

REPORTABLE
IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRL.) NO. 37 OF 2009

Bhiaru Ram & Ors.

.... Petitioner(s)

Versus

Central Bureau of Investigation & Ors.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) The petitioners, numbering nine, have approached this Court under Section 406 of the Code of Criminal Procedure, 1973 seeking transfer of Special Case No. 22 of 2008 pending before the Special Judge, CBI, Greater Mumbai, being CBI Case No. RC/03(A)/2005-ACU-05-CBI, New Delhi, to a Court of competent jurisdiction at Jaipur.

2) **Factual Matrix**

On 29.09.2005, a First Information Report (in short “FIR”) was registered at New Delhi bearing FIR No. RC 3A/2005/ACU(V), for offences under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 against one Shri B.R. Meena, who is respondent No.3 herein. At the relevant time, respondent No.3 was posted as Commissioner of Income-Tax, Income Tax Appellate Tribunal, Mumbai. The substance of allegations in the FIR against Shri B.R. Meena was that he was in possession of disproportionate assets from 01.04.1991 to 31.03.2005. During the said period, he was posted at various places such as Calcutta, Ahmedabad, Jaipur and Mumbai. After carrying out the search at the official residence of Shri B.R. Meena and his family members at various places, finally, the C.B.I., on 27.03.2008, filed charge sheet before the Court of Special Judge, CBI, Greater Mumbai. In the said charge sheet, petitioner Nos. 1-9 was arrayed as accused Nos. 5-13.

3) **Reasons for transfer**

According to the petitioners, as per the charge sheet, most of the alleged disproportionate assets/properties are situated at Rajasthan and most of the witnesses are from Rajasthan, Jaipur, in particular. As far as the petitioners are concerned, the allegations against them are of having abetted Shri B.R. Meena-Respondent No. 3 herein and Smt. Champa Devi, wife of Shri B.R. Meena, Respondent No. 4 herein, by fabricating false evidence through preparation of false Agreement to Sell in order to help them for justifying the huge cash recoveries. All the petitioners are residents of the State of Rajasthan. Most of the alleged disproportionate assets are situated at Rajasthan and FIRs were registered at Delhi, therefore, the CBI ought to have filed charge sheet at Jaipur, Rajasthan. It is also stated by the petitioners that since all of them hail from Rajasthan and most of the witnesses to be examined are also residents of Rajasthan, for convenience,

the case pending before the Special Judge, CBI, Greater Mumbai be transferred to Jaipur, Rajasthan.

4) Heard Mr. P.H. Parekh, learned senior counsel appearing for the petitioners and Mr. H.P. Raval, learned Additional Solicitor General, for the contesting respondents.

5) Section 406 of the Code of Criminal Procedure empowers this Court to transfer any case or appeal from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. We are concerned about sub-clause (1) of Section 406 which reads as under:

“406. Power of Supreme Court to transfer cases and appeals –

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.”

It is clear from the abovesaid provision that for the ends of justice, this Court can transfer any criminal case or appeal to any place. In order to transfer a case from one State to

another or from one place to another, there must be “reasonable apprehension” on the part of the party to a case that justice may not be done. Mere allegation that there is apprehension that justice will not be done, cannot be the basis of transfer. In fact, in the case on hand, it is not the claim of the petitioners that they may not get fair justice at Special Court, CBI, Greater Mumbai but they are seeking transfer mainly on the basis of convenience stating that all of them are hailing from Rajasthan and majority of the witnesses going to be examined are from Jaipur, Rajasthan.

6) In a recent judgment pronounced on 23.07.2010 in ***D.A.V. Boys Sr. Sec, School Etc. Etc. vs. D.A.V. College Managing Committee***, Transfer Petition (C) Nos. 1233-1237 of 2008, this Court while considering the power of this Court to transfer suits, appeals etc. on the civil side under Section 25 of Civil Procedure Code has held that,

“Section 25 of the Code itself makes it clear that if any application is made for transfer, after notice to the parties, if the Court is satisfied that an order of transfer is expedient for the ends of justice necessary direction may be issued for transfer of any suit, appeal or other proceedings from a High Court or other Civil Court in one State to another High Court or other Civil Court in any other State. In order to maintain fair trial, this Court can exercise this power and transfer the proceedings to an appropriate Court. The mere convenience of the parties may not be enough for the exercise of power but it must also be shown that trial in the

chosen forum will result in denial of justice. Further illustrations are, balance of convenience or inconvenience to the plaintiff or the defendant or witnesses and reasonable apprehension in the mind of the litigant that he might not get justice in the Court in which suit is pending. The above-mentioned instances are only illustrative in nature. In the interest of justice and to adherence of fair trial, this Court exercises its discretion and order transfer in a suit or appeal or other proceedings.”

From the above, it is clear that the above mentioned principles have to be kept in mind while dealing with transfer petitions.

7) In the case on hand, except convenience, the petitioners have not pressed into service any other ground for transfer. In fact, Mr. P.H. Parekh, informed this Court that the petitioners are willing to attend the proceedings at Delhi, if the case is transferred to Special Court, CBI, Delhi. Mr. H.P.Raval, learned ASG, after taking us through specific averments made in the counter affidavit filed on behalf of Respondent Nos. 1 & 2 (CBI), submitted that the main accused Shri B.R. Meena is a very influential person in the State of Rajasthan and there is strong apprehension that due to influence of Shri B.R. Meena, there would be no fair trial at Jaipur or any other place in the State of Rajasthan. He also pointed out that the Court of Special Judge, CBI at

Greater Mumbai has ample jurisdiction to try this case because various movable properties have been found in Mumbai and the main accused, Sh. B.R. Meena, was posted in Mumbai from 2001 to the end of the check period, i.e. 04.10.2005 and this is the period during which most of the properties were allegedly acquired by him and his family members.

8) We have already adverted to the fact that against the main accused, Shri B.R. Meena, (IRS 1977), Commissioner of Income Tax, Income Tax Appellate Tribunal, Mumbai, a case has been registered on 29.09.2005 under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for possession of assets in his own name and in the name of his family members to the extent of Rs.43,29,394/- which were disproportionate to his known sources of income and could not be satisfactorily accounted for. It further shows that respondent No.3, during the check period i.e. 01.04.1993 to 04.10.2005, acquired assets disproportionate to his known sources of income to the extent of Rs.1,39,39,025/-. The petitioners have been

charge sheeted for commission of offences under Section 109 read with Section 193 of the IPC read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for having actively aided and abetted Respondent Nos. 3 to 4 by fabricating false evidence through preparation of false Agreements to Sell with the object to justify/explain the huge cash recoveries from the residential premises of respondent No.3. It further reveals that the petitioners entered into false transactions with respondent No.3 showing receipt of cash amounts against alleged purchase of immovable properties from him. The stamp papers were purchased against registration of case and false Agreements to Sell were prepared in connivance with each other.

9) A perusal of the charge sheet containing all these details clearly shows that witnesses to be examined are not only from Jaipur, Rajasthan, but also from various other places including Mumbai. Though the petitioners may have a little inconvenience, the mere inconvenience may not be sufficient ground for the exercise of power of transfer but it

must be shown that the trial in the chosen forum will result in failure of justice. We have already pointed out that except the plea of inconvenience on the ground that they have to come all the way from Rajasthan no other reason was pressed into service. Even, the request for transfer to Delhi cannot be accepted since it would not be beneficial either to the petitioners or to the prosecution. In fact, the main accused, respondent Nos. 3 & 4 have not filed any petition seeking transfer. In such circumstances, the plea of the petitioners for transfer of the case from the Court of Special Judge, CBI, Greater Mumbai to Special Judge, CBI, Jaipur on the ground of inconvenience cannot be accepted.

10) In the light of the above discussion and conclusion, the transfer petition is dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
AUGUST 3, 2010.