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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 12th December, 2024

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CRL.C.REF. 1/2024

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr. Anupam S Sharrma, SPP-CBI
with Ms. Harpreet Kalsi, Mr. Prakash
Airen, Mr. Ripudaman Sharama & Mr.
Vashisht Rao, Advs. (M:9810009734)

versus

ASHISH KUMAR

.....Respondent

Through: Mr. Adarsh Priyadarshi and Mr.
Apoorv Shankar, Advs. with
Respondent in person.
(M:9955324661)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present reference for criminal contempt against the Respondent - Ashish Kumar, arises out of the order dated 25th July, 2024 passed by the Id. Special Judge (PC Act)(CBI-20), Rouse Avenue District Court, New Delhi in *Sessions Case No. 02/2019 (RC No.2(S)/1994/CBI/SIC-V/SIC-II)* titled ***CBI v. Sumedh Singh Saini & Ors..***
3. The brief facts leading to the present reference are that the *Sessions Case No. 02/2019* arises out of a complaint filed by the Respondent - Mr. Ashish Kumar, the alleged contemnor herein, in respect of alleged disappearance/killings of his family members *i.e.*, his brother and brother-in-law namely Mr. Vinod Kumar, Mr. Ashok Kumar, respectively, as also their



driver. The said case was first registered in the Sessions Court of Ambala. The accused persons in the said case include Mr. Sumedh Singh Saini, who was the Sr. SSP at the relevant time and other police officials in Punjab.

4. The trial was initially proceeding in Punjab itself. However, in the transfer petition filed by the Respondent - Mr. Ashish Kumar, the matter was shifted from Id. Special Judge, Ambala, Punjab, to the Id. Sessions Judge, Delhi. Charges were framed way back on 6th December, 2006. *Vide* orders dated 29th September, 2010 and 9th September, 2011, the Id. Trial Court had directed that the evidence was to be recorded on a day to day basis. However, till date the evidence has also not been concluded.

5. In the meantime, the matter proceeded and was being heard by one Presiding Officer in Rouse Avenue Courts. The matter was fixed for final arguments by the Id. Trial Court after closing the evidence of the accused persons. The said Presiding Officer had heard the arguments between 11th March, 2024 to 18th March, 2024. However, the said Presiding Officer was then transferred and the matter was assigned to a new Presiding Officer.

6. At that stage, the Respondent had filed a transfer petition criminal being **TR.P. (CRL.) 32/2024** titled **Ashish Kumar v. Central Bureau of Investigation & Ors.**, seeking transfer of the **Sessions Case No. 02/2019** from the present Presiding Officer to the earlier Presiding Officer, who according to him, had substantially heard the matter. *Vide* order dated 22nd April, 2024, the said petition was rejected by a Id. Single Judge of this Court. The operative portion of the order reads as under:

*“13. In view of the above discussion, this Court finds no ground for transferring case titled **CBI v. Sumedh Singh Saini and Ors.**, in SC No. 02/2019 (RC No.2(S)/1994/CBI/SIC-V/SIC-II) from the Court of*



Ms. Sunena Sharma, learned Special Judge, PC Act (CBI-20), Rouse Avenue District Court to the Court of Sh. Naresh Kumar Laka, learned Additional District Judge-07, Central, Tis Hazari Courts.

14. This Court is sanguine that the learned Special Judge dealing with the present case will be equally sensitive to the long pendency of the trial and shall make every endeavour to conclude the trial as expeditiously as possible. Learned Special Judge is requested to ensure that no unnecessary adjournments are granted in the matter. ”

7. The matter, thereafter, continued before the Id. Trial Court. This Court is informed that some further witness testimonies are also now being recorded. However, the Contemnor again raised the issue of impartiality and unfairness to the Presiding Officer due to which she recused from the matter on 18th May, 2024. The said order reads as under:

“12. In the light of aforementioned facts and circumstances of the case when a serious doubt has been raised by the complainant on the impartiality and fairness of the court, it would be improper for this court to still proceed in the matter. I therefore, recuse from this. Let this file be placed before Ld Principal District and Sessions Judge, RADC with a request to transfer this matter to some other court of competent jurisdiction. Ahlmed to forthwith send the complete file to Ld Principal District and Session Judge, RADC for appropriate orders.

13. Parties are directed to appear before Ld Principal District and Session Judge, RADC today itself at 2pm.”

8. As can be seen from the above, the parties were to appear before the Id. Principal, District & Sessions Judge on the same date i.e., 18th May, 2024. The Id. Principal District & Sessions Judge-cum-Special Judge (PC Act)



(CBI), *vide* order dated 22nd July, 2024, rejected the prayer for transfer as also recusal of the present Presiding Officer and sent the matter back to the same Presiding Officer. The relevant portion of the said order is set out below:

“13. I have also examined the order dated 18.05.2024 whereby Ld. Special Judge Ms. Sunena Sharma has sent the matter to this court with the request to transfer on the basis of recusal. Since, the recusal is based on the submissions of the complainant (whereby he expressed having no faith in the court), the same cannot be approved by this court. The conduct of the complainant in making such submissions before the court cannot be taken as correct. During the course of arguments before this court, complainant even said that there is a judicial officer posted at Rouse Avenue Courts whose father was colleague of accused Sumedh Singh Saini. This plea has nothing to do with Ld. Judge Ms. Sunena Sharma who is presently presiding over the matter. The insistence of the complainant in getting the matter transferred from the court of Ms. Sunena Sharma is without any logical reason. Complainant has been taking all possible pleas to get the matter transferred but in my opinion, the transfer cannot be allowed without their being any strong and substantial ground. I find nothing against the neutrality and impartiality of Ld. Judge and the plea of bias as perceived by the applicant/complainant and pleaded in the transfer application is not correct. In my opinion, this is not a fit case for allowing transfer of the case CBI vs Sumedh Singh Saini & Others. Accordingly, application is dismissed and also the request of Ms. Sunena Sharma, Ld. Special Judge for transfer is declined.

14. The matter is, therefore, referred back to Ld. Special Judge, Ms. Sunena Sharma with directions to deal with the same as per law.

15. Accordingly, file/record be sent back to the court of Ms. Sunena Sharma Ld. Special Judge, CBI-20 for 25.07.2024.”



9. The matter was then taken up on 25th July, 2024 before the same Presiding Officer. On that date, again the contemnor made allegations against the Presiding Officer due to which the matter has been referred to the Division Bench under the Contempt of Courts Act for consideration as criminal contempt reference.

10. On the last date *i.e.*, on 5th November, 2024, notice was issued to the Respondent - Mr. Ashish Kumar, who is present today in the Court. At the outset, he expresses his unconditional apology. His grief is due to the fact that for 30 years, the matter has not reached closure. According to him his near and dear family members were killed and till date there is no trace of them. He expresses remorse and submits that he did not intend to make any allegation against the present Presiding Officer. However, it was due to certain information, which he had received because of which he felt that the said Presiding Officer ought not to hear the matter.

11. On his behalf, Mr. Adarsh Priyadarshi, Id. Counsel submits that the unconditional apology may be accepted by the Court. Mr. Anupam Sharma, Id. SPP for the CBI also submits that the matter has been delayed for a substantial period.

12. The Court has heard the matter. Clearly, after hearing the Respondent, it appears that, he may have made allegations in the Court out of sheer frustration due to delay in the conclusion of the case. His family members continue to be untraced as of today. He has been pursuing this litigation for the last 30 years. Even the Id. Single Judge of this Court, while rejecting the transfer petition, had directed that the Id. Special Judge shall endeavour to conclude the trial as expeditiously as possible and no unnecessary adjournment shall be granted. The Court is informed that again statements of



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witnesses are being recorded.

13. Considering the nature of the matter, the Court is inclined to accept the unconditional apology tendered by the Respondent - Mr. Ashish Kumar.

14. Needless to add that the Complainant shall ensure that his conduct is not repeated in future.

15. The present criminal contempt reference is, accordingly, disposed of in these terms.

16. This order be communicated to the Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue Court Complex, New Delhi.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

DECEMBER 12, 2024/dk/ms