SUNEETHA NARREDDY & ANOTHER

v.

THE CENTRAL BUREAU OF INVESTIGATION AND OTHERS

(Writ Petition (Criminal) No.169 of 2022)

NOVEMBER 29, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Transfer of Criminal Trial – Fair and Independent Trial – Petition pertaining to the mysterious death of uncle of the Chief Minister of Andhra Pradesh – Writ petition filed by the daughter and the wife of the deceased seeking transfer of trial and direction to the CBI for duly completing the investigation in time bound manner – Apprehension of petitioners that star witnesses/witnesses were having life threat perceptions and that some of the witnesses were already influenced and that justice will not be done and/or there shall not be a fair trial – Held: Justice is not only to be done but the justice is seen to have been done also – Free and fair trial is sine qua non *of Art.21 of the Constitution – CBI/investigating agency stopped further investigation due to apprehension of harassment and filing of frivolous/false complaint – There was a reasonable apprehension that there shall not be any fair investigation so far as the further investigation on larger conspiracy and destruction of evidence was concerned – One of the key witnesses initially volunteered to give his statement, thereafter he did not turn up to get his statement recorded and thereafter he died under mysterious circumstance – Petitioners being daughter and wife of the deceased have a fundamental right to get justice as victim – This is a fit case to transfer the trial and further investigation on larger conspiracy and destruction of evidence to the State other than the State of Andhra Pradesh – Trial ordered to be transferred to the CBI Special Court, Hyderabad – Constitution of India – Arts. 21 and 32.*

Allowing the writ petition, the Court

HELD: 1. From the facts, it emerges that one of the key witnesses though initially he volunteered to give his statement under Section 164 Cr.P.C. and the CBI submitted an application to record his statement under Section 164 Cr.P.C., thereafter he did not turn up to get his statement recorded and on the contrary

he made a statement before the media that he was being pressurised by the CBI. That thereafter he died under mysterious circumstances. Considering these facts and circumstances, it cannot be said that apprehension on the part of the petitioners being daughter and wife of the deceased that there may not be a fair trial and that there may not be any independent and fair investigation with respect to further investigation on larger conspiracy and destruction of evidence at the scene of incident is imaginary and/or has no substance at all. The petitioners being daughter and wife of the deceased have a fundamental right to get justice as victim and they have a legitimate expectation that criminal trial is being conducted in a fair and impartial manner and uninfluenced by any extraneous considerations. Under the circumstances, This Court is of the opinion that this is a fit case to transfer the trial and further investigation on larger conspiracy and destruction of evidence to the State other than the State of Andhra Pradesh. [Paras 12 and 13][754-E-H; 755-A]

2. As per the settled position of law, justice is not only to be done but the justice is seen to have been done also. As per the settled position of law, free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. However, at the same time, looking to the large number of witnesses to be examined during the trial and no hardship is caused to those witnesses, This Court is of the opinion that instead of transferring the trial to New Delhi, it may be transferred to CBI Special Court at Hyderabad. The trial is hereby ordered to be transferred to the CBI Special Court, Hyderabad. All the relevant papers including chargesheet/supplementary chargesheet are now to be transferred to the CBI Special Court, Hyderabad. The CBI is also directed to complete the further investigation/investigation in the aforesaid FIR on the larger conspiracy and destruction of evidence, as observed by the High Court earlier, at the earliest and it goes without saying that it must be done independently and in an unbiased manner. [Paras 14 and 15][755-B-E]

Amarinder Singh v. Parkash Singh Badal **(2009) 6 SCC 260 : [2009] 9 SCR 194 – followed.**

Abdul Nazar Madani v. State of T.N. **(2000) 6 SCC 204 : [2000] 3 SCR 1028;** *Jayendra Saraswathy Swamigal (II) v. State of T.N.* **(2005) 8 SCC 771 : [2005] 4 Suppl. SCR 556- referred to.**

Case Law Reference

[2009] 9 SCR 194	**followed**	**Para 4.4**
[2000] 3 SCR 1028	**referred to**	**Para 7**
[2005] 4 Suppl. SCR 556	**referred to**	**Para 7.1**

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No.169 of 2022.

(Under Article 32 of The Constitution of India)

Siddharth Luthra, Siddhartha Dave, Sr. Advs., Ms. Jesal Wahi, Anmol Kheta, Ms. Cheshta Jetly, Ms. Vidhi Thaker, Advs. for the Petitioners.

K. M Nataraj, ASG, S. Niranjan Reddy, Guru Krishnakumar, Kapil Sibal, Sr Advs., Ms. Swarupama Chaturvedi, Vatsal Joshi,Vinayak Sharma, Nakul Chengappa K.K., Arvind Kumar Sharma, Mahfooz Ahsan Nazki, Polanki Gowtham, Ms. Rajeswari Mukherjee, Shaik Mohamad Haneef, T. Vijaya Bhaskar Reddy, K.V. Girish Chowdary, Ms. Akhila Palem, Abhishek Sharma, Sahil Raveen, Ashutosh Dubey, R. Krishnaamorthi, Mohit Jaiswal, Dhruv Gosoami, Shiv Sagar Tiwari, Nepal Singh, Ms. Aakanksha Tiwari, Venkatesh Rajput, Ananga Bhattacharyya, Rohit Rao. N., Ms. Devahuti Tamuli, Ms. Ekta Pradhan, Ms. Anushka Singh, M/s Veritas Legis, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. The present writ petition under Article 32 of the Constitution of India has been preferred by the daughter and the wife of the deceased – Y.S. Vivekananda Reddy, seeking transfer of trial arising out of RC-04(S)/2020/CBI/SC-III/New Delhi from CBI Special Court, Kadapa, Andhra Pradesh to the CBI Special Court, Hyderabad or CBI Special Court, New Delhi, and also to direct the CBI for duly completing the investigation in the aforesaid FIR in a time bound manner.

A 2. Shri Siddharth Luthra, learned Senior Advocate appearing on behalf of the petitioners has submitted that the incident pertains to the mysterious death of late Shri Y.S. Vivekananda Reddy, the brother of late Shri Y.S. Rajasekhara Reddy (former Chief Minister of the united State of Andhra Pradesh) and uncle of Shri Y.S. Jaganmohan Reddy, the present Chief Minister of Andhra Pradesh and the opposite leader at the time of the incident.

B 2.1 It is submitted that the deceased was brutally murdered on the intervening night of 14-15/03.2019 in his house. It is submitted that the then State Government constituted a Special Investigation Team (SIT). However, subsequently, petitioner No.2 and Shri Y. Jaganmohan Reddy filed petitions before the High Court of Andhra Pradesh for transfer of investigation to the CBI. It is submitted that thereafter the elections to the State Assembly were held on 11.04.2019 and Shri Y. Jaganmohan Reddy became the Chief Minister and took oath on 30.05.2019. Thereafter, the SIT was re-constituted twice, but there was no progress in the investigation and therefore petitioner No.1 was constrained to approach the High Court to transfer the investigation to the CBI. However, Shri Y. Jaganmohan Reddy withdrew his petition for transferring the investigation to the CBI and the State also opposed such transfer. However, the High Court was pleased to transfer the investigation to the CBI.

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E 2.2 It is submitted that thereafter and after the CBI took over the investigation, there was substantial progress and in the course of time, five accused have been arrested and the chargesheet and the supplementary chargesheet have been filed. It is submitted that however, though in the chargesheet, the role of one Y.S. Avinash Reddy, who is a sitting Member of Parliament from the ruling party in Andhra Pradesh came to light and he was mentioned as a suspect and he played a key role in the destruction of the evidence and spreading false news that the deceased died due to heart attack, the said Y.S. Avinash Reddy has not yet been arrested and the State authorities and the influential people in the State are using all kinds of tactics to scuttle the investigation with the aim to shield the said Y.S. Avinash Reddy and his close associate D. Shiv Shankar Reddy (A5). It is submitted that not only that, a false complaint came to be filed against the officers of the CBI and the CBI officers were constrained to approach the High Court against the said complaint and the High Court was pleased to stay all further proceedings.

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It is submitted that however the investigation has been stalled due to the pendency of the complaint and the CBI officers leaving Andhra Pradesh. It is submitted that thereafter the CBI officers have not resumed investigation anticipating more false complaints at the behest of the accused and interference by the State authorities if they resume investigation by travelling to Andhra Pradesh.

2.3 It is submitted that the people involved in the crime, with the aid and active participation of the State authorities and influential people in the State are making conscious efforts to scuttle the investigation and protect the culprits by influencing the witnesses, the investigation, and the judicial process.

2.4 It is submitted that the lives of the key witnesses and accused, specially one Shaik Dastagiri (A4) and one Ranganna (PW61) are in danger. It is submitted that one of the key witnesses has died in a suspicious manner.

2.5 It is submitted that one of the witnesses who initially agreed to give his statement under Section 164 Cr.P.C. has been subsequently scared and he has been taken back on duty and thereafter he has refused to give his statement under Section 164 Cr.P.C. It is submitted that therefore all pressure tactics are being adopted not to further investigate. It is submitted that as the witnesses are under threat, the petitioners are apprehending that they may not get justice and therefore it is prayed to transfer the trial either to New Delhi or Hyderabad.

2.6 It is further submitted that even some witnesses are provided with special security considering life threat perception to them. It is submitted that therefore the petitioners have reasonable apprehension that there shall not be any fair and independent trial if the same is continued at CBI Special Court, Kadapa, Andhra Pradesh.

3. Shri K.M. Nataraj, learned Additional Solicitor General of India has appeared on behalf of the respondent -CBI. A counter affidavit has been filed on behalf of the CBI.

3.1 It is submitted that in light of the observations made by the High Court of Andhra Pradesh at Amravati, further investigation of the case is still continuing on the issue of larger conspiracy for murder and destruction of evidence at the scene of crime.

3.2 Now so far as the allegation of the applicants on influence/ inducement/threat to the witnesses and the false and frivolous complaints

against the officers of the CBI/investigating agency is concerned, it is submitted that the events unfolded during the course of investigation do indicate that several witnesses in the case are being influenced at the behest of the accused D. Siva Shankar Reddy (A5) and his close associates. It is reported that three star witnesses are already suspected to have come under the influence of A5 and other conspirators.

3.3 It is submitted that in the course of investigation, one K. Gangadhar Reddy, a criminal and a close associate of the accused D. Siva Shankar Reddy (A5) himself had approached CBI and thereafter his statement under Section 161 Cr.P.C. was recorded. It is submitted that he volunteered to give the statement to the learned Magistrate. Therefore, the investigating officer of CBI, to get his statement recorded before the learned Court, filed an application and *vide* order dated 27.11.2021 the learned Court nominated the learned Judicial Magistrate (First Class), Jamalamudugu to record the statement of K. Gangadhar Reddy under section 164 Cr.P.C. However, on 29.11.2021, the said K. Gangadhar Reddy did not attend the court of JMFC, Jamalamudugu to give his statement under Section 164 Cr.P.C. It is submitted that on the contrary he gave a statement before the media that he is being pressurised by the CBI to give statement. It is submitted that thereafter the said K. Gangadhar Reddy had died under suspicious circumstances on 9.6.2022 in his house. It is submitted that one another witness, namely, J. Shankaraiah was suspended for dereliction of duty in connection with the incident and whose statement was earlier recorded under section 161 Cr.P.C. was to appear for recording his statement under Section 164 Cr.P.C., however, he has been warned over and initially he did not appear for recording his statement pursuant to the order dated 30.09.2021. However, thereafter his suspension came to be revoked on 6.10.2021 and he was reinstated in service and therefore thereafter he is not appearing for recording his statement under section 164 Cr.P.C.

3.4 It is submitted that two star witnesses are already under the police protection, considering the life threat perception to them. Therefore, it is submitted that there are all possibilities of influencing the witnesses and/or tampering with the evidence and there shall not be a fair further investigation on the larger conspiracy as the officers of the CBI/ investigating agency are also pressurised and given threats and even false FIR is filed against them.

4. Shri S. Niranjan Reddy, learned Senior Advocate has appeared on behalf of the State and has opposed the present petition. We have heard Shri Kapil Sibbal and Shri Guru Krishnakumar, learned Senior Advocates appearing on behalf of the respective respondents/impleaders, who are opposing the present writ petition. The present petition is also opposed by the learned counsel appearing on behalf of respondent No.4. A counter affidavit is also filed on behalf of respondent No.4.

4.1 While opposing the present petition, learned senior counsel/ counsel appearing on behalf of the respondents/impleaders have vehemently submitted that the present petition for the reliefs sought may not be entertained.

4.2 It is submitted that the primary contentions of the petitioners are in relation to witnesses being influenced and threat to lives of accused No.4 – the approver and other witnesses. It is submitted that no real threat perception to either the life of the accused or to the witnesses has been established by the petitioners. It is submitted that more than three years have passed since the murder of the deceased has happened, but none of the witnesses or accused has approached the police, CBI or Courts and alleged any threat to life.

4.3 It is submitted that in fact to witnesses, namely, Shaik Dastagiri and Ranganna have already been granted protection by the Sessions Court under the Witness Protection Scheme, 2018.

4.4 Relying upon the decision of this Court in the case of ***Amarinder Singh v. Parkash Singh Badal, (2009) 6 SCC 260***, it is submitted that as observed and held by this Court, the apprehension of not getting a fair and impartial enquiry/trial is required to be reasonable and not imaginary.

4.5 It is submitted that relief of transfer of trial sought in the present petition has a direct bearing on the right of defence of the accused.

4.6 It is further submitted that in the present case the chargesheet/ supplementary chargesheet have been filed. It is submitted that there are more than 250 witnesses to be examined and therefore if the trial is transferred to Delhi and/or outside the State of Andhra Pradesh, it may not only cause undue hardship to those witnesses but in fact may also prejudice the accused and therefore there may not be chances of a fair trial.

A 5. We have heard learned counsel for the respective parties at length.

The present petition pertains to the mysterious death of late Y.S. Vivekananda Reddy, the brother of late Y.S. Rajasekhara Reddy (former Chief Minister of the united State of Andhra Pradesh) and uncle of Y.S. B Jaganmohan Reddy, the present Chief Minister of Andhra Pradesh and the opposite leader at the time of the incident. The present petitioner No.1 Dr. Suneetha Narreddy is the daughter of the deceased. She is a Doctor by profession. The present petition under Article 32 of the Constitution of India has been filed by the daughter and wife of the deceased, seeking transfer of trial arising out of RC-04(S)/2020/CBI/ C SC-III/New Delhi from CBI Special Court, Kadapa, Andhra Pradesh to the CBI Special Court, Hyderabad or CBI Special Court, New Delhi, and also to direct the CBI for duly completing the investigation in the aforesaid FIR in a time bound manner.

6. It is apprehended on behalf of the petitioners that star witnesses/ D witnesses are having life threat perceptions and that some of the witnesses are already influenced. Therefore, it is apprehended that there is every likelihood that there may not be a fair and impartial trial and even further investigation on the issue of larger conspiracy for murder and destruction of evidence at the scene of crime because of the influence on the part of E the accused and the State machinery.

7. In the case of ***Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204***, in paragraph 7, it is observed and held as under:

> **"7.** The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is F shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not G imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding

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a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition….."

7.1 Similar view has been expressed in the case of ***Jayendra Saraswathy Swamigal (II) v. State of T.N., (2005) 8 SCC 771***.

8. It is true that as per the settled position of law and even as observed and held by this Court in the case of ***Amarinder Singh (supra)*** for transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice may not be done. It is also observed in the said decision that it is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. As observed by this Court in the aforesaid decision, however, the Court has to see whether the apprehension alleged is reasonable or not. The apprehension must not only be imaginary, but must appear to the court to be a reasonable apprehension.

9. Now let us consider whether the apprehension that justice will not be done and/or there shall not be a fair trial, is reasonable or not.

The deceased was murdered on 14-15/03/2019 in his house. The then State Government constituted a SIT. Subsequently, petitioner No.2 and Y. Jaganmohan Reddy (the present Chief Minister) filed petitions before the High Court of Andhra Pradesh for transfer of investigation to CBI. That thereafter the allegations to the State Assembly were held on 11.04.2019 and the said Y. Jaganmohan Reddy became the Chief Minister and took oath on 30.05.2019. Thereafter, the SIT was re-constituted twice, but there was no progress in the investigation and therefore petitioner No.2 was constrained to approach the High Court for transfer of investigation to CBI. However, in view of the changed circumstances, Y. Jaganmohan Reddy withdrew his petition to transfer the investigation to CBI and the State opposed such transfer. However, the High Court was pleased to transfer the investigation to the CBI and that is how the CBI took over the investigation. During the course of investigation, the CBI filed chargesheet/supplementary chargesheet. However, pursuant to the order passed by the High Court, further investigation by the CBI on the issue of larger conspiracy of murder and destruction of evidence at the scheme of crime is still continuing. During the course of further investigation on the larger conspiracy, an FIR against the officers of the

A CBI is filed which has been stayed by the High Court. It appears that therefore apprehending harassment and filing false/frivolous complaints, the CBI/investigating agency stopped further investigation. Therefore, there is a reasonable apprehension that there shall not be any fair investigation so far as the further investigation on larger conspiracy and destruction of evidence is concerned.

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10. Even two key witnesses, namely, Shaik Dastagiri and Ranganna are already given the police protection under the Witnesses Protection Scheme, 2018, pursuant to the order passed by the learned Sessions Court, considering the life threat perception. Even in the response to the present petition, learned counsel appearing on behalf of the State has also produced the orders passed by the competent authority granting police protection to two witnesses.

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11. As observed hereinabove, one of the witnesses who was to record his statement under Section 164 Cr.P.C. has not appeared for recording of his statement, though initially he volunteered to given the statement under Section 164 Cr.P.C. The reason seems to be that thereafter his suspension order has been revoked and he has been taken back on duty.

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12. From the facts narrated hereinabove, it emerges that one of the key witnesses, namely, K. Gangadhar Reddy, though initially he volunteered to give his statement under Section 164 Cr.P.C. and the CBI submitted an application to record his statement under Section 164 Cr.P.C., thereafter he did not turn up to get his statement recorded and on the contrary he made a statement before the media that he was being pressurised by the CBI. That thereafter he has died under mysterious circumstances.

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13. Considering the aforesaid facts and circumstances, it cannot be said that apprehension on the part of the petitioners being daughter and wife of the deceased that there may not be a fair trial and that there may not be any independent and fair investigation with respect to further investigation on larger conspiracy and destruction of evidence at the scene of incident is imaginary and/or has no substance at all. The petitioners being daughter and wife of the deceased have a fundamental right to get justice as victim and they have a legitimate expectation that criminal trial is being conducted in a fair and impartial manner and uninfluenced by any extraneous considerations. Under the circumstances,

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we are of the opinion that this is a fit case to transfer the trial and further investigation on larger conspiracy and destruction of evidence to the State other than the State of Andhra Pradesh. A

14. As per the settled position of law, justice is not to be done but the justice is seen to have been done also. As per the settled position of law, free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. However, at the same time, looking to the large number of witnesses to be examined during the trial and no hardship is caused to those witnesses, we are of the opinion that instead of transferring the trial to New Delhi, it may be transferred to CBI Special Court at Hyderabad. B C

15. In view of the above and for the reasons stated above, the present writ petition is allowed. The trial arising out of RC-04(S)/2020/CBI/SC-III/New Delhi from CBI Special Court, Kadapa, Andhra Pradesh is hereby ordered to be transferred to the CBI Special Court, Hyderabad. All the relevant papers including chargesheet/supplementary chargesheet are now to be transferred to the CBI Special Court, Hyderabad. The CBI is also directed to complete the further investigation/investigation in the aforesaid FIR on the larger conspiracy and destruction of evidence, as observed by the High Court earlier, at the earliest and it goes without saying that it must be done independently and in an unbiased manner. D E

Devika Gujral
(Assisted by : Shubhanshu Das, LCRA)

Writ petition allowed.