

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

**MISC. DJ/ASJ 69/2019
H.B. CHATURVEDI VS. CBI & ORS.**

28.08.2020

**Order on transfer application filed under Section 408 CrPC and
application seeking review of the office order dated 20.02.2020.**

ORDER

Applicant H. B. Chaturvedi, accused in as many as 14 criminal cases has sought withdrawal of three cases presently pending in different Courts with a prayer to transfer the same to one and the same Court. The three cases subject matter of this application are, as under:

- i. CC No. 266/2019, CBI Vs. Dwarkadhish Spinners Ltd., RC No. BD1/2009/E008/BS&F/ND;
- ii. CC No. 272/2019, CBI Vs. Shamkeen Multifab Ltd., RC No. BD1/2009/E/0013/ND; and
- iii. CC No. 273/2019, CBI Vs. Shamkeen Spinners Ltd., RC No. BD1/2008/E/0010/BS&FC/ND.

2. The backdrop of relevant facts is that CBI initiated 11 cases against the applicant and other accused persons, arrayed as respondents in the instant application. Additionally, there are three criminal cases i.e. FIR No. 702/2004 of PS Badarpur, FIR No. 89/2005 of PS Mandir Marg and 368/2006 registered at PS Okhla.

Besides this, there are 11 cases initiated by CBI as under:

- I. RC.BD1/2008/E/0010(39/12),
- II. RC BD1/2009/E/0008(38/12),
- III. RC.BD1/2009/E/0005(737/1),

- IV. RC.BDI/2009/E/ 0006(752 /1),
- V. RC BD1/2008/E/0009(743/1),
- VI. RC.BD1/2009/E/0013(40/12).
- VII. RC.BD1/2009/E/0010(01/14),
- VIII. RC BD1/2009/F 0001(743 /1),
- IX. RC.BD1/2009/F/0006(750 /1),
- X. RC.BD1/E/0002; and
- XI. RC.BD1/2009/E/0009(322/10)

3. As stated herein, the common offences in these 14 cases are under Sections 120-B IPC, 420, 468, 471 IPC, apart from Sections 406, 409, 467 and 511 IPC. In 04 of the CBI cases, since allegations are against bank officials as well, the offence under Section 13 sub-section 2 read with Section 13(1)(d) of PC Act have also been added.

4. The applicant/accused is stated to be 86 years of age and suffering from various old age ailments and that he has to face great hardships as sometimes cases are listed on same day before different Courts.

5. Earlier in the year 2014, applicant had filed a transfer petition bearing Transfer Petition (criminal) No.49 before the Hon'ble High Court of Delhi seeking transfer of the aforesaid 14 cases pending before various Courts to a single Court.

6. Vide order dated 12.11.2014, in the matter titled as **H. B. Chaturvedi Vs. State and Another, 2004 JCC 2955**, Hon'ble High Court transferred the cases i.e. (i) RC.BD1/2008/E/0010(39/12), (ii) RC.BD1/2009/E/0013(40/12) and (iii) RC BD1/2009/E/0008(38/12) to the Court of Ms. Swarna Kanta, the then Ld. Special Judge (CBI), Patiala House Court, New Delhi before which Court, RC No. BD1/2009/E/0010(01/14) was already pending. The said order of the Hon'ble High Court was based on the criteria of general convenience of the parties and the witnesses and in view of the expediency for the ends of justices.

7. Further stated that, due reorganization of Patiala House Courts,

the matters i.e. (i) RC.BD1/2008/E/0010(39/12), (ii) RC BD1/2009/E/0008(38/12), (iii) RC.BD1/2009/E/0005(737/1), (iv) RC.BDI/2009/E/0006(752/1), (v) RC BD1/2009/E/0013(40/12), (vi) RC.BD1/2009/E/0010(01/14), (vii) RC.BD1/2009/F/ 0001(743/1), (viii) RC BD1/2009/F10006(750/1), (ix) RC BD1/2008/E/0009(743/1), (x) RC.BD1/E/0002 and (xi) RC BD1/2009/E/0009(322/10) were got transferred to RADC, where RC No. BD1/2009/E0008/BS&FC/New Delhi having CC No. 266/2019 and RC No. 13E/2009/BS&FC/CBI/New Delhi having CC No 272/2019 got listed before Ld. Special Judge (PC Act) (CBI)-I. Mr. Anurag Saini, and whereas RC.BD1/2008/E/0010/BS&FC/New Delhi having CC No. 273/2019 got listed before Ld. Special Judge (PC Act) (CBI)-12, Mr. Lal Singh, rendering the directions in the order dated 12.11.2014 passed by Hon'ble High Court of Delhi, ineffective.

8. The applicant has further stated that all the cases/FIR are closely knitted and related to each other and that in all the cases, the applicant has been arrayed as an accused besides the other accused persons and whereas the said cases are pending in different and separate Courts. According to the applicant, it would be just and proper if trial of all the above cases **“heard and tried together”** by one and the same Court.

9. It is further stated by the applicant that in all the cases the accused persons are almost common and the documents seized and relied upon by the parties are same and similar and the witnesses are also same.

10. It is further contended that in all the cases, the defence of the accused is same and if **“all the cases are not withdrawn”** from their respective courts and transferred to single court of competent jurisdiction for trial of the same, then the defence of the accused shall be open to the other party in the other case before hand giving the prosecution the opportunity to fulfil the cavity and the lacunae in pursuance to the defence raised/disclosed to them in advance through the other accused.

11. It is further contended on behalf of applicant that in order to

protect the very spirit of justice and to bring out the truth to check the veracity of the version of FIR, the trial and consolidation of all the 14 cases, is required and is expedient in the interest of justice that **“all the 14 cases be tried and dealt with by one and the same Court”**.

12. A reference is, thereafter, made to the relevant provisions of Section 408 CrPC, which provides as under:

“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 sub- section (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."

13. The applicant/accused has again stated that **“all the cases/FIRs must be tried together and jointly”**. Accordingly, he seeks directions for withdrawal of all the cases from their different courts and transfer to one and the same Court of competent jurisdiction for trial.

14. The applicant then goes on to referring to the provisions of Section 219 and 220 of CrPC as well i.e. trial of the offences, which may be charge together and which Sections provides as under:

“219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the

same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law: Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.”

“220. Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.”

15. Applicant once again says that the allegations made in “**all the three cases**” are outcome of one and the same transaction and form part of the same transaction. He further contends that it can safely be said that the offence alleged to have been committed by the accused were part of the same transaction. Apart from seeking the withdrawal and transfer of these case to one and the same court. Applicant has shown an apprehension that, otherwise he would be denied free and fair trial. Secondly, if the applicant is tried in different Courts, there may be a delay in the trial of such cases by causing prejudice to the petitioner.

16. Thereafter, applicant goes on referring to the provisions contained in the order of the Hon’ble High Court dated 12.11.2014 and states that in case his prayer is not allowed, the directions contained in the order of Hon’ble High Court would stand defeated.

17. Applicant further contends that since the cases are related to the same incident and arising out of the same transaction, they should be

disposed of by the same Court by pronouncing judgment on the same day.

18. Notices of the application were issued to non-applicants, who are also accused in the other cases sought to be transferred. Their appearances were complete. All of them gave their no objection to the application except non applicant/respondent No. 14. A written reply was filed by Ld. Counsel for R-14 while their objection was that their client (R-14) may have to appear in the different cases, where he was not even an accused if such a consolidated order is passed.

19. Ld. Counsel for respondent no. 14 has expressed the apprehension of her client regarding his appearance to be compelled in all the cases in which he was not even an accused. Ld. Counsel for the applicant has also clarified that the presence of respondent no. 14 would not have to be insisted upon and would not be required under law in the cases where he is not an accused.

20. In view of this submission on behalf of applicant, Ld. Counsel for respondent no. 14 stated that her sole objection had been dealt with satisfactorily and she had no other objection left.

21. Applicant also filed simultaneously an application for the review of the order dated 20.02.2020 by which the cases had been marked to separate courts.

22. Upon completion of the objections and no-objections, matter was taken up for arguments.

23. Sh. Bhuvnesh Satija, Ld. Counsel for applicant/accused, at the outset of the arguments has clarified certain points regarding the transfer of all the 14 cases. Ld. Counsel clarified that out of the 14 cases, 11 cases pertained to the jurisdiction of CMM and are pending before the Court of Ld. CMM, RADC. Secondly, as regards 04 other cases, one case had been filed by the ED i.e. under Prevention of Money Laundering Act and the same had already been assigned to a designated Court. Therefore, there were three cases under the provisions of Prevention of Corruption Act besides others,

which were/are being sought to be transferred to one and the same Court. Ld. Counsel submitted that the three matters be transferred to the designated Court, where ED matter was pending.

24. Ld. Counsel for the applicant requested to treat the application for transfer of only three cases as under:

- i. CC No. 266/2019, CBI Vs. Dwarkadhish Spinners Ltd., RC No. BD1/2009/E008/BS&F/ND;
- ii. CC No. 272/2019, CBI Vs. Shamkeen Multifab Ltd., RC No. BD1/2009/E/0013/ND; and
- iii. CC No. 273/2019, CBI Vs. Shamkeen Spinners Ltd., RC No. BD1/2008/E/0010/BS&FC/ND.

25. I have heard arguments at length and perused the record.

From the first para of the application, it seems that it is only three cases of which transfer was being sought, however, throughout the rest of the contents of this application, reference was made not only to 14 cases but also to transfer them to one and the same Court.

26. Further throughout this application, as per the entire contents, it seems that the applicant not only sought the transfer of the cases to one and the same Court, but also sought them to be tried together in terms of Sections 219 and 220 CrPC.

27. Ld. Sr. PP for CBI also made a similar submission that he has no objection to the application, if it was limited to the three cases as mentioned and that if it was limited to the transfer of the cases and not for relief for the trial of cases together. Ld. Sr. PP also added that the order of transfer if passed would also be in harmony and spirit contained in the order of Hon'ble High Court dated 12.11.2014.

28. The applicant clearly seems to be seeking withdrawal of all the 14 cases referred in the application to be transferred to one and the same Court.

29. From the entire contents of the application, read in totality, the

applicant clearly seems to be seeking joint trial of all the 14 cases on various grounds, he has stated in detail in the application.

30. At this stage, I have perused the order of Hon'ble High Court dated 12.11.2014, wherein Hon'ble High Court was pleased to direct in Para 18 as under:

“18. Consequently, it is directed that

(i) the following cases pending before the Court of Mr. Sanjeev Jain, learned Special Judge, Saket Courts, i.e., (a) RC.BD1/2008/E/0010 (39/12) (b) RC.BD1/2009/E/0013 (40/12), (c) RC.BD1/2009/E/0008 (38/12) shall be transferred to the Court of Ms. Swarna Kanta, learned Special Judge, CBI, PHC before which Court RCBD1/2009/E/0010 (01/14) is pending; and

(ii) The above cases will be listed on 15th December 2014 in the Court of Ms. Swarna Kanta, learned Special Judge, CBI, PHC New Delhi and will proceed from the stage at which each of them is at present.

(iii) where any party is unrepresented a fresh notice be issued to such party

(iv) all parties will co-operate with the Court in facilitating the expeditious disposal of the cases without seeking unnecessary adjournments.

(v) the following cases pending in the Court of Mr. Sudhanshu Kaushik, learned ACMM, Tis Hazari Courts, i.e.

(a) RC.BD1/2009/E/0005 (737/1),

(b) RC.BD1/2009/E/0001 (743/1),

(c) RC.BD1/2009/E/0006 (752/1),

(d) RC.BD1/2009/E/0006 (750/1)

(e) RC.BD1/2008/E/0009 (743/1)

(f) RC.BD1/E/0002 and

(g) RC.BD1/2009/E/0009 (322/10) pending in the Court of Mr. Satish Kumar Arora, learned ACMM, Dwarka Courts, shall be transferred to the Court of Mr. Sanjay Khanag, learned CMM, PHC before which Court cases arising out of FIR No. 702 of 2004 registered at Police Station („PS“) Badarpur, FIR No. 89 of 2005 registered at PS Mandir Marg, and FIR No. 368 of 2006 registered at PS Okhla are pending. (vi) The cases at (v) (a) to (g) will be listed on 16th December 2014 in the Court of Mr. Sanjay Khanag, learned CMM, PHC and will proceed from the stage at which of them is and;

(vii) where any party is unrepresented a fresh notice be issued to such party;

(viii) all parties will co-operate with the Court in facilitating the expeditious disposal of the cases without seeking unnecessary adjournments.”

31. It was observed by the Hon’ble High Court that though the Petitioner had invoked Section 220 (1) Cr PC and other provisions to urge that all the cases form part of the 'same transaction' and satisfy the requirements of a joint trial, this Court (Hon’ble High Court) did not consider it necessary at that stage to express any view thereof.

32. Hon’ble High Court was further pleased to make it clear that the transfer order by Hon’ble High Court should not be construed as an order for the joint trial or consolidation of the cases. It was further observed that, as and when any of the parties made an application in that regard it would be for the concerned Courts to consider such a prayer on its merit.

33. It is quite unfortunate that in spite of these clear directions and observations by the Hon’ble High Court, the applicant before this Court, in complete disregard of these directions, tried to mislead this Court through the contents of the application, and again tried to seek a joint trial of all the 14 matters. The contents of this application were absolutely against the matters of record and same is not appreciated.

34. It is also observed that, the applicant throughout the contents of the application has made submissions firstly seeking transfer of all the 14 cases, whereas they had already been dealt with by the Hon’ble High Court. Secondly, he also tried to make submissions regarding joint trial of all the cases, which also had been very well dealt with by the Hon’ble High Court in its own order. Applicant tried to circumvent the said order and made an attempt to confuse and mislead this Court.

35. The very submissions, Ld. Counsel for the applicant made before this Court, happen to be in complete contradiction of the contents of the application, almost on each and every aspect.

36. At different stages of the detailed arguments, this Court brought

it to the notice of the Ld. Counsel for the applicant that the application was suffering from various ambiguities, vagueness and self-contradictions between the contents thereof on one hand, and the submissions being made before the Court.

In fact, an option was extended to the Counsel to withdraw this application with liberty to file a fresh application, but for reasons best known, in spite of repetitive offers being extended from the Court on many occasions even till the final order's day, Ld. Counsel for the applicant in a very clear and determined way informed the Court that he had instructions from his client not to withdraw this application and that he would stand by the contents of this application.

37. The application is devoid of merit, apart from being vague, ambiguous and self-contradictory, and is not even maintainable. However, the same is disposed of after a detailed hearing.

Dismissed.

Application file be consigned to Record Room after completion of due formalities.

A copy of this order be provided to Ld. Counsel(s) for the parties through electronic mode.

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

**Announced through video conferencing
today on 28.08.2020**

(SUJATA KOHLI)

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