

NIRMAL SINGH ETC.

A

v.

STATE OF HARYANA

AUGUST 19, 1996

[DR. A.S. ANAND AND S.B. MAJMUDAR, JJ.]

B

*Code of Criminal Procedure, 1973 : Section 407.*

*High Court—Power to transfer cases and appeals—Exercise of suo moto power—Murder trial—Accused—Case suo moto transferred by High Court from one District to another—High Court not taking into account financial constraints and inconvenience caused to accused—No opportunity afforded to accused—Challenge to directions of High Court transferring the case—Held High Court on its own initiative can order transfer of a case in the interest of justice—But it should have been done only after issuing notice to the accused and granting them an opportunity to have their say in the matter—Held suo moto directions given by High Court for transfer of the case cannot be sustained more particularly in view of the difficulties expressed by the appellants.*

C

D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 872-73 of 1996 Etc.

E

From the Judgment and Order dated 28.5.96 of the Punjab & Haryana High Court in CrI. Misc. No. 8182-M/96 and 8666 of 1996.

V.R. Reddy, Additional Solicitor General, Vikram Mahajan, Sushil Kumar, B.S. Mor, S.P. Lalar, Ms. Kusum Singh, M.S. Dahiya, C.S. Ashri, Goodwill Indeevar, A. Mariarputham, Ms. Aruna Mathur, Prem Malhotra and Balraj Devan for the appearing parties.

F

The following Order of the Court was delivered :

Leave granted.

G

We have heard learned counsel for the parties.

The investigation in connection with the murder case arising out of FIR No. 89 dated 16th July, 1994, was entrusted to the C.B.I. which filed

H

A a challan against fourteen persons, including the appellants herein. Appellant, Nirmal Singh, was denied the concession of bail by the Trial Court, the High Court and by this Court on various occasions. However, on a fresh bail petition filed on his behalf on 9th May, 1996, the learned Sessions Judge, Ambala, granted interim bail to him on 11th May, 1996 till 20th May, 1996. This order was made when neither the District Attorney representing the State nor the Public Prosecutor representing the C.B.I. were present. The High Court on being moved by the C.B.I. against the order of grant of interim bail on 14th May, 1996, stayed the operation of the order dated 11th May, 1996. After appellant Nirmal Singh surrendered on 16th May, 1996, the High Court vide its order dated 28th May, 1996 set aside the order dated 11.5.1996 granting interim bail to him and at the same time transferred the trial of the case from the Court of Shri A.S. Garg, Sessions judge, Ambala, to the Court of Sessions Judge, Chandigarh. The case was at the stage of recording the statements of the accused under Section 313 Cr.P.C.

D On 10th July, 1996 we dismissed the special leave petition of appellant Nirmal Singh against the cancellation of bail but issued notices to the respondents in the matter of directions of the High Court transferring the sessions trial from Ambala to Chandigarh.

E Counters have been filed on behalf of the C.B.I.

F It is not disputed that the learned Single Judge of the High Court transferred the case from the Court of Shri A.S. Garg, Sessions Judge, Ambala, to the Court of the Sessions Judge, Chandigarh, *suo moto*, without any application having been made before him by any of the parties for the said purpose and without hearing the accused in the case. Indeed the learned Single Judge of the High Court had the jurisdiction under Section 407 Cr.P.C. to make such an order *suo moto*, on its own initiative, on being satisfied that a fair and impartial trial could not be held in any criminal court subordinate to it but in fairness to the accused it should have been done only after issuing notice to the accused and granting them an opportunity to have their say in the matter. That was not done. Fair play in action has been respected in its breach.

H The accused (appellant Naib Singh) has, in the Memorandum of his Appeal in this court challenging the directions of the High Court stated that the order of transfer had been made behind his back and without any

notice to him or affording him any opportunity to oppose it. It is also stated that while ordering the transfer the learned Single Judge of the High Court did not take into consideration the financial constraints and the inconvenience which would be caused to the accused, who may have to engage new counsel at Chandigarh. The objections raised by the other accused in their appeals are of a similar nature. These objections cannot be said to be devoid of force or merits. Even if the learned Single Judge was of the opinion that the case should be transferred in the interest of justice, it should not have been done without notice to the parties. This we say on the plainest consideration of fair play and justice. We are, therefore, of the opinion that the *suo moto* directions given by the learned Single Judge for transfer of the case to the Court of Sessions Judge, Chandigarh cannot be sustained more particularly in view of the difficulties expressed by some of the appellants to face the trial at Chandigarh, where they may have to engage other counsel at fresh fee etc.

However, with a view to ensure a fair trial of the case, we consider it appropriate, while setting aside the directions dated 28.5.1996 to direct that the case arising out of FIR No. 89 dated 16th July, 1994 shall be tried by the senior most Additional Sessions Judge, Ambala, and not by Shri A.S. Garg, Sessions Judge from whose court it was ordered to be transferred by the learned Singh Judge. The case shall be tried by the transferee court from the stage, in which it was when the same was ordered to be transferred by the High Court. The learned Sessions Judge, Chandigarh shall send the record of the case back to the Court of Sessions Judge, Ambala without any delay. The learned Sessions Judge, Ambala shall then forward the record to the transferee Court (senior-most Additional Sessions Judge, Ambala) and the transferee court shall dispose of the trial of the case expeditiously and as far as possible within three months from the date of receipt of the case file.

With the aforesaid directions the appeals are allowed and disposed of.

We clarify that nothing stated hereinabove shall be construed as any expression of opinion on the merits of the case or be treated as a reflection on the Court of the Sessions Judge, Ambala.

T.N.A.

Appeals allowed and disposed of.