

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78798 of 2023

Arising Out of PS. Case No.-277 Year-1994 Thana- ARA NAGAR District- Bhojpur

Saif Ahmad, Son of Late Mumtaz Ahmad, Resident of Singahi Kala, P.S. Ara
Town, District-Bhojpur.

... .. Petitioner

Versus

- 1. The State of Bihar
- 2. Riyasat Hussain
- 3. Shafi Rizwan
- 4. Fasi Rizwan @ Jannu
- 5. Sannu @ Sana Jamal
- 6. Aslam
- 7. Abdul Manan
- 8. Junaid Ahmad
- 9. Alamgir
- 10. Firdos Ahmad
- 11. Ansar Ahmad
- 12. Arsad Ahmad @ Dadu
- 13. Istiak Ahmad
- 14. Jibbu

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Y.C. Verma, Sr. Advocate Mr. Vikash Kumar Jha, Advocate
For the State	:	Md. Fahimuddin, APP
For the O.P. No. 9	:	Mr. Bibhakar Tiwary, Advocate Mr. Madhav Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 18-01-2024

Heard Mr. Y.C. Verma, learned Senior Counsel assisted
by Mr. Vikash Kumar Jha, learned counsel for the petitioner and
Mr. Bibhakar Tiwary, learned counsel for the O.P. No. 9 as also
Md. Fahimuddin, learned APP for the State.

2. The petitioner in this case is seeking transfer of the Sessions Trial No. 137 of 2001 arising out of Ara Town P.S. Case No. 277 of 1994 instituted for the offences alleged under Sections 147, 148, 149, 307, 302 of the Indian Penal Code and Section 27 of the Arms Act.

3. Learned Senior Counsel for the petitioner submits that earlier, the trial was going on in the court of learned Additional Sessions Judge-VII. It is submitted that the accused persons filed an application before the learned Sessions Judge, Bhojpur in administrative side for sending the records to some other court for fair trial.

4. It is further submitted that during trial the prosecution filed an application to summon some left over accused. The court, finding sufficient materials summoned them. Thereafter, the prosecution had filed an application for recalling the entire evidence so that the case concerning the newly summoned persons be brought on the record. The learned Fast Track Court rejected the said application. The main ground for rejection was that the newly summoned accused persons filed an application supported by an affidavit that they were adopting the evidence already adduced in the case and were not in favour of summoning the prosecution witnesses who had already been examined. The order

of learned Fast Track Court was challenged in Cr. Misc. No. 11043 of 2010 but the same was dismissed. The petitioner moved the Hon'ble Supreme Court also but the Hon'ble Supreme Court did not interfere with the order passed by the Hon'ble High Court and learned Fast Track Court as the accused were not going to be prejudiced and they had filed an application adopting the evidence already adduced in the case. The case was, thereafter transferred to the court of learned Additional Sessions Judge-VII.

5. It is submitted that although the learned Sessions Judge rejected the application for recalling the order in the administrative side and sending it to some other court, on the application filed by the accused persons challenging the order in revision, the learned Sessions Judge recalled the case from the court of learned Additional Sessions Judge-VII and kept it with him. On account of certain developments, the petitioner has developed reasonable apprehension that he may not get fair and impartial trial before the learned Sessions Judge.

6. Mr. Y.C. Verma, learned Senior Counsel has placed before this Court the statements made in paragraphs '15', '16' and '17' of the present application. It is submitted that one of the accused in this case is Arshad Hussain @ Dadu. He was earlier attached with the learned Sessions Judge as a Peon and he retired

some two years back but he is too close to the Sessions Judge and is always seen going to his office in his room.

7. It is further submitted that one Sagir Ahmad was earlier posted as a Peshkar attached to learned Sessions Judge and retired some time back in March 2023. His service has been extended and is still continuing as Peshkar. He is maternal uncle of Arshad Hussain @ Dadu and Anshar Ahmad. It is submitted that all the accused persons are closely related to each other. The Peskhar Sagir Ahmad is taking interest in the case and ignoring *parvi* which is being done by the prosecution. He even sometimes scolds the persons taking interest on behalf of the prosecution.

8. Learned Senior Counsel submits that an eye witness, namely, Faiz Ahmad was not examined in this case and when the prosecution filed an application under Section 311 requesting his examination, the learned District Judge, Ara rejected it. Against this order dated 05.07.2023, the prosecution moved the Hon'ble High Court in Cr. Misc. No. 60446 of 2023 which is pending herein. Learned Senior Counsel submits that the District Judge, Ara did not wait for hearing of the Cr. Misc. No. 60446 of 2023 and went ahead with further hearing and argument.

9. Mr. Verma, learned Senior Counsel submits that on 13.10.2023, the argument had been completed and case was

adjourned for hearing on 19.10.2023. On the said date, Farid Ahmad, brother of the informant received information that one of the accused persons, namely, Arshad Hussain @ Dadu was sitting in the office of the Sessions Judge. The informant's brother rushed there and really found him to be seated there. Seeing the informant's brother, the said Arshad Hussain came out. This situation not only raised reasonable apprehension in the mind of the prosecution rather it confirms that and thus, the informant's brother got an application typed and tried to give it to the Peshkar. The Peshkar was reluctant to receive it. The Sessions Judge heard it and he asked the Peon to send the brother of the informant and accordingly, he went to the Chamber of the Sessions Judge with folded hands and requested that he had reasonable apprehension that he would not be acting fairly and impartial trial would not be possible. The learned Sessions Judge, however, did not take care of it. On these grounds, it is submitted that the case be transferred to some other court outside the Bhojpur district.

10. Learned counsel for O.P. No. 9 has opposed this application. It is submitted that one of the accused, namely, Arshad Hussain @ Dadu was a Peon in the court of learned Sessions Judge who has retired in the year 2018. It is submitted that a Class IV employee like Arshad Hussain @ Dadu cannot influence a

judicial officer in the rank of District Judge and as such, the allegation that because he was earlier working as a Peon in the court so the learned Sessions Judge is not likely to render justice cannot be believed. It is submitted that Sagir Ahmad is not related to O.P. No. 9 or any other accused persons. He is though continuing in service on extension but is not functioning as Peshkar. CCTV cameras are installed in the premises of Civil Courts of Bhojpur, Ara and the truthfulness or otherwise of the allegations levelled by the petitioner can be verified from CCTV footage.

11. Learned counsel submits that the informant-petitioner had all through participated in course of trial. The prosecution, defence and the informant had filed their written arguments on 28.08.2023. Thereafter, the prosecution advanced its argument which was concluded on 16.09.2023. The trial court granted liberty to the informant also to advance his arguments. The informant advanced his arguments on 21.09.2023 and concluded it on 26.09.2023 whereafter the defence advanced its argument on 29.09.2023 which was concluded on 10.10.2023.

12. Learned counsel submits that the petition under Section 311 CrPC was filed at a much belated stage on 22.06.2023 for examination of the full brother of the petitioner, namely, Faiz

Ahmad. By a detail order, the learned trial court dismissed the petition and observed therein that the present case is an old case and it is in the list of cases identified by the Hon'ble High Court. Thereafter, the informant filed another petition dated 03.10.2023 for recalling of prosecution witness nos. 4, 5, 6 and 7. Learned trial court rejected the said petition vide order dated 10.10.2023. The entire ordersheet has been brought on the record as Annexure 'R/2' to the counter affidavit.

13. It is submitted that the trial court had posted the case for judgment for 19.10.2023. On the said date, the informant filed a petition before the learned trial court mentioning therein that he has filed transfer petition before this Court.

14. In the above circumstance, a prayer has been made to dismiss the present application.

15. Learned APP for the State has also opposed this application. It is submitted that the prosecution and defence have already completed their argument and the case is fixed for judgment.

16. Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that mere apprehension expressed by the petitioner at this stage when the case is fixed for judgment cannot be a valid ground to transfer

the trial of the case from Bhojpur district to another district in the State of Bihar. One of the accused of this case happened to be a Peon, who, according to O.P. No. 9 has retired in the year 2018. There is no material before this Court to take a view that he is in touch with the District and Sessions Judge, Bhojpur and is in a position to influence the course of justice. So far as Sagir Ahmad is concerned, who is said to be Peshkar of the learned Sessions Judge, it is stated in the counter affidavit of O.P. No. 9 that he is not related to any of the accused.

17. It is, however, incumbent upon the learned District and Sessions Judge, Bhojpur at Ara also to look into this aspect of the matter and take a declaration from said Sagir Ahmad that he is not connected with any of the accused.

18. It is evident from the records that the trial of this case is going on since the year 2001, more than 22 years have gone and at this stage, the request for transfer of the trial from one district to another district on the basis of mere bald statements of the petitioner cannot be allowed.

19. This application has, thus, no merit. It is dismissed.

20. Learned counsel for O.P. No. 9 submits that a connected case being Cr. Misc. No. 3416 of 2024 has been filed by

him under Section 407 CrPC which he would immediately
withdraw.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	22.01.2024
Transmission Date	22.01.2024