

Sushil Sharma Vs. State

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Court : Delhi

Decided On : Apr-17-2001

Reported in : 2001VAD(Delhi)785; 2002CriLJ418; 92(2001)DLT238; 2001(59)DRJ132; 2001(2)JCC69

Judge : Mr. R.C. Chopra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 212 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 311, 326, 407 and 482

Appeal No. : Crl. M.(M) No. 3202/2000

Appellant : Sushil Sharma

Respondent : State

Advocate for Def. : Mr. Anil Soni, Adv.

Advocate for Pet/Ap. : Mr. Jayant K. Sud and; Mr. Amit Gaurav, Adv

Judgement :

ORDER

R.C. Chopra, J.

1. The petitioner who is facing trial for an offence under section 302/201/212/34 IPC in case FIR No.486/95, presently pending in the Court of Shri V.K. Jain,

Additional Sessions Judge, New Delhi, has come to this Court under Section 407 read with Section 482 of the code of Criminal Procedure with a prayer to transfer the case to the Court of Shri G.P.Thareja, Addl. District & Sessions Judge, Delhi (presently posted as Additional Rent Control Tribunal, Delhi).

2. I have heard learned counsel for the petitioner and learned counsel for the state.

3. The petitioner's prayer for the transfer of the case to the Court of Shri G.P. Thareja is mainly on the ground that the case against him is complicated involving enormous evidence most of which has already been recorded by Shri G.P. Thareja in his own hand writing. It is submitted that Shri G.P. Thareja has been liberally putting Court questions to the witnesses, exercising discretion under Section 311 Cr. P.C. and making directions and observations in regard to the production of records by the prosecution. He has been recording and noticing the demeanour of the witnesses and as such prejudice is bound to result, in the appreciation of evidence, if he is not to decide this case. It is pointed out that out of 105 prosecution witnesses, prosecution has given up about 20 PWs and the remaining witnesses including PW 85 Investigating Officer of the case had been cross examined on behalf of the accused petitioner by the time Shri G.P. Thareja was transferred. The cross examination of PW 85 is stated to be continuing. It is submitted that Shri G.P. Thareja is very much available in Delhi and the administrative orders of the High Court which have resulted in transferring the petitioner's case from his Court are in conflict with the principles of fair trial and justice. Referring to various precedents it is prayed that the case against the petitioner be made over to Shri G.P. Thareja for trial and disposal.

4. Learned counsel for the state has not disputed the factual submissions made on behalf of learned counsel for the petitioner but has submitted that in view of the provisions of Section 326 of the Code of Criminal Procedure (hereinafter referred to as the 'Code' only) there is no justification for the transfer of the case to Shri G.P.Thareja. It is also submitted that besides PW-85 one or two more prosecution witnesses may be examined by the prosecution. It is stated that it may be difficult for Shri G.P. Thareja to handle this case Along with civil work already assigned to

him.

5. In a judgment of our own High Court titled Sushil Kumar v. State reported in 1982 C.C. Cases 554 a similar issue was dealt with in detail and his lordship Hon'ble Mr. Justice Avadh Behari Rohtagi (as his lordship then was) relying upon a judgment of the Supreme Court in Pyre Lal Vs . State of Punjab : (1962)ILLJ637SC and the orders passed by the Supreme Court in Tara Chand v. State (Cr. A. 41/82) was pleased to observe that it was an important and well established right of the accused to get his case decided by a Judge who had recorded substantial part of the evidence in the case. It was observed that Section 326 is an exception to the rule and was introduced purely for administrative convenience and if the administrative orders are in conflict with the principles of fair trial the Code will prevail. It was clearly held that in the case of Sessions Judge who usually try more serious offenses the departure from the principle that the person who heard the evidence must give judgment should be followed except for compelling reasons. His lordship directed the transfer of the Sessions case to the Court of the Additional Sessions Judge who had recorded evidence and heard the case. Learned counsel for the petitioner has also cited the judgments reported in Dharamvir Vs . State : 28(1985)DLT254 , Tara Chand v. State (Crl. M(M) 485 of 1981) and Ram Lal v. State (Crl.M(M) 158/81) in which the transfer of the cases to the judges who had recorded evidence and heard the cases was ordered.

6. After considering the submissions made by learned counsel for the parties, this Court is of the considered view that Section 326 of the Code is primarily aimed at avoiding delay in the disposal of a criminal case if for one reason or the other the Judge or Magistrate who had recorded evidence and had heard the case becomes unavailable. The Section lays down that the Judge or Magistrate succeeding him may act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself. It does not in any manner curtail the powers of the High Court to transfer a case from one Court to another if interests of justice so demand. This provision is not at all couched in negative to prohibit the transfer of such a case to the Judge who had recorded evidence and heard the case when his services are available. Interests of justice are higher than considerations of administrative expediency in regard to the transfers and postings

of the Judges and Magistrate. In an exceptional and serious case like the present one where the accused is facing charges entailing capital punishment the effort should be, as far as possible, not to create any impression in the mind of the accused that trial against him is not being conducted in a fair manner. When about 85 PWs have been examined by one Additional Sessions Judge running into about 805 pages and the Judge is shown to have been actively involved in questioning the prosecution witnesses and noticing their demeanour there is no reason to leave the case in the hands of another Judge who had neither recorded evidence nor noticed the demeanour of the witnesses. Even if one or two witnesses are still to be examined by the prosecution that would not be a ground for declining the request of the petitioner which appears to be just and reasonable.

7. This Court is, therefore, of the considered view that in the present case wherein almost entire evidence already stands recorded, interests of justice and principles of fair trial demand that the case should be made over to Shri G.P. Thareja as prayed so that the petitioner has no misgivings about the fairness of trial.

8. It is true that Shri G.P.Thareja is presently posted as Addl. Rent Control Tribunal and is dealing with rent matters but that does not make any difference in-as-much as the powers of the Additional Sessions Judge conferred upon him do not appear to have been withdrawn. The powers once conferred continue to remain in force irrespective of the transfers and postings of the Officers so long he remains a member of Higher Judicial Service unless specifically withdrawn by the High Court. However to avoid any future complications, the Register, High Court of Delhi shall get this aspect of the matter examined and obtain appropriate orders from Hon'ble the Chief Justice. In case fresh orders are required to be issued conferring powers of Additional Sessions Judge on Sh. G.P.Thareja, the same may be issued without any delay.

9. In view of the foregoing reasons, the petition is allowed and the case titled State v. Sushil Sharma and Ors. under Section 302/201/212/34 IPC arising out of FIR 486/95 PS Connaught Place presently pending in the Court of Shri V.K. Jain, additional Sessions Judge, New Delhi is withdrawn from the Court of Shri V.K.

Jain and transferred to Shri G.P.Thareja, Addl. Rent Control Tribunal, Delhi with the directions to proceed further in the case in accordance with law.

10. In view of the fact that Shri G.P. Thareja is holding the charge of Additional Rent Control Tribunal, Delhi, which also is an important assignment, it is ordered that the proceedings in the case against the petitioner may preferably be conducted in the After lunch Sessions so that the other judicial work of Shri G.P. Thareja does not get disturbed.

A copy of this order be sent to the Registrar, High Court for information.

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