

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **TR.P. (CRL.) 3/2010**

Decided on 08.07.2010

IN THE MATTER OF :

PRASHANT RATHI Petitioner
Through: Mr. B.P. Sharma, Advocate

versus

STATE Respondent
Through: Mr. M.N. Dudeja, APP for the State.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 407 read with Section 482 of the Cr.PC praying *inter alia* for transfer of the case entitled 'State vs. Prashant Rathi' in respect of FIR No.216/2002, lodged by the father of the deceased wife of the petitioner under Section 498A/304B/34 IPC with Police Station: Shakarpur, stated to be pending before the Court of Shri Sanjay Garg, ASJ, Karkardooma Courts, Delhi, to another Court in the same District.

2. Counsel for the petitioner submits that despite order dated 07.11.2009 passed by the learned ASJ, Sh. Sanjay Garg, the matter could not be transferred to another Court as the District Judge-VI does not have the power to do so and, therefore, he returned the file to the same Court.

However, a perusal of the paper book shows otherwise. Vide order dated 07.11.2009, the learned ASJ directed the parties to appear before the District Judge-VI-cum-Sessions Judge on 13.11.2009 for transfer of the matter from his Court in view of the submission made on behalf of the defence counsel that there was an apprehension that they would not get justice from the Court.

3. When the matter came up for hearing before the District Judge, he took notice of the submission made by the counsel for the accused/petitioner to the effect that learned Presiding Officer was himself inclined to transfer the case and without assigning any reason, the file was sent back to the same ASJ. The said request of the petitioner was, however, rejected vide order dated 23.3.2010 on the ground that vague and general allegations had been made in the application for transfer and that transfer of a case from one court to another should not be granted readily for any fancied notion of the litigant as the same in effect casts doubt on the integrity, competence and reputation of the concerned Judge. The District Judge also took notice of the fact that the counsel for the accused/petitioner had stated before the ASJ that he had no complaint against any one and the trial may be continued before the same Court but while the cross-examination of PW-3 was going on, another counsel namely, Mr. Anwar Ahmed Siddiqui appeared in the Court and made a statement that the accused had apprehension that they would not get justice from the Court. As a result, the application of the petitioners for transfer of case was dismissed.

4. When confronted with the aforesaid order, counsel for the petitioner seeks to explain his earlier statement by saying that it was his

case that the District Judge-VI does not have the power to transfer the matter from the Court of the present ASJ to the Court of another ASJ and that only District Judge-I, whose seat is at Tis Hazari Courts has the jurisdiction to do so. The submission of the counsel for the petitioner is not borne out from the records. There is not a whisper to the said effect in the impugned order. Nor is there any averment to the said effect in the present petition. The aforesaid statement of the counsel for the petitioner is nothing but an attempt to mislead the Court. Counsels appearing for the parties are also officers of the Court and while conducting matters, they are expected to be fair and truthful and assist the Court by stating the correct facts and bringing out the true position on the basis of the record. The documents placed on the record reflect that when the ASJ directed the case file to be sent to the District Judge-VI-cum-Sessions Judge for transfer of the matter, the petitioner/accused filed an application under Section 408 Cr.PC stating *inter alia* that they had lost faith in the trial court and that the proceedings were not being conducted fairly and in an impartial manner.

5. The order of the District Judge clearly reflects that no cogent reasons were given by the petitioners for seeking transfer of the case from the court of Shri Sanjay Garg, ASJ to another Court and that even earlier, the said case was transferred from the Court of Shri S.C. Malik, learned ASJ to the Court of the present ASJ. The District Judge has rightly held that transfer of a case from one Judge to another casts doubt on his integrity, competence and reputation. Transfer of cases ought not to be permitted merely on the asking of a party. Permitting such a request without any reasonable ground for such an apprehension expressed by a litigant would result in forum shopping, and must be frowned upon. It appears that the

petitioners are looking for an escape route to avoid an inconvenient court, which is not permissible.

6. This Court does not find any illegality, arbitrariness or perversity in the impugned order, which deserves interference while exercising its inherent powers conferred under Section 482 Cr.PC. The petition is dismissed with costs of Rs.5,000/- payable to the Delhi High Court Legal Services Committee.

7. On the next date of hearing fixed before the learned ASJ, counsel for the petitioner shall place on record receipt of the costs deposited with the Delhi High Court Legal Services Committee, before he is permitted to participate in the proceedings.

JULY 08, 2010
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(HIMA KOHLI)
JUDGE