Suo Motu Transfer Petition (Crl.) No. 04 of 2019

STATE OF SIKKIM   PETITIONER (S)

VERSUS

PURAN SUBBA   RESPONDENT (S)

Date: 07/06/2019

CORAM :
        HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CJ.
                …

Learned Special Judge (POCSO Act, 2012), East Sikkim at Gangtok, has sent a letter bearing reference no. 96/D&SC(E) dated 15.05.2019, to the Registrar General, High Court of Sikkim along with a copy of Order passed by him on 15.05.2019 in *S.T. (POCSO) Case No.02 of 2017 : State of Sikkim vs. Puran Subba*, expressing his difficulties to proceed with the matter.

2.   Order passed by the learned Special Judge on 15.05.2019, is as follows;

> "15.05.2019
>
> ……………………………………………………..………
>   At the very outset, Ld. Counsel Ms. Gita Bista submits that she is presently attached to the chambers of Ld. Senior Advocate Shri N.B. Khatiwada. Since the Ld. Senior Advocate happens to be my father it would not be appropriate on my part to proceed with the matter.
> ………………………………………………..…………….."

3.   This Court in Transfer Petition (C) No. 02 of 2019 in the matter of *Mahesh Chettri & Another vs. State of Sikkim & Others*, has given the grounds on which cases can be transferred from one Court

to another. Paragraphs 4 and 5 of the above Order are extracted herein below:-

> "(4)   In the present case, this fact was brought before the learned District Judge that earlier his father, being the Additional Advocate General of the State, had appeared for the State in respect of the same subject matter. In my view, this cannot be and should not be ground for recusal from the case. The District Judge, at no point of time, was involved in any manner with the case. He himself was not appearing for any of the parties. It was his father who was appearing for the respondent, that too, for the State as State Counsel/Additional Advocate General. In fact, in many cases the Counsel for the State appear on behalf of the State. They do not even remember in which case they appeared for the State. The father of the District Judge appeared in his private capacity and the District Judge had nothing to do with the said case. In some cases it is found that father appears for one party and son appears for opposite party. They appear for the respective parties in their individual capacity. Nothing wrong in it.
>
> (5)   In my view, it is the duty of a Judge to hear every matter placed before him without fear or favour. A Judge can recuse when he or his family members' interest is involved in the case. He can also recuse when his close relative is a party in the lis. He can recuse from a case where one of the parties is known to him and is closely associated with him. He can also recuse when he had earlier as an Advocate appeared for one of the parties. A Judge can also recuse where he had earlier given legal opinion in the matter or has a financial interest in the litigation."

4.   I have perused and considered the Order passed by the learned Special Judge. The reason given by the Special Judge is that Ms Gita Bista, Advocate, is presently attached to the chamber of Shri N.B. Khatiwada, Senior Advocate. It is also stated by him that Shri N.B. Khatiwada is his father. Hence, it would not be appropriate on his part to proceed with the matter. In my view, the reason given by the learned Special Judge does not appear to be correct. The fact that   Ms Gita Bista is a chamber junior to his father is not a sufficient ground for transfer of the case. Further, no allegation has been made

by anyone against the Special Judge. It is also not a case where any of the party has prayed for transfer of the case.

5.   Consequently, request of the learned Special Judge for transfer of *S.T. (POCSO) Case No. 02 of 2017 : State of Sikkim vs. Puran Subba*, stands rejected.

6.   The Special Judge (POCSO Act, 2012), East Sikkim at Gangtok, be informed accordingly.

7.   This Suo Motu Transfer Petition stands disposed of, accordingly.

Chief Justice
07.06.2019

Index : ~~Yes~~ / No
Internet : Yes / ~~No~~

jk/bp