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Bombay High Court

Case No: Misc. Application No. 390 of 2007 in Criminal Writ Petition No. 1278 of 2007

Damodar Lokhande and Liladhar Narkhede		APPELLANT
	Vs	
Central Bureau of Investigation, The State of Maharashtra and Smt. Rajani Vishram Patil		RESPONDENT

Date of Decision: March 13, 2008

Acts Referred:

- Arms Act, 1959 - Section 3(25)
- Constitution of India, 1950 - Article 227, 26
- Criminal Procedure Code, 1973 (CrPC) - Section 173, 407
- Penal Code, 1860 (IPC) - Section 120(B), 302, 34

Citation: (2008) CriLJ 2940

Hon'ble Judges: Swatanter Kumar, C.J; J.P. Devadhar, J

Bench: Division Bench

Advocate: A.H. Ponda, instructed by P.G. Sabnis, in Writ Petition No. 1278 of 2007 and S.B. Talekar and J.G. Reddy, for the Appellant; Gopal Subramaniam D.N. Salvi and Revathi Mohite, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, C.J.
Criminal Miscellaneous Application No. 390 of 2007 has been filed by the applicants praying for transfer of Criminal Writ Petition Nos. 1278 of 2007 and 1877 of 2007 from Principal Seat at Mumbai to Aurangabad Bench for the reasons stated in that application.

2. In order to examine the merit or otherwise of this application, reference to necessary facts can be made at the outset. One Smt. Rajani Vishram Patil had filed Criminal Writ

Petition No. 646 of 2005 praying that a direction be issued for transferring the investigation of Crime No. 242 of 2005 registered at Zilla Peth Police Station, Jalgaon, against the four accused to the Central Bureau of Investigation as the investigation was not being conducted in accordance with law. According to her, her husband, Prof. V.G. Patil, who was the President of the District Congreee (I) Committee, Jalgaon, was assaulted by two persons. The incident was noticed by witnesses and they escaped on a motor-cycle. The offence was registered under Sections 302 read with 34, 120(B) of the Indian Penal Code and Section 3(25) of the Arms Act. It was found that four persons were involved in this case. The investigation was transferred to State C.I.D. on 30th September, 2005. Charge-sheet was submitted to the Court of Judicial Magistrate (First Class) against Raju Mali, Raju Sonavane, Damodhar Lokhande and Leeladhar Narkhede on 22nd December, 2005. Later on Damodhar Lokhande and Leeladhar Narkhede approached the High Court praying for quashing of the first information report by filing Writ Petition Nos. 3331 and 298 of 2005 which were allowed. Special Leave Petitions against the order was dismissed by the Supreme Court, but in the meanwhile the case was committed to the Court of Sessions and was numbered as Sessions Case No. 8 of 2006. When the investigation was pending, the State moved an application before the Sessions Court for conducting narco analysis, brain mapping and lie detector tests on the accused. This writ petition came to be disposed of by the order of the Division Bench of the Aurangabad Bench on 23rd February, 2007. The relevant part of the order reads as under:

10. We have scrutinized entire record with the help of counsel for both sides. Considering the chequered history of the present case, the development which have taken place after filing of the charge-sheet, issues involved and the reference to alleged conspiracy by the influential political leaders of the region, in our opinion, the decision of the State Government that the investigation of this case should be conducted by Central Bureau of Investigation is justified. Having regard to the importance of issues involved and the alleged complicity of the influential political leaders referred to in paragraph Nos. 3 and 4 of the petition, in our considered opinion, this is a fit case where the investigation should be conducted by Central Bureau of Investigation.

11. In the result, writ petition is allowed in terms of prayer Clause (B) and (C). Prayer Clause (D) does not survive since the investigation is transferred to respondent No. 7 - Central Bureau of Investigation. Appropriate steps be taken by the concerned authority for implementation of this order at the earliest.

3. The petitioner in Criminal Writ Petition No. 646 of 2005 filed another Criminal Writ Petition No. 1278 of 2007 in the principal seat at Bombay. In this writ petition, a prayer was made that the Central Bureau of Investigation should be directed to file status report in the case and continue to file status report from time to time. It was also prayed that the Court should monitor and supervise the further investigation as Raju Mali who was to give another confession to the C. B. I. died in suspicious circumstances and if the investigation was not overseen by the Court, it would suffer great prejudice. Notice on this petition was

issued and vide order dated 10th September, 2007, the statement of the Solicitor General appearing for the C.B.I. was recorded stating that the C.B.I. investigation is under progress and lie detection tests are conducted and report would be submitted. The case was adjourned to 8th October, 2007. On 2nd November, 2007, the Court was informed by the counsel appearing for the C.B.I. that District and Sessions Judge, Jalgaon, objected the permission for conducting scientific tests on the petitioners in Criminal Writ Petition No. 1877 of 2007. Criminal Writ Petition No. 1278 of 2007 was thereafter adjourned from time to time and lastly was fixed before the Court on 7th January, 2008.

4. The two accused in the case viz. Damodar Jagannath Lokhande and Liladhar Purushottam Narkhede filed another petition being Criminal Writ Petition No. 1877 of 2007 (which was renumbered upon transfer, original number being Criminal Writ Petition No. 578 of 2007). In this petition, the petitioners had prayed for quashing and setting aside the order dated 28th September, 2007 passed by the Additional Sessions Judge, Jalgaon, who had issued bailable warrants against the said accused. They also prayed that the proceedings before the Court be stayed. During the pendency of this petition, the petitioners also filed another application being Criminal Application No. 391 of 2007 for dismissal of Criminal Writ Petition No. 1278 of 2007.

5. When the Bench at Aurangabad was dealing with Criminal Writ Petition No. 578 of 2007, seeking stay, bail etc., the Bench also noticed that Criminal Writ Petition No. 1278 of 2007 pertaining to Sessions Case No. 8 of 2006 was pending before the Principal Seat at Bombay. The Court thus passed the following order:

It appears that there is one Criminal Writ Petition pending before the principal seat of this Court at Mumbai bearing Criminal Writ Petition No. 1278 of 2007 pertaining to the Sessions Case No. 8 of 2006. It further appears that the present applicants have made an application bearing Criminal Application No. 285 of 2007, for impleading them as intervenors in the said criminal writ petition. The said criminal application has been allowed by the Division Bench of this Court vide order dated 19th September, 2007. In the said application, the applicants have also prayed that the CBI should be restrained from conducting the narco analysis test and brain mapping test against the present applicants. The Division Bench of this Court vide the aforesaid order has observed that the said prayer would be considered on 8th October, 2007. In that view of the matter, I think that it would be appropriate that the present application is heard along with Criminal Writ Petition No. 1278 of 2007, so as to avoid any conflicting orders.

5. The Registry of this Court is, therefore, directed to place this matter immediately before the Honourable the Chief Justice for appropriate orders. In the meantime, it is directed that there shall be interim relief in terms of prayer Clause (c) on the condition that the applicants shall present themselves before the respondent No. 4 in his office on 7th October, 2007 at 11.00 a.m.

6. On the basis of the above order, administrative order was passed on 5th October, 2007. Criminal Writ Petition No. 578 of 2007 was transferred from Aurangabad to Principal Seat at Bombay and renumbered as Criminal Writ Petition No. 1877 of 2007. This petition was ordered to be heard along with Criminal Writ Petition No. 1278 of 2007.

7. The said order was passed in the presence of the parties to that writ petition. However, to circumvent that order, the petitioners in Criminal Writ Petition No. 1877 of 2007 filed Criminal Application No. 390 of 2007 in Criminal Writ Petition No. 1278 of 2007 seeking transfer of Criminal Writ Petition Nos. 1278 of 2007 and 1877 of 2007 from the Principal seat at Bombay to the Aurangabad Bench.

8. Transfer of the petitions is sought primarily on the ground that the cause of action had arisen at the Bench at Aurangabad and the investigation was conducted at that place. According to the applicants, it will be more appropriate and the law requires that all the proceedings are entertained and decided by the Aurangabad Bench rather than the principal seat at Bombay.

9. The Additional Solicitor General, of course, has left the matter to the discretion of the Court as to which Bench should hear the matter.

10. The learned Counsel for the applicants has placed reliance upon the judgment of the Supreme Court in the case of Rajasthan High Court Advocates Association Vs. Union of India and Others, to contend that the Principal Seat will not exercise territorial jurisdiction over the areas which fall within the permanent Benches of the Court. He also relied upon the decision of the Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, to contend that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court''s territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. The learned Counsel appearing for the applicants can hardly drive any assistance from the above two judgments. There is no dispute before us with regard to the power of the Court to entertain the petition in whose jurisdiction the offence was committed. The High Court of Judicature at Bombay has different Benches at Nagpur, Aurangabad and Goa. In this case, the order of transfer was already passed by the concerned Bench at Aurangabad on 1st October, 2007 and that order was passed in presence of the parties and after hearing them. This order of the Court has not been questioned. Admittedly, no review application has been filed against that order nor the same was assailed in appeal before the Supreme Court. In these circumstances, that order has already attained finality. Not only this, in furtherance to the judicial order passed by the Aurangabad Bench, administrative order transferring the case to this Court was also passed.

11. In these circumstances, the prayer of the applicants to transfer both the criminal writ petitions to Aurangabad Bench is misconceived. Even otherwise, no plausible reason or ground has been stated in the entire petition which would justify re-transfer of these cases

to the Aurangabad Bench. The Bombay High Court (Appellate Side) Rules, 1960 vest the power of transfer from Principal Seat to other Benches and vice-versa. The said Rule reads as under:

CHAPTER XXXI

...Presentation of proceedings at the office of the High Court at Nagpur, Aurangabad and Panaji, Goa.

1. Presentation of matters at Nagpur, Aurangabad and Goa.

2. All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Ahmednagar, Aurangabad, Beed, Jalgaon, Jalna, Nanded, Osmanabad, Parbhani and Latur which lie to the High Court at Bombay shall be presented to the Additional Registrar at Aurangabad and shall be disposed of by the Judges sitting at Aurangabad: Provided that the Chief Justice may, in his discretion, order that any case or class of cases arising in any such District shall be heard at Bombay:

Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Aurangabad.

12. A bare reading of the Rule indicates that the discretionary power of transfer of the cases can be exercised by the Chief Justice.

13. Another fallacy in the argument advanced by the learned Counsel appearing on behalf of the applicants is that the cases are being instituted for the first time. The question is not of institution of cases but is of transfer of the cases already instituted and entertained by the Courts of competent jurisdiction. Aurangabad Bench had entertained both the writ petitions i.e. Criminal writ Petition Nos. 646 of 2005 and 578 of 2007. Admittedly, in Criminal Writ Petition No. 1278 of 2007, a prayer was made that the C.B.I. be directed to file status report in the case and continue to file status report from time to time. Admittedly, C.B.I. has no office at Aurangabad and its investigations are being conducted through Bombay where the C.B. I. admittedly has an office. The learned Solicitor General appearing for the C.B.I. has clearly stated that the investigation had effectively progressed and the charge-sheet would be filed very shortly, may be with the leave of the Court to file supplementary charge-sheet in accordance with the provisions of Section 173 of the Criminal Procedure Code. Once the Courts have exercised judicial discretion and have directed the matters to be heard at Principal Seat, we see no existence of compelling circumstances either in equity or in law which would justify re-transfer of these cases to the Bench at Aurangabad. Even if the provisions of the Criminal Procedure Code were to be strictly applied to the proceedings filed before the Aurangabad Bench, still then in accordance with the provisions of Section 407 of the Code, the High Court would have the power to transfer the cases. The application is accordingly dismissed.