

22.06.2023
Item No.10 &
Item No.1 (S/L)
gd/ssd

MAT/1085/2023
IA NO: CAN/1/2023
RANJU JHA
VS
NARENDRA KHARKA AND ORS.
with
MAT/1097/2023
IA NO: CAN/1/2023
STATE OF WEST BENGAL
VS
NARENDRA KHARKA AND ORS.

Mr. Sudipta Maitra,
Mr. Sandipan Ganguly,
Mr. Jaydeep Biswas,
Mr. Vikash Singh,
Mr. Kaushik Ghosh
..for the Appellant in
MAT 1085 of 2023.

Mr. Amitesh Banerjee,
Sk. Md. Galib,
Ms. Amrita Panja Moulick
..for the Appellant in
MAT 1097 of 2023.

Mr. Rajdeep Majumder,
Mr. Mayukh Mukherjee
..for the Respondent No.1.

Mr. Amitesh Banerjee,
Sk. Md. Galib,
Mr. Abu Siddique Mallick
..for the State in
MAT 1085 of 2023.

Mr. Ashoke Kumar Chakraborti, Id. ASG,
Mr. Arun Kumar Mohanty,
Mr. Manabendra Nath Bandyopadhyay
..for CBI.

1. These intra court appeals by the appellants
are directed against the order passed by the learned

Single Bench dated 14th June, 2023 in WPA 9948 of 2023.

2. By the impugned order the case which was investigated by the State police has been transferred to the Central Bureau of Investigation, Special Crime and Anti Corruption Branches, Kolkata.

3. Before we examine the scope of the directions issued by the learned Single Bench, we need to point out the directions issued by the Hon'ble Supreme Court in several judgments as to when and under what circumstances a case can be transferred from one investigating agency to another investigating agency, more particularly the Central Agency. The Hon'ble Supreme Court has pointed out that although no inflexible guidelines has been laid down to decide whether or not such a power of transfer should be exercised, but it has been reiterated that such an order of transfer of investigation is not passed as a matter of routine or merely because a party has levelled some allegations against the local police. It has been further pointed out that this extraordinary power must be exercised directly, cautiously and an exceptional situation where it becomes necessary of credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

4. From the order impugned we find that the learned writ court has observed that there is some merit in the submissions of CBI that the subject matter of the FIR being No.86 of 2023 is vitally linked to the existing investigations being conducted by the CBI in the coal and cattle scams.

5. In our opinion, this reasoning may not be sufficient for transferring the case to CBI as the court has to consider as to whether the case in FIR 86 of 2023 has a direct nexus and link to the coal and cattle scam which is being investigated by the CBI, more particularly when the case is one of murder of one Rajesh Kumar Jha @ Raju Jha. Furthermore, it appears that a report was submitted by CBI, as mentioned before us by the learned standing counsel for CBI. However, in the order impugned mentioned of the report is not found. In any event the court bearing in mind the directions of the Hon'ble Supreme Court has to find tune the order so as to satisfy the parameters laid down by the Hon'ble Supreme Court in various decisions. Furthermore, we find that since affidavits were not called for, the full "picture" was not placed before the learned writ court and in our view, the entire facts have to be placed before the learned writ court so as to enable the learned writ court to form an opinion as to whether the case merits transfer to the Central Agency and whether the case has live link to

the ongoing investigation being conducted by CBI in the coal and cattle scams.

6. For the above reasons, the appeals are allowed and the order passed in the writ petition is set aside and the writ petition is remanded back to the learned Single Bench for fresh consideration.

7. The respondents are directed to file their affidavit-in-opposition not later than 30th June, 2023; reply, if any, within 7th July, 2023 and the writ petition be listed before the appropriate learned Single Bench in the week commencing 10th July, 2023.

8. The learned advocate appearing for CBI has raised the question of maintainability of the appeal at the instance of the appellant.

9. We take note of the submission of the learned standing counsel for CBI that there is some allegation that the officers who are investigating the case or also part of the investigation in the coal and cattle scams by CBI.

10. Since we have already directed that affidavit should be filed by CBI, it is open to CBI to mention all those facts in the said affidavit to enable the learned writ court to consider the same.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)