

(2011) 02 DEL CK 0499

Delhi High Court

Case No: Writ Petition (Criminal) 223 of 2011 and Criminal M.A. 1848 of 2011

State (Govt. of NCT of
Delhi)

APPELLANT

Vs

State of Haryana and
Another

RESPONDENT

Date of Decision: Feb. 15, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2011) 2 AD 599

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: Pawan Sharma, Laxmi Chauhan, Harsh Prabhakar and Kushagra Arora, for the Appellant; Manjit Singh and Yashpal Rangi, for the Respondent

Judgement

Hima Kohli, J.

The present writ petition is filed by the Petitioner under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure praying inter alia for setting aside the orders dated 01.02.2011 and 10.02.2011 passed by the learned Additional Sessions Judge, Rohini Courts, Delhi, in a case arising out of FIR No. 166/2010 registered with Police Station: Narnaud, Hissar, Haryana.

2. The grievance of the Petitioner/Govt. of NCT of Delhi is that in the aforesaid orders, the learned Sessions Court has directed issuance of a notification appointing the same Advocates appointed as Special Public Prosecutors by the Haryana Government to conduct the trial of case arising from FIR No. 166/2010 in Delhi, and has ordered the personal presence of the Principal Secretary (Home), Govt. of NCT of Delhi, on 17.2.2011.

3. A perusal of the order dated 10.02.2011 shows that the learned ASJ has not denied the Govt. of NCT of Delhi the prerogative appointing a Special Public Prosecutor. The Court has only observed that in the interest of justice, due consideration be given to the request made by Respondent No. 1/State of Haryana (transferor State), unless for special reasons, the transferee State is unable to accede to the request. Pertinently, in the present case, learned Counsel for Respondent No. 1 states that the Principal Secretary, Govt. of Haryana had addressed a letter dated 09.02.2011 to the Principal Secretary (Home), Govt. of NCT of Delhi, requesting Delhi Government to endorse the name of a particular counsel as Special Public Prosecutor in the present case but no response has been received thereto. The said letter has not been placed on record by the Petitioner, but a copy thereof is handed over by the counsel for Respondent No. 1 and taken on record. In the order dated 10.02.2011, directions have been issued for appearance of the Chief Secretary, Govt. of Haryana and the Chief Secretary, Govt. of NCT of Delhi, either in person or through an officer not less than the rank of Principal Secretary (Home) of the respective Governments, for them to give clarifications about the three specific queries as set out in the said order.

4. Learned Standing Counsel for the Petitioner states that a status report dated 11.02.2011 was filed before the Sessions Court yesterday in respect of the three queries raised. However, it is conceded that the Govt. of NCT of Delhi and the Govt. of Haryana have not collectively taken any administrative decision in respect of the three questions raised by the learned ASJ, in the order dated 10.2.2011.

5. From the tone and the tenor of the orders dated 01.02.2011 and 10.02.2011, it is apparent that the learned ASJ was constrained to take notice of the legal wranglings on the administrative side between the two States, which appears to have adversely affected the speedy trial of the present case, which has been transferred on the directions issued by the Supreme Court, vide order dated 08.12.2010, from the court of the learned ASJ, Hissar to the Court of the learned ASJ, Delhi to ensure that a free and fair trial is conducted without any pressure from any quarter. In such circumstances, the delay in conducting the proceedings by notifying a Special Public Prosecutor has resulted in wastage of one and a half months, more so when about 98 accused have been transferred from Central Jail, Hissar and lodged in Central Jail, Tihar and the victims claim that they are receiving constant threats from the family members of the accused.

6. It is now stated by the learned Standing Counsel for the Petitioner that a notification has been recently issued, appointing a Special Public Prosecutor to conduct the case, but insofar as the three queries raised for clarification, in the order dated 10.12.2010 are concerned, the Govt. of NCT of Delhi is ready and willing to thrash out the said issues on the administrative side in consultation with Respondent No. 1, if given some more time. Pertinently, vide order dated 10.2.2011, both the States were given one week's time to respond and matter was posted for 17.2.2011.

7. Counsel for Respondent No. 1 states that the Principal Secretary (Home), State of Haryana shall be coming down to Delhi tomorrow for sorting out the pending issues and he is ready and willing to resolve the issue by having a meeting with the Principal Secretary (Home), Government of NCT of Delhi. He further states that as the stand of the Petitioner is very clear that they have taken over the entire progress of the prosecution of the present case in their hands, then the arrangement for the protection of the victims/witnesses as also their security, both in Haryana and Delhi has to be the subject matter of consideration of the Petitioner.

8. Learned Standing Counsel for the Petitioner states that it would be appropriate if the orders dated 01.02.2011 and 10.02.2011 be kept in abeyance for a period of three days to enable the aforesaid senior officers to interact with each other in this duration and try to sort out the pending administrative issues.

9. Accordingly, the present writ petition is disposed of along with the pending application, with the directions that both, Principal Secretary (Home), Govt. of NCT of Delhi and the Principal Secretary (Home), State of Haryana shall sit together and resolve the three clarifications sort in the impugned order dated 10.2.2011, as expeditiously as possible. If both the sides are ad idem as to the stand to be taken before the learned ASJ, a joint affidavit shall be filed in this regard before the learned ASJ by 19.02.2011. However, if they are unable to resolve the administrative issues internally, and the conflict persists, then the said officers shall appear before the learned ASJ to enable them to explain their respective stands in this regard. The present order shall be brought to the notice of the court, on the date fixed before Sessions Court on 17.02.2011, with a request to adjourn the matter for 19.2.2011.

10. A copy of this order be forwarded by the Registry by dispatch rider to the Sessions Court for perusal.