

1

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE HIRDESH
ON THE 20th OF OCTOBER, 2023
MISC. CRIMINAL CASE No. 45148 of 2023**

BETWEEN:-

1. ARCHANA LUNAWAT W/O SHRI GOUTAM LUNAWAT OCCUPATION: PRIVATE BUSINESS NIRANJAAN WARD ALKA TALKIES ROAD KARELI NARSINGHPUR (MADHYA PRADESH)
2. HARSHIT LUNAWAT S/O SHRI GOUTAM LUNAWAT OCCUPATION: PRIVATE BUSINESS R/O NIRANJAAN WARD ALKA TALKIES ROAD KARELI NARSINGHPUR (MADHYA PRADESH)

....PETITIONERS

(BY SHRI SAJIDULLA KHAN - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH POLICE STATION KARELI DISTRICT NARSINGHPUR (MADHYA PRADESH)

....RESPONDENT

(BY SHRI PRAMOD KUMAR PANDEY - GOVERNMENT ADVOCATE)

*This application coming on for hearing this day, **JUSTICE HIRDESH** passed the following:*

ORDER

This application under Section 407 of Cr.P.C. has been filed by the petitioner to transfer the Criminal Case No. SC Lok/01/2020 (State of M.P. v. Anvesh Mishra and ors.) pending before the Special Court (Prevention of

Corruption) Act Narsinghpur to Special Judge C.B.I., Jabalpur.

2. After perusal of the record it was found that the Crime No. 511/2019 lodged by police station Kareli, District Narsinghpur on the basis of the complaint of the Dharmendra Kumar Upadhyay and Satish Yadav charge sheet has been filed before the Special Court (Prevention of Corruption Act), Narsinghpur.

3. CBI, SPE, ACB, Jabalpur has also filed Crime No.RC0092019A0006 dated 02.07.2019 under Sections 13(2) r/w Sections 13(1)(d) of Prevention of Corruption Act and under Section 120-B, 409, 420, 468 and 471 of IPC which is pending before the Special Judge CBI, Jabalpur (M.P.) bearing Case No.SC/CBI/06/2021 (State of MP vs. Anvesh Mishra and ors.).

4. On the basis of the complaint of Shri Babulal Radhakishan Verma and after investigation, charge sheet has been filed before the Special Judge, CBI Jabalpur.

5. Heard the learned counsel for the petitioner as well as learned Government Advocate for the respondent/State.

Section 407 of Cr.P.C. reads as under :-

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."

6. Bare reading of the Section 407 of Cr.P.C. makes it clear that assurance of fair trial is the main criteria for exercise of power under Section 407 of Cr.P.C. In present case, petitioner has mainly stated that for convenience of petitioner, trial must be held in District Jabalpur.

7. It is well settled that litigant cannot choose the Bench/Court of his choice. It is only in exceptional circumstances where the existence of bias or likelihood of bias are apparent on the fact and circumstances of the case, the High Court can invoke its discretionary power.

8. Convenience alone is not a sole ground of transfer. In the case of **Rajesh Talwar v. CBI and ors. (2012) 4 SCC 217**, Hon'ble the Apex Court has held as under :-

"The petitioner's plea for transfer is based primarily on convenience, but convenience of one of the parties cannot be a ground for allowing his application. Transfer of a criminal case under Section 406 of the Cr.P.C. can be directed when such transfer could be expedient for the ends of justice. This expression entails factor beyond mere convenience of the parties or one of them in conducting a case before a court having jurisdiction to hear the case. The parties are related and are essentially fighting commercial litigation filed in multiple jurisdictions. While instituting civil suit, both the parties had chosen aura, some of which were away from their primary places of business or the main places of business of the defendant."

9. The ratio of decision of Hon'ble the Supreme Court in case of **Mrudul M. Damle and anr. vs. CBI, New Delhi 2012 (5) SCC 706** cannot apply in the factual context of this case. In that case a proceeding pending in a court of Special Judge, CBI, Rohini Court, New Delhi was directed to be

transferred to the Special Judge CBI cases, Court of Session, Thane. Out of 92 witnesses enlisted in charge sheet, 88 were from different parts of Maharashtra. That case was found to be not Delhi centric. The accused persons were based in western part of this country. It was because of this reason said case was directed to be transferred. The circumstances surrounding the case pending in the Salem Court are entirely different. In the case of Rajesh Talwar (Supra), it was held :-

"46. Jurisdiction of a court to conduct criminal prosecution is based on the provisions of the Code of Criminal Procedure. Often either the complainant or the accused have to travel across the entire State to attend to criminal proceedings before a jurisdictional court. In some cases to reach the venue of the trial court, a complainant or an accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances in order to depose before the jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court conducting the criminal trial is accepted, the provisions contained in the Criminal Procedure Code earmarking the courts having jurisdiction to try cases would be rendered meaningless. Convenience or inconvenience are inconsequential so far as the mandate of law is concerned. The instant plea, therefore, deserves outright rejection."

10. So considering the legal position and decision of Hon'ble the Supreme Court, it would not be expedient in the interest of justice to invoke the provision contained in the 407 of Cr.P.C.

11. Accordingly, the transfer petition is dismissed.

JUDGE

vkv /-

JUDGE

