when he was satisfied that respondent No. 1 was purposely seeking adjournment and that Mr. Malhotra, counsel appearing for respondent No. 1 had argued her case that learned Special Judge refused to grant further adjournment. We do not find any material to substantiate the fear expressed by respondent No. 1 that she would not get a fair trial. The High Court, therefore, should not have transferred the case to the Special Judge, Kangra. Needless to say that such transfers ordered merely on the say-so of a party have a demoralizing effect on the trial courts. Unless a very strong case based on concrete material is made out, such transfers should not be ordered.”

[27] Supreme Court in ***Lalu Prasad @ Lalul Prasad Yadav Vs. State of Jharkhand*** 2013(8) SCC 593 wherein the trial was at the fag end denied to interfere in the transfer petition and has held as under:-

12. In the light of the entire factual scenario, particularly, the objection relating to bias which came to be raised at the fag end of the trial that is on the eve of passing orders, as observed earlier, we are not inclined to entertain such objection. The Presiding Judge, in our view, will take note of the grievance expressed and eliminate the apprehension of the appellant. It goes without saying that every litigant is entitled

to fair justice.

13. Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-a-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent.

[28] Supreme Court in ***Umesh Kumar Sharma v. State of Uttarakhand*** 2020 AIR (SC) 5488 after considering its earlier decisions held that only when fair justice is in peril, plea for transfer might be considered.

Conclusion:

[29] High Court under Section 407(1) Cr.P.C. can transfer trial from subordinate criminal court if fair or impartial trial is not possible.

[30] From the judgments cited above, it is clear that on mere apprehension trial cannot be transferred. The apprehension must be reasonable and not imaginary. The power of transfer is to be sparingly exercised. There cannot be a straight jacketed formula for transfer of trial.

[31] The apprehension of the petitioner is based upon incidents

relating to other cases. The reliance is upon a complaint made against the Special Judge in another case. The allegations are that the Special Judge was in constant touch with one of the accused in a money laundering case. He attended an inaugural function of a hospital owned by the said accused and thereafter granted him bail.

[32] It would be appropriate to note at this stage that the affected party in that case was Enforcement Director. There is nothing on record that till date any legal remedy has been availed against the order passed by the Special Judge. As per the comments received from the Special Judge, three accused (including one alleged to be in touch with Special Judge) in the case titled as “**ED v. M/s Future Maker Life Care Pvt. Ltd.**” were granted interim regular bail on 23.3.2021 by his predecessor. The Special Judge after getting the reply from the Enforcement Director had only confirmed the interim bail. No adverse inference can be drawn against the Special Judge on the ground that he made no comments on the complaint filed against him. He has put forth his version in his comments by stating that his predecessor granted the interim bail which was confirmed by him.

[33] The allegations of proximity of the respondent No. 2 with the Special Judge is based on hear-say like, that the judgment was drafted by the respondent No. 2 on 7.8.2021 or on unrelated incident in another case where the senior counsel appearing for the accused objected to the presence of the respondent No. 2 in the court and he was asked to sit on the chairs meant for the lawyers.

[34] Timing of transfer of respondent No. 2 from Chandigarh to

Panchkula coinciding with the transfer of Special Judge is relied to show the proximity between the two. CBI in its reply filed has annexed the transfer order whereby two Public Prosecutors were transferred including respondent No. 2. It was an administrative decision taken by the concerned department and these were routine transfers. It would be worth mentioning that the allegations in the petition are not pointed towards CBI.

[35] The presence of respondent No. 2 in the court during trial is duly explained in the pleadings by the CBI. He is a regular Public Prosecutor in CBI Court at Panchkula. Senior Public Prosecutor and a Special Public Prosecutor have been specifically appointed to represent CBI in this case. Being a designated Public Prosecutor in the court, his presence is obvious and being regular in Court, he can lend assistance to his colleagues.

[36] The contentions that CCTV footage of 7.8.2021 of the court room has intentionally not been sent in spite of the upgradation of the CCTV server is not well-founded. From the perusal of Annexure-9 with the comments of the Special Judge, it is clear that there is 15 days back up of the CCTV footage of inside the court room. Reading of Annexure-9 nowhere shows that CCTV footage of 7.8.2021 of inside the court room is available. More so, it is nobody's case that CCTV Camera is installed in chamber of Special Judge, as the allegation is of going to office on a holiday and judgment being dictated on 7.8.2021.

[37] The argument that the Special Judge is in undue hurry to conclude the trial and resultantly had not given fair opportunity to the

Special Public Prosecutor to assist the court, by declining two weeks' adjournment request is noted to be rejected. From the zimni orders annexed, it is clear that on 11.8.2021, it was recorded that oral arguments have been concluded by all defence counsel. The adjournment was sought to cite relevant case law. The matter was adjourned for 12.8.2021. Liberty was granted to the defence counsel for submitting the written arguments. On 12.8.2021, on request of the Special Public Prosecutor for CBI, the case was adjourned to 18.8.2021 for rebuttal arguments. On 18.8.2021, instead of making rebuttal arguments, Special Public Prosecutor moved an application seeking two weeks' further time. The same was rejected by passing a detailed order and noting the fact that the ground raised for adjournment was never mentioned by the Special Public Prosecutor when he advanced his detailed arguments. In spite of that, liberty was granted to submit written rebuttal arguments. The case was adjourned for 24.8.2021 for pronouncing the final order. Learned senior counsel appearing for CBI contended that written rebuttal arguments were submitted before the Special Judge and the CBI has not raised any grievance with regard to rejection of adjournment and liberty granted for filing written rebuttal arguments.

[38] Reliance upon the decision of the Supreme Court in **Kaushalya Devi's case (supra)** does not enhance the case of the petitioner. In the case before the Supreme Court, the Magistrate before whom the trial was pending himself filed an affidavit on behalf of Delhi Administration opposing the transfer petition. The Supreme Court noted the fact that no

comments were sought by the court from the Magistrate but he of his own filed the affidavit opposing the transfer. In the present case, it was only on the directions of this Court that Special Judge filed his comments.

[39] The endeavour to argue that the trial in the present case is of different nature considering its sensitivity and involvement of high profile accused cannot form basis for transfer of the trial. It would be apt to quote observations made by the Supreme Court in **R. Balakrishna Pillai v. State of Kerala (2000) 7 SCC 129:**

“.....we would further state that in this country there is complete separation of Judiciary from the Executive and Judges are not influenced in any manner either by the propaganda or adverse publicity. Cases are decided on the basis of the evidence available on record and the law applicable. Granting such application and transferring the appeal from High Court of Kerala to High Court of Karnataka would result in casting unjustified aspersion on the Court having jurisdiction to decide the appeal on the assumption that its judicial verdict is consciously or sub-consciously affected by the popular frenzy, official wrath or adverse publicity, which is not the position qua the judicial administration in this country. We would also mention that at the time of hearing the learned Counsel has not raised this contention.”

[40] The aspect of the Special Judge submitting comments in the present case and making a prayer that it is case of interference in the judicial process, making a basis for transfer of trial at a stage when it is fixed for pronouncement would be a dangerous proposition to accept. The Special Judge was duty bound as there was direction by this Court to file

his comments. If the trial is transferred on the basis that filing of comments by the Special Judge would affect the outcome of the trial, the trail of such pressure would not only end with the transfer but will proceed to the next Judge also. Moreover, a judge is aware of the powers bestowed and how to conduct fair trial.

[41] The apprehensions of petitioner cannot be held to be reasonable, these are imaginary and based upon surmises and conjectures. The trial is at stage of pronouncement of judgment. The petitioner watched and participated in trial before Special Judge since April, 2021 i.e. when he was transferred. The petitioner in garb of transfer petition cannot be permitted to have bench of his choice or to get result of trial as per his wishes. With the advancement of technology and activism of social media, the allegation leveled by such litigants needs to be scrutinized very carefully. On asking of apprehensive litigant, transfer of trial at fag end would result in browbeating the Judge and interference in fair administration of justice.

[42] The petition is dismissed being void of merits.

[AVNEESH JHINGAN]
JUDGE

5th October, 2021

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |