

HIGH COURT OF CHHATTISGARH, BILASPUR**TPCR No. 15 of 2016**

1. Alok Kumar Agrawal S/o Shri Radheshyam Agrawal Aged About 46 Years R/o In Front Of Tejaswini Girls Hostel, Parijat Extension, Nehru Nagar, Bilaspur, Tahsil & Police Station Bilaspur, District Bilaspur, Chhattisgarh.
2. Abhish Swami S/o Shri Krishna Nand Swami Aged About 46 Years R/o B-F-1 Archana Vihar, Nehru Nagar Road Bilaspur, Chhattisgarh, Permanent Resident- Awash Yojna Colony Camp Umariya, Police Station- Umariya District- Umariya, Madhya Pradesh.
3. Radheshyam Agrawal S/o Late Shri Purnamal Agrawal Aged About 68 Years R/o M.I.G- 1 Housing Board Colony Jaistamb Chouk Umariya, Police Station & District- Umariya, Madhya Pradesh.
4. Smt. Pushpa Agrawal W/o Shri Radheshyam Agrawal Aged About 66 Years R/o M.I.G-1 Housing Board Colony Jaistamb Chouk Umariya, Police Station & District- Umariya, Madhya Pradesh.
5. Smt. Alka Agrawal W/o Shri Alok Kumar Agrawal Aged About 39 Years R/o In Front Of Tejaswini Girls Hostel, Parijat Extension, Nehru Nagar, Bilaspur, Tahsil & Police Station Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through State Economic Offences Investigation Bureau, Raipur, Chhattisgarh.

---- Respondent

For Petitioners : Shri K.A. Ansari, Sr. Advocate with Shri MM Ansari
and Shri A.K. Yadav, Advocate.

For Respondent/State : Shri S. Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

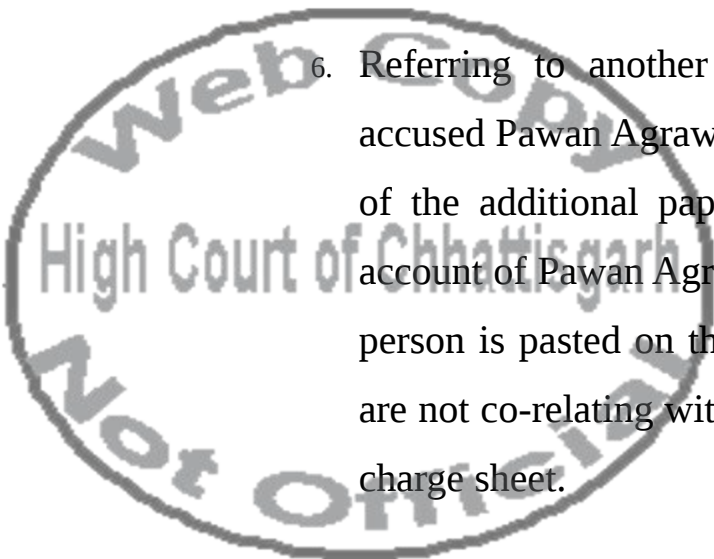
27/10/2016

1. This application under Section 407 of the Cr.P.C. has been preferred seeking transfer of Special Case No.186/2015 pending before the Special Judge, (Prevention of Corruption Act) Bilaspur (Smt. Geeta Neware, Special Judge, PC Act) to any other court of competent jurisdiction.
2. The petitioners are facing trial before the Special Court (PC Act) for committing offence under Sections 109, 420, 467, 468, 471 & 120-B of the IPC and Sections 13 (1)(e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 on the allegation that petitioner Alok Kumar Agrawal, the Executive Engineer, Water Resources Department (WRD), Government of Chhattisgarh, in conspiracy with other accused, forged documents & records and thereby misused and abused his official position and not only caused financial loss to the Government but also amassed huge wealth to the extent of more than Rs.30 crores by corrupt and illegal means.
3. In the raid conducted by the prosecution in the premises of co-accused Abhish Swami, he was found to be in possession of the fixed deposits and bank accounts in the name of wife of Alok Agrawal. He was also found to possess cash of Rs.35 lakhs. It is said that co-accused Abhish Swami is the childhood friend of the main accused Alok Agrawal. He was working as Head Master, Umaria, M.P. from the year 1999-2011. However he resigned from the service to be a contractor in the State of Chhattisgarh. He got

himself registered as Contractor in the WRD by submitting false experience certificate that he is engaged in construction business since 2009, which was not possible because till 2011 he was working as Head Master. The said Abhish Swami obtained registration in the name of Sagareshwar Construction whereas another concern was opened by co-accused Pawan Kumar Agrawal in the name of Mahamaya Construction. Both the construction firms were opened to channelize the ill-gotten money amassed by Alok Agrawal. From his bank locker, 1 kg golden ornaments and 5 kg silver ornaments have also been recovered. The allegation against the main accused Alok Agrawal is of amassing total assets of Rs.49 crores, out of which the unexplained assets are to the tune of Rs.31.23 crores.

4. The ground on which transfer is sought is that initially when the charge sheet was filed, only 1135 number of documents were included, however, the documents No.1136 to 1141 were included later on. Similarly document No.1 i.e. FIR was initially said to be containing 13 pages, however, when the certified copy of the FIR was obtained, it was running into 29 pages. It is also argued that when the charge sheet was filed at the beginning, it was containing about 8000 pages, however, when accused Alka Agrawal was supplied charge sheet at subsequent point of time, it contained 10,935 pages and thereafter when certified copies were obtained, the charge sheet was found to be containing 12,025 pages. Referring to the order sheet dated 24.8.2016, it was argued that blank order sheets were signed by the accused which goes to demonstrate that the trial Court is not obtaining signatures of the accused persons and the order is typed or printed subsequently.

5. It is further argued that the voluminous charge sheet is kept in a big trunk, however, there is no pagination or indexing of the charge sheet, therefore, Article 21 is violated because the charge sheet is not filed in due process of law nor it is properly arranged so that the accused may know as to what evidence he has to meet with. Referring to Section 25(2) of the Cr.P.C., it is argued that the Investigating Officer has no role to play in the trial, yet while replying to one of the applications filed by the accused, the I.O. has filed reply under his own signatures which should have been filed under the signatures of the Public Prosecutor.
6. Referring to another document i.e. the post office account of accused Pawan Agrawal, it is argued that the document at page 364 of the additional paper book is purported to be the post office account of Pawan Agrawal, however, the photograph of some other person is pasted on the said document. Therefore, the documents are not co-relating with the case and yet it has been included in the charge sheet.
7. Learned counsel for the petitioners would place reliance on law laid down by the Supreme Court in the matter of **Satish Jaggi Vs. State of Chhattisgarh and Others** {(2007) 3 SCC 62} and the order of this Court in the matter of **Vinay @ Abhishek & Others Vs. State of C.G.** {2011 (4) CGLJ 144}.
8. On the other hand, learned State Counsel would oppose the application on submission that on the date when the Sessions Court has passed the order charges were not framed and merely because charge sheet is not properly arranged or some documents were not shown earlier in the charge sheet but were subsequently found would not be a ground for transfer of the case. Reliance is placed



in the matter of **Captain Amarinder Singh Vs. Parkash Singh Badal and Others** {(2009) 6 SCC 260}.

9. When the petitioners moved application under Section 408 CrPC before the Sessions Judge for transfer of trial to any other Special Judge (PC Act) in the district, the same has been rejected by the Sessions Judge by observing that the trial Court is yet to apply its judicial mind, as charges have not yet been framed against the petitioners, therefore, it is not a case where the petitioners are prejudiced by any order of the trial Court.

10. I have heard learned counsel for the parties and perused the papers.

11. Before proceeding to consider the merits of transfer petition, it would be just and proper to reiterate the principle on which power to transfer criminal case to a Court of competent jurisdiction under Section 406 or 407 CrPC is exercisable.

12. In the matter of **Abdul Nazar Madani Vs. State of T.N.** {(2000) 6 SCC 204}, the Supreme Court has held thus in para-7:-

“7. 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 CrPC. 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 or 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. However, 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. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition.”

13. In the matter of **Jayendra Saraswathy Swamigal (II) Vs. State of T.N.** {(2005) 8 SCC 771}, the Supreme Court held that the apprehension entertained by the party must be a reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.

14. In the matter of **Captain Amarinder Singh** (Supra), the following has been held in paras-18 & 20:-

“18. 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 the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

20. 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.”

15. Most of the grounds urged in support of prayer for transfer is in the

realm of recording of evidence and cross-examination for which the petitioners would get opportunity. For this I may refer to the grounds that some additional documents were added; some additional pages were found in the charge sheet at subsequent point of time; in the post office account of accused Pawan Agrawal, photograph of some other person is appended etc. These are all matter of evidence. While cross-examining the I.O. or any other witness, the accused persons would be entitled to elicit truth from the witnesses or seek explanation from them about the discrepancy in the charge sheet or any of the documents contained in the charge sheet. The Sessions Judge has rightly observed that the trial Court has not yet passed any such order which adversely affects the petitioners' case in the trial. At the stage when the Sessions Judge rejected the application, charges were not framed though it is informed that subsequently charges have been framed.

16. There is no quarrel about the principle that justice should not only be done but it should seem to be done and that the accused should not nurture an impression that the trial Judge is not fair in conducting trial. However, the present is a case where no such proceeding has been drawn as yet by the trial Judge wherein any substantial right of the petitioners has been adversely affected. If while framing charges all the documents were not seen by the trial Judge, it may be urged before the Court where the order framing charge would be assailed, however, for that the trial need not be transferred.
17. The principle that there should not be an apprehension on the part of the party to the case that justice will not be done is not to be applied in extract terms nor the principle that once one of the

accused in the case has lodged a complaint against the presiding officer, the case should necessarily be transferred. In either of the case, the accused may project a reasonable apprehension artificially when there is none. Similarly an accused may lodge complaint against the presiding officer if the officer is performing his duty in accordance with law and the accused has gathered impression that he is likely to be convicted in the case. In every such case, the case cannot be transferred only for the fact that some complaint is made against the presiding officer. Of- course, justice has to be done and it should be seem to have been done but not in terms of definition of justice which the accused thinks because for him until and unless he is acquitted justice is not done to him.

18. In the considered opinion of this Court, the apprehension nurtured by the petitioners that justice may not be done to them is imaginary and not real. Therefore, no ground for transfer of the case from the Court of Special Judge (Prevention of Corruption Act) Bilaspur where they are being tried to any other Court is made out.

19. The application is accordingly dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve

HEADLINES

Transfer of criminal case not permissible on imaginary or artificial apprehension that justice may not be done.

