

(2012) 05 DEL CK 0596

Delhi High Court

Case No: TR.P. (Criminal) No. 7 of 2012

Ashok Malhotra

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision: May 9, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 407, 482

Citation: (2012) 3 JCC 1584**Hon'ble Judges:** M.L. Mehta, J**Bench:** Single Bench**Advocate:** Aman Lekhi, with Mr. Tarun Chandiok, for the Appellant; P.K. Sharma, S.C. for the CBI, for the Respondent**Final Decision:** Dismissed

Judgement

M.L. Mehta, J.

This petition is filed u/s 407 read with Section 482 Cr.P.C. challenging the order dated 9th April, 2012 passed by the District & Sessions Judge, Delhi and also seeking transfer of the case from the Court of A.K. Mendiratta, Special Judge, P.C. Act (Central), Tis Hazari to another court of competent jurisdiction. The petitioner along with other persons is facing prosecution under different provisions of IPC and Prevention of Corruption Act. Applications were filed by the petitioner and other accused persons before the District & Sessions Judge seeking transfer of the cases from the Court of Sh. A.K. Mendiratta, Special Judge to some other court of competent jurisdiction. The said applications came to be dismissed by the common order dated 9th April, 2012 by the learned District & Sessions Judge. The petitioner has assailed the said order.

2. I have heard learned senior counsel for the petitioner and gone through the impugned order.

3. The main grievance of the petitioner is against the alleged conduct of the Special Judge. It is alleged that by his conduct in not accommodating the petitioner for pass-overs and also by not fairly treating him, the petitioner had developed an apprehension of distrust of fair trial and justice in the Special Judge. It is noted that in expressing his apprehension of distrust to fair trial and justice in the transfer application, which was made before the learned District & Sessions Judge, the petitioner had used highly derogatory language against the Special Judge. The District & Sessions Judge also in the impugned order had extracted some of the averments as set out in the transfer petition. Not only that unwarranted and uncalled for words were written in the transfer petition, but the petitioner had gone to the extent of saying that the Special Judge may not be granted any judicial work as he has lost all sense of judicial propriety, fairness etc.

4. While observing that there was no basis for apprehension of the petitioner, much less reasonable and that all the remarks made by the petitioner were absolutely uncalled for and unwarranted, the District & Sessions Judge also noted that the applicants should have restrained from making such uncalled for allegations against the Special Judge. The petitioner, instead of acting upon the advise of the District & Sessions Judge, has worded this petition in no less derogatory words. He has also assailed the order of the District & Sessions Judge declining the transfer of the case, alleging the same to be erroneous.

5. So far as the submission of the learned senior counsel that if there is a reasonable apprehension in the mind of the litigant that justice will not be done by any court in a given case, that gives a cause for the transfer of a case from one court to another, there cannot be any disagreement. But, at the same time, it is also to be remembered that mere allegation of an apprehension that justice will not be done is not sufficient to transfer a case on an application made in this regard. The superior court has to consider if there are circumstances calculated to create in the mind of the applicant reasonable apprehension that he may not get fair and impartial trial and justice.

6. Having gone through the transfer petition filed before the District & Sessions Judge and also the instant petition and after hearing the learned senior counsel for the petitioner, nothing could be seen warranting reasonable apprehension as alleged. The Special Judge expediting the case by giving short dates and even at times, not accommodating frequent pass-overs was perceived as not being fair. It is experienced that similar causes are being mentioned as grounds for seeking transfers. Undisputedly, there is no allegation regarding efficiency or integrity of the Special Judge, who is known to be a judge of repute. The only grievance seems to be nothing, but lack of understanding by the petitioner to engender suspicion and distrust towards him. There are no two opinions that the use of strong language by a court is never calculated to satisfy the litigant before it. Sometimes, an officer is bound to feel strongly on a particular occasion, but that in fact, is the testing time

for him. In such circumstances, he can remain strong and firm even without raising his voice to give rise to cause of apprehension in the mind of a party. Otherwise also, the calm state of mind is absolutely essential for all the stakeholders of the administration of justice. In the instant case, the petitioner seems to have unnecessarily carried and spitted venom without any foundation of any apprehension against a judge who enjoys the absolute reputation of integrity and efficiency.

7. The learned District & Sessions Judge has exercised her discretion judiciously and recorded a well-reasoned order in declining the request of transfer of the case from the court of Special Judge. I do not see any reason to interfere in the said discretion that has been exercised by her since there is neither any illegality nor any impropriety therein. The present petition in fact deserved to be dismissed with cost. However, acceding to the request of learned senior counsel and having regard to the fact that the petition was drafted by a new entrant in the legal profession who was till recently a judicial officer, I have refrained to impose cost on the petitioner. The petition has no merit and is hereby dismissed.