

**IN THE COURT OF MS. SUJATA KOHLI, DISTRICT & SESSIONS
JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE AVENUE
COURT COMPLEX, NEW DELHI**

**Complaint Case No. 01/2020
Mangal Singh Parihar Vs. Jagdish Pradhan**

24.07.2020

Present: None.

Matter has been taken up through video conferencing hosted by Sh. Suneet Singh Negi, Reader of this Court, in terms of orders of Hon'ble High Court bearing No. R-235/RG/DHC/2020 dated 16.05.2020 and 16/DHC/2020 dated 13.06.2020.

The file was received from the Court of Ld. District & Sessions Judge, North-East District, Karkardooma Courts, Delhi vide order dated 09.01.2020 for "forwarding to the concerned Court".

In view of the reasons stated in the said order of Ld. District & Sessions Judge, North-East District, Karkardooma Courts, Delhi, the matter was assigned to the Court of Sh. Vishal Pahuja, Ld. ACMM being designated Court.

Vide order dated 11.03.2020, Ld. CMM, RADC again sent this file before this Court to be sent to North-East District, Karkardooma Courts vide order dated 11.03.2020.

I have perused the order of Ld. CMM, RADC, New Delhi, vide which the matter was sought to be transferred to North-East District, Karkardooma Courts, Delhi. It was observed therein that none of the accused in the above case is MP/MLA. It was further observed that it was also not a CBI investigated matter, in view of all this the present matter was sought to be sent back to the concerned Court of Ld. CMM, North-East District.

As per the provisions of Section 407 CrPC, if a case is to be transferred from the division of one District & Sessions Judge to the division of another District & Sessions Judge, it would be only, and only the Hon'ble High Court, which shall be empowered to entertain and decide the transfer application.

The following two provisions need to be referred as hereunder:

“407 CrPC. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub- section (1) shall be made by motion, which shall, except when the applicant is the Advocate- General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub- section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with copy of the grounds on which it is made; and no order shall be made on of the merits of the application unless at least twenty- four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose: Provided that such stay shall not affect the subordinate Court' s power of remand under section 309.

(7) Where an application for an order under sub- section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub- section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.”

“408 CrPC. Power of Sessions Judge to transfer cases and appeals.

(1) Whenever it is made to appear to a Sessions Judge that

an order under this sub- section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub- sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under subsection (1) as they apply in relation to an application to the High Court for an order under subsection (1) of section 407, except that sub- section (7) of that section shall so apply as if for the words" one thousand rupees" occurring therein, the words" two hundred and fifty rupees" were substituted."

In view of the provisions of Section 407 CrPC, referred above, let this file be placed before the Hon'ble High Court for further appropriate orders.

Ahlmad is directed to send the case file immediately to the Ld. Register General, Delhi High Court with a request to place the matter before the Hon'ble High Court for further orders.

Parties and Ld. Counsel(s) are directed to appear before the Ld. Registrar General, Delhi High Court on 31.07.2020 at 11.00 AM.

A copy of this order be sent to the concerned Court of Ld. CMM and ACMM, RADC.

A copy of this order be sent to the Computer Branch to be uploaded on the official website.

(SUJATA KOHLI)

District & Sessions Judge-cum-Spl. Judge
(PC Act) (CBI)/RADC/ND/24.07.2020