

Neelesh and Others Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-16-2014

Judge : Subhash Kakade

Appeal No. : Misc. Cri. Case No. 850 of 2014

Appellant : Neelesh and Others

Respondent : State of M.P.

Judgement :

Subhash Kakade, J.

1. By this petition under Section 407 of the Code of Criminal Procedure, 1973, the applicants are praying for transfer of Criminal Case No. 6939/2013, State of M.P. through P.S. Gopalganj, District Sagar v. Neelesh and others pending before the Judicial Magistrate, First Class, Sagar to Jabalpur.

2. On dated 25-10-2013 unknown persons were committed theft in the house of the complainant. On the said allegation, Police Station, Gopalganj registered Crime No. 470/2013 for the offence punishable under Sections 457,380 of IPC and after due investigation, the applicants were arrested and charge-sheeted.

3. The basis of transfer mentioned in petition is that the complainant is a practicing Advocate under the jurisdiction of Sessions Court, Sagar, hence he is pressurising

and giving threats to the Advocates of Sagar not to appear in the case of the applicants. All the Advocates of Sagar are afraid and in pressure of the complainant, therefore, they are against the applicant and not ready to defend their case. The applicants are in jail, hence, their relatives contacted with the Advocates, who belongs to other District but, looking to above mentioned pressure they did not ready to prosecute the case of the applicants at Sagar hence, fair and impartial trial is not possible at Sagar. The applicants have no faith or believe upon their Counsel or any Counsel of Sagar.

4. In view of the above facts and circumstances of the case, learned Counsel for the applicants submits that looking to status of the complaint that he is in position to influence the Advocates practicing at Sagar, it is a fit case in which transfer of the aforesaid case from District Sagar to Jabalpur or any other District is expedient for the ends of justice.

5. Learned Counsel for the States vehemently opposing the transfer of the case from Sagar.

6. Section 407 of Cr.PC clothes a party with the power to apply for transfer of a case, where the party apprehends he cannot get a fair or impartial enquiry or trial.

7. Cardinal Principle is that the trial of a case should be in an atmosphere, which does not create even a suspicion that there has been or is likely to be an improper interference with the course of justice. It is not merely of some importance but of fundamental importance that justice should not only be done but should manifestly be seen to be done.

8. In case of *Maneka Gandhi v. Rani Jethamalani*, AIR 1979 SC 468, the Supreme Court observed that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party of easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may

be myriad and vary from case to case.

9. Now, the point for determination is whether the applicants have reasonable apprehension that they would not get a fair and impartial trial and whether the transfer of the case is expedient for the ends of justice ?

10. On application for transfer the real test is whether there exist real grounds for the applicant's apprehension that they will not get a fair and impartial hearing. To judge the reasonableness of the apprehension, the state of mind of the person, who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entered but must appear to the Court to be a reasonable apprehension, though the party is not required to demonstrate the justice will inevitably fail but it has to show that its apprehension is reasonable one.

11. Now, duty is upon the applicant to show that there is existence of some material from which it can be inferred that the some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.

12. In the normal course of the trial of aforesaid case should be taken place at Sagar, a place which has territorial jurisdiction.

13. The normal course of things should not be lightly interfered with and the case should be allowed to be tried by the Court, which has territorial jurisdiction as it was held by the Apex Court in case of Baljit Singh v. State of Jammu and Kashmir, AIR 1982 SC 1558 = 1982 SCC (Cri.) 268 = 1982 Cri.LJ 1944 (SC).

14. It is not a case in which the Bar Association of the District, Sagar had passed any resolution that any member advocate of the Bar Association will not to argue or defend the case of the applicants.

15. It is also not clarified in the petition names of the Advocates of other districts to whom the relatives of the applicants contacted and they refused to defend the applicants.

16. In absence of any well-founded material it cannot be said that the atmosphere at Sagar is not conducive for fair trial. Some apprehension have been expressed that justice may not be done to the applicants but keeping in view the facts and circumstances of this case, the apprehension does not appear to be a reasonable one. In the present case, no substantial ground could be made out for transfer of the case from Sagar to Jabalpur or any other district.

17. The application is rejected on its merit.

18. It is sufficient to record a note of precaution that a copy of this order be sent to the learned Trial Court with the request that to see that the trial is conducted with utmost fairness in an atmosphere of complete detachment and neutrality.

19. Before parting with the case this Court is not only hopeful but having all the faith that the learned President of Bar Association, Sagar will guide and assist the applicants and also generate confidence among the applicants that their apprehension is not at all well founded as well as any learned Member of the Bar Association, Sagar of the applicants choice will defend their case alike case of any other litigant who comes to seek justice at any of the Courts administering justice at Sagar.

20. The copy of this order be supplied to the learned President of the Bar Association, Sagar also for information and necessary action with the request as mentioned aforesaid.

21. The application is disposed of as rejected accordingly.

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