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Court : Mumbai

Decided On : Aug-04-1986

Reported in : 1986(3)BomCR444; (1986)88BOMLR550

Judge : S.W. Puranik, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 120B; Code of Criminal Procedure (CrPC) , 1973 - Sections 407(1)

Appeal No. : Criminal Applns. Nos. 766, 767 to 771 and 801 of 1986

Appellant : W.S. Vaingankar

Respondent : M/S Hodek Engineering Works Pvt. Ltd. and Others Etc.

Judgement :
ORDER

1. All these applications are filed by the original complainant Shri V. S. Waingankar, Assistant Director, Enforcement Directorate, Government of India. Bombay against various accused persons in different criminal cases launched by the complainant for the offences under the Foreign Exchange Regulation Act and the offence of conspiracy under Section 120-B of the Penal Code. They can, therefore, be disposed of by this common judgment.

2. The petitioner complainant and his staff conducted series of raids in the months of December, 1985 against various Kirloskar Group of Companies and their

Directors and several documents were seized during the raids. On inspection of the said documents, the Directorate of Enforcement found that various Companies had committed breaches of Foreign Exchange Regulation Act. 1973. The complainant, therefore, filed seven cases against various persons. They were filed before the Chief Judicial Magistrate, 1st Class, Pune and are registered as Criminal cases Nos. 1 to 7 of 1986.

3. Out of the seven cases filed by the complainant Criminal Case No. 2 of the 1986 tried first before the said learned Magistrate and it resulted in acquittal of the accused by the order dt. 14-5-1986. Criminal Cases Nos. 1 and 3 to 7 of 1986 are however pending for trial.

4. Within a fortnight after the order of acquittal in Case No. 2 of 1986 the complainant has preferred the six applications being Criminal Applications No. 766 of 1986 to Criminal Application No. 771 of 1986 under Section 407(1)(c) of the Cr.P.C. seeking transfer of the said cases from the Court of the Chief Judicial Magistrate, 1st Class, Pune to the Court of the Chief Metropolitan Magistrate, Bombay. All the applications are on similar grounds and the non-applicant accused are also opposing the same on common grounds and hence this common order.

5. Criminal Application No. 801 of 1986 is also filed by the complainant for a limited prayer for staying the proceedings in the remaining cases before the trial Court pending disposal of the transfer petitions stated above. That application will automatically stand disposed of in view of the order being passed in the remaining transfer applications.

6. All these applications state the general fact of launching of the seven cases before the Court at Pune and the end of Case No. 2 of 1986 in acquittal on 14-5-1986. In para 3 of the application the petitioner state that he is filing this group of applications for transfer of Case No. 1 and Cases Nos. 3 to 7 of 1986 from the Court of Chief Judicial Magistrate, 1st Class, Pune to the Chief Metropolitan Magistrate, Bombay on the ground of convenience. Some of the grounds narrated are : (1) that the investigating officers are posted in Bombay; (2) that most of the prosecution witnesses in these cases are from Bombay; (3) the officers are

required to carry original documents and records from Bombay to Pune; (4) that accused No. 4 Shivmohan in Case No. 1 of 1986 is a resident of New Delhi; (5) accused No. 4 Luktuke in Case No. 5 of 1986 is a resident of Bombay; (6) Shri M. M. Kothari, accused in Criminal Case No. 6 of 1986 is a resident of Bombay; (7) most of the accused have secured exemptions from personal appearance and the prosecution did not object to grant of the said exemptions; (8) that the defence have engaged 12 leading Counsel, who are all from Bombay; (9) Senior Counsel for the prosecution is also a resident of Bombay and that (10) for the offences under the Foreign Exchange Regulation Act the Court of the Chief Metropolitan Magistrate at Bombay also has jurisdiction to try that cases.

7. The prosecution therefore submits that for the above reasons it is very inconvenient for the prosecution to conduct the cases in Pune, while it will be very convenient for both the sides if the cases are transferred from Pune to Bombay and the order of the transfer under Section 407(1)(c) will tend to the general convenience of the parties and witnesses and is expedient for the ends of justice.

8. Shri B. Dutta, the Additional Solicitor General for the Union of India assisted by Shri M. K. Patwardhan appeared for the complainant and the department i.e. the prosecution agency, while the respondents were represented by Shri K. M. Desai, Shri P. R. Vakil, Shri P. B. Khambatta, Shri Ovalekar, Shri Kanade and Shri More, P.P. for the State.

9. At the outset it must be stated that the some of the accused had sought to file written replies to the applications objecting to the transfer of the cases. However, the learned Solicitor General took objection and sought for further time to file the counter-replies. In order not to extend the peremptory date of hearing the learned Counsel for the defence withdrew their submissions and it was agreed by all the parties to contest the applications on oral submissions.

10. The learned Solicitor General appearing on behalf of the prosecution submitted that during the raids conducted in December 1985 at Pune against a leading industrialist firm, which is styled as Kirloskar group of Companies it transpired that various companies, its directors and officers had committed various offences under the Foreign Exchange Regulation Act and it is for this purpose that

the complaint case were filed at Pune. In para 13 in Criminal Case No. 766 of 1986 it is stated that since the arrest and remand of Shri S. L. Kirloskar had been effected in Pune, the three companies involved have their registered offices in Pune, the complaints were filed in Pune Court. But now after the trial of one case (Criminal Case No. 2 of 1986) it is found that it is very inconvenient for the prosecution to conduct the cases in Pune. The two grounds urged by the Shri B. Dutta for the alleged inconvenience to continue the trial are that the investigating officers are from Bombay, most of the prosecution witnesses are from the Bombay, documents and records are in Bombay, several Counsel engaged by the defence are from Bombay, the Prosecution Counsel Shri Patwardhan is from Bombay and the Bombay Court has also jurisdiction to try the cases. Moreover most of the accused have been granted exemptions from personal appearance and hence it would be very convenient for the both the sides if the pending cases are transferred from Pune to Bombay Court. He submitted that it is also expedient in the ends of justice because according to him the learned Magistrate who tried these cases has expressed his view while acquitting the accused in Criminal Case No. 2 of the 1986 and therefore it would not be desirable that the same Court should continue to try and dispose of other cases. He was at pains to point out that there is an integral link between the various transactions in different criminal cases. He also submitted that the documents are required to be carried from Bombay to Pune for the trial which is rather inconvenient and asking all the investigating officers to attend the hearing for trial would cost the Government Exchequer a large sum of money, which could be avoided if the cases are transferred from Pune to Bombay. Thus, if the convenience of the parties, the convenience of the witnesses, the convenience of the learned Counsel are taken into consideration, it would be desirable to transfer all the case to Bombay.

11. These submissions were vehemently opposed by all the learned Counsel for the defence. Even the learned Public Prosecutor Shri More appearing for the State of the Maharashtra categorically stated that in so far as Criminal Cases Nos. 6 and 7 of 1986 are concerned, it may be possible to transfer them to Bombay as the accused therein are the residents of Bombay, while in all other cases the State has no side to take in respect of the transfers. He, however, pointed out that the main accused in Criminal Cases Nos. 1, 3, 4 and 5 from Pune. Their

manufacturing (units) and industry are also in Pune and ordinarily there should be no reason to transfer the cases to Bombay. He, therefore, left the matter to the discretion of the Court.

12. Shri K. M. Desai appearing in Criminal Applications Nos. 766, 768 and 769 of 1986 contended that the grounds in the applications for transfer merely reproduce the phraseology of S. 407(1)(c) of the Cr.P.C. viz, the general convenience of the parties and witnesses and expediency in the ends of justice, but that does not make out a case for transfer as is required under Section 407. Firstly, according to him there is no link whatsoever between the various prosecutions launched since they relate to different transactions and different facts, secondly because one of the accused Arun Kirloskar is merely a namesake Kirloskar and is no relation of Shri S. L. Kirloskar. No accused persons or witnesses are common in either of the criminal cases. According to him four officers of the prosecuting agency are of Bombay while two of them are in Pune and one is posted at Trivendrum and the rest of the witnesses are from Pune. He also objected to the ground of the convenience of Counsel. It is not the convenience of Counsel to conduct cases which is to be taken into the account but only the convenience of the parties and witnesses. All the main accused are residents of Pune, their industries are at Pune and the alleged offences have been committed at Pune. Even otherwise assuming that the Bombay Court also has jurisdiction just as Pune, the prosecution at the time of filing of the charge-sheet had chosen the forum at Pune. Even at that time they were aware of the witnesses, documents and the records to be taken from Bombay and in that event they should have filed the case at Bombay only. Even otherwise at the earliest stage of the trial of the very first case, when the independents schedule of trials in different cases was finalised, the prosecution could have moved such an application for transfer. He suspected some oblique motive for presentation of the these applications for transfer only after one case resulted in acquittal. He also contended that after the charge-sheet were filed at Pune, the accused prepared their cases for defence, also engaged their advocates on record from Pune and engaged their Counsel for conducting the cases at Pune. To transfer cases merely for the convenience of the officers of the prosecuting agency is not at all a substantial ground and it in fact overlooks the general convenience of the accused. Similar were the contentions raised on behalf of the

other learned Counsel. Shri Vakil also pointed out that the statement that most of the witnesses are from Bombay is totally wrong. Only eight out of twenty one witnesses in Criminal Application No. 767 of 1986 are from Bombay. To say that the investigating officers are from Bombay is also wrong since some of them are from Pune and some of them are at Trivendrum and other places. Moreover he stated that the principal accused persons are the residents of Pune and even though they have been granted exemptions from personal appearance, their presence at the place of trial is necessary for giving instructions to the defence Counsel from time to time.

13. Shri Desai and Shri P. R. Vakil also relied on several cases of the Supreme court and other High Courts in support of their submissions.

14. To my mind the convenience of the Counsel for the defence or for the prosecution is not a matter for consideration in such transfer applications for the simple reason that the Counsel as professionals are engaged for a particular case and they are aware while accepting the briefs as to when and where they will have to conduct the cases. It is only on adjusting convenience that a Counsel accepts a brief for outstation and it is also not a rare phenomenon. Moreover, as far as Bombay and Pune are concerned, the distance is only 100 miles or about and many Counsel are shutting between Bombay and Pune every day for their work in both the cities. It is a fact known to all that several employees in Bombay in various offices and companies come from Pune every day and return in the evening. Therefore, the ground of convenience of the Counsel is no ground at all. In so far as the convenience of witnesses is concerned, it is seen after perusal of list of various witnesses filed that some of the investigating officers are from Bombay but some of the them are in Pune and other places. All the panch witnesses are from Pune as also the principal offender. In any event the prosecution having opted for the forum at Pune, even though the Bombay Court has jurisdiction to try these cases, it does not lie in their mouth now to day it is inconvenient to continue the proceedings in Pune Court.

15. It is common knowledge that the Central Excise, Customs and Enforcement Departments carry out investigations at various places in India and also launch

preparations (prosecution ?) at various places in India. They also conduct those prosecution cases at the places of their choice. The prosecution after the investigation had opted for the forum at Pune. If at all, they were aware of the difficulties of witnesses and parties at the time of choosing forum. But to say, as is stated in Para 13 of Criminal Application No. 767 of 1986, that complaints were filed in Pune Court because arrest and remand of Shri S. L. Kirloskar had been effected in Pune and three companies involved have their registered offices in Pune, yet now matter final result in one case, it has been found that it is very inconvenient for the prosecution to conduct cases in Pune, would not reflect the true state of facts.

16. Moreover, as regards the documents to be carried from Bombay to Pune, the prosecution has not pointed out whether it is voluminous record or whether the prosecution relies on certain documents seized during the raid. In fact the learned Counsel for the defence made a statement at the Bar that the list of exhibits attached to notice of opportunity issued by the prosecution in these cases wherein they have categorically stated that the prosecuting agency relies on only three documents, viz., a black diary seized from Shri Arun Kirloskar, statement of Shri Kirloskar and statement of Shri Luktuke and documents and corres-pondence. If that be so, then I do not think that any difficulty can be envisaged to carry limited documents from Bombay to Pune. Even otherwise, assuming the records to be voluminous and bulky, the Department has its branch office at Pune also, where the documents can be lodged or can be tendered in Court itself once. This difficulty was also such which could have been envisaged at the early stage of the trial itself. These grounds to convenience of witnesses and the convenience of Counsel as well as convenience in respect of production of documents are such which are very minor and cannot be called such 'compelling circumstance' Which can result in any inconvenience to any of the parties or witnesses and therefore cannot afford sufficient grounds for transfer of the trial to any other Court.

17. The only other grounds raised by the learned Addl. Solicitor General is that an order of transfer will be expedient in the ends of justice. Even though in the petition no such specific ground has been elucidated, the Solicitor General submitted at the Bar that the learned Magistrate who dispose of Criminal case No. 2 of 1986

and which resulted in a acquittal has already formed his views on the offence alleged in these cases and it would therefore be not expedient to the continue the trial before the Court. I fail to understand this submission at all. Firstly, it is pointed out that the learned Judge (Magistrate ?) who disposed of the case is due to retire by the end of the this month only. Moreover, if the learned Magistrate has formed an opinion and was likely to take up other matters, it was open for the prosecution to move the Sessions Judge at Pune to request for transfer of remaining cases to some other Court of equivalent jurisdiction at Pune itself. By saying that one Magistrate has formed his opinion, it would not be proper for the State to urge that all the Courts in Pune are not fit to take up the matter and dispose of the same on merits. In the matter of transfer of trial from one Court to the other, this Court has to be very cautious and circumspect, lest an impression would be created on the mind of public that the prosecution or this Court for that matter has not faith in Pune Court. I feel the Government must act as a model litigant in all matters, civil or criminal and must present their case normally before the Court having jurisdiction to try the matter. It has been stated more than one that when the State launches any petition, prosecution or suit before any Court, it never loses the litigation. Paramount interest of the State is in the administration of justice amongst citizens and even if the case results against the State, the State should be content that justice has been done at the hands of the Court subject of course to their right of preferring an appeal or a revision. Therefore to say that once the learned Magistrate has taken a particular view, it cannot be said that all the other Magistrates of equivalent jurisdiction at Pune could not deal with the matter according to law, to seek transfer on this ground of expediency in the interest of justice is also most improbable. V. R. Krishan Iyer, J. speaking on behalf of three Judges' Bench in Maneka Sanjay Gandhi v. Rani Jethmalani : 1979 CriLJ458 has observed as follows :-

'Assurance of a fair 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 or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of the public justice and its attendant environment, is necessities if the Court is to exercise its power of transfer. This is

the cardinal principal although the circumstances may be myriad and vary from case to case. The ground for the transfer have to be tested on his touch-stone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from the angle the Court may weigh circumstances.'

18. The ends of justice are higher than the ends of law. Justice is indifferent to a particular result in a particular case. Ends of justice is fairness and each side should have equal opportunity to prepare its own case to lay its evidence fully, fairly and freely before a Court of competent jurisdiction. This necessarily involves preparation. Such preparation is far more effective from the point of view of justice, if it is made with the aid of skilled legal advice. Madgaonkar, J. speaking on behalf of the Full Bench of this Court in the matter of Lakshman v. Emperor, AIR 1931 Bom 313 : 32 Cri LJ 1147 Further observed :

'..... I might add two other considerations second only in importance to this for the ends of justice. Confidence in the Court administering justice on the part of both the parties and of the public is also a vital element in the administration of justice, so much so that a reasonable apprehension, tantamount of lack of confidence has been held by the Courts to render a transfer advisable. A special Judge or a special venue directed by the local Government is apt or at least is capable of being used to destroy this confidence, and except where the supreme need of justice is clearly such as to override these conside-rations, or ordinary course of justice is best left untouched.'

19. In a recent judgment in the matter of Baljit Singh v. State of J. & K., : 1982 CriLJ1944 . Their Lordships of the Supreme Court were dealing with transfer of criminal cases from Jammu to Srinagar, which transfer the High Court of Jammu and Kashmir had allowed. The sole ground of transfer was that the most of the witnesses belonged to Jammu and they had already been examined by the trial Court and the only witness from Kashmir or Delhi had remained to be examined. They then observed while disagreeing with the order of transfer passed by the High Court :

'Nor do we feel that the it would be a correct principle to apply to the transfer of criminal cases, that they should be heard at the place from where a large number of witnesses are to be examined. The normal course of things should not have been lightly interfered with and the case should have been allowed to be tried by the Court which had territorial jurisdiction.'

The Supreme Court, therefore allowed the appeal by the accused and quashed the order of transfer passed by the High Court.

20. This is not a case where any grudge has been made on behalf of the accused, for the in that case the State as well as the Courts would see the convenience of the accused so as to give them a free and fair trial. All the defence Counsel have vehemently stated that they have absolutely no grudge if the trials are continued at Pune. Thus, bearing in mind the principles laid down from time to time by the Supreme Court, I find that the grounds of convenience of parties and witnesses narrated in these petitions and the ground of expediency for the ends of justice are too vague and general and cannot be accepted as the grounds for transfer. Such general grounds are available in almost all the cases of criminal trial and to allow such applications would be expressing lack of faith in the administration of justice in general and the Courts in Pune in particular. I am, therefore, unable to accede to the prayer in the petitions. The same are without substance and are dismissed. The trial to proceed to Pune as scheduled.

21. Rule in each of the applications including Criminal application No. 801 of 1986 is discharged. Interim stay stands vacated.

At this stage Mr. Patwardhan, Advocate for Petitioner in all these petitions seeks leave to appeal to Supreme Court. As no substantial question of law of general importance is involved, the leave is refused.

Request for further stay of proceedings before a trial Court is also refused. Parties to appear before trial Court on 11th September 86.

22. Petitions Dismissed.

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