

HIGH COURT OF MADRAS**Date of Decision: 12th January 2024****CORAM: THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA**

Criminal Original Petition No. 24531 of 2023

Dr. A. Paramasivan ... Petitioner**vs.****1. State rep. by Superintendent of Police, SPE/CBI/ACCB/Chennai.****2. State rep. by Inspector of Police, SPE/CBI/ACCB/Chennai. ...
Respondents****Legislation:**

- Section 407 of the Criminal Procedure Code (Cr.P.C.).

- Sections 109 of the Indian Penal Code (IPC).

- Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.

Subject: Petition for transfer of a criminal case (C.C.No.6 of 2019) due to the petitioner's serious health condition and alleged denial of a fair chance to cross-examine witnesses.**Headnotes:**

Transfer of Criminal Case due to Health Condition – Dr. A. Paramasivan, accused in a disproportionate assets case under Sections 109 IPC and Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, seeks transfer of his case citing a serious health condition (Adenocarcinoma) and inadequate opportunity to cross-examine witnesses due to rapid trial progression. [Paras 2, 3, 4, 7, 12, 14]

Previous Conviction and Ongoing Trial – Petitioner already convicted in another case (C.C.No.9 of 2015), currently facing trial in the present case with 22 witnesses examined between 6.4.2022 and 25.8.2023. Petitioner undergoing extensive medical treatment including surgery and chemotherapy. [Paras 3(iii), 3(v)]

Trial Court's Decision on Postponement Request – Trial court dismissed petitioner's request for case postponement (Crl.M.P.No.7718 of 2023), considering it a delaying tactic, despite petitioner's serious health condition. [Paras 3(vi), 8]

Legal Provisions for Postponement or Adjournment – Section 309 of Cr.P.C. discusses the postponement of proceedings, allowing it for reasons beyond the control of a party, balancing the need for speedy trial and fairness. [Para 10, 11, 13]

High Court's Decision – Considering the balance of convenience and fairness, the High Court ordered the transfer of C.C.No.6 of 2019 from VIII Additional District Sessions Judge, Court of Principal Special Judge for CBI Cases, Chennai to XIV Additional Judge (Special Court for CBI Cases), Chennai. [Paras 14, 15]

Referred Cases: Not listed in the order.

Representing Advocates:

- For Petitioner: Mr. T. Sivananthan, assisted by Ms. M. Anitha.

- For Respondents: Mr. K. Srinivasan, Special Public Prosecutor for CBI Cases.

ORDER

The High Court of Madras, presided by Justice A.D. Jagadish Chandira, ordered the transfer of a criminal case involving Dr. A. Paramasivan, facing charges under the IPC and Prevention of Corruption Act, 1988, to a different court. The petitioner, diagnosed with a severe health condition, argued for the transfer due to rapid trial progression and lack of fair opportunity for cross-examination. The trial court's dismissal of his postponement request was challenged. The High Court, emphasizing the balance between speedy trial and fairness, directed the transfer of the case to ensure justice.ORDER

The present petition has been filed by the first accused in C.C.No.6 of 2019 on the file of the VIII Additional District Sessions Judge, Court of Principal Special Judge for CBI Cases, Chennai, seeking transfer of the case to some other competent Special Court for CBI Cases in Chennai.

2. The petitioner is A1 in the Calendar Case before the Trial court facing the case for the offences punishable under Sections 109 IPC read with Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. His wife, who was also implicated in the case, was, subsequently discharged by an order dated 29.7.2021 passed by the Trial Court.

3. The factual background of the case is as under:-

i) The petitioner, a permanent resident of Noida, who was serving as Director (Audit), AGM-II, in the office of the Director General of Audit, Control Expenditure, New Delhi and thereby a public servant, is alleged to have indulged into the offence by intentionally enriching himself illicitly during the period from 1.1.2010 to 22.4.2014, by possessing pecuniary resources and properties disproportionate to the extent of Rs.30,40,296/- in his name and in the name of his family members, which works out to 80.48% disproportionate assets to the known sources of income for which, he could not satisfactorily account for.

ii) On completion of investigation, final report in RC42(A)/2014/CBI/ACB/CHENNAI came to be filed by the respondent before the Trial Court.

iii) The petitioner already stands convicted in another case by the same Trial Court in C.C.No.9 of 2015 by order dated 14.12.2022 and on filing Criminal Appeal No.1311 of 2022 before this court, he was enlarged on bail by this court in Crl.M.P.No.19895 of 2022 by order dated 23.1.2023.

iv) Whiles, the trial in the present case in C.C.No.6 of 2019 had commenced and the prosecution witnesses viz., P.W.1 to 22 were examined between 6.4.2022 and 25.8.2023.

v) In the meanwhile, the petitioner was diagnosed with the ailment ADENOCARCINOMA OF OESOPHAGOASTRIC JUNCTION, a rare type of cancer of the esophagus, the tube that connects the mouth and stomach. He was admitted in GEM Hospital, Institute of Gastroenterology & Laprosopy, Chennai twice, one from 9.6.2023 and 17.6.2023 and another was from 25.7.2023 to 27.7.2023 and there, he underwent a surgery on 10.6.2023. Further, he underwent four cycles of adjuvant chemotherapy which needs frequent hospital admission and it would take a period of six months.

vi) On the ground of ill health, requests for adjournments weremade on behalf of the petitioner, since he could not pursue the matter amidst his poor health condition, however, the trial was proceeded and evidence was recorded and documents were marked on various dates from 13.6.2023 to 28.8.2023 without there being a fair chance for the petitioner to cross-examine the witnesses.

vii) Thereupon, a petition in CrI.M.P.No.7718 of 2023 under Section 309 Cr.P.C. was filed on before the Trial Court 25.8.2023 seeking for postponement of the case for two months and the same was dismissed by the Trial Court holding that the petition was filed only to delay the trial, aggrieved against which, the present petition has been filed seeking transfer of the case to some other competent Special Court for CBI Cases in Chennai.

4. Mr.T.Sivananthan, learned counsel appearing for the petitioner would submit that the petitioner, who is diagnosed with a serious ailment and undergoing chemotherapy and surgeries as evident from the medical recorded produced, sought for a reasonable time to defend his case in proper perspective, however, the same has been misconceived by the Trial Court as a delaying tactics and proceeded with the trial by examining many witnesses and marking various documents, ignoring the pivotal aspect that the petitioner has not been provided with a fair chance to cross examine the witnesses and thereby, the petitioner apprehends that he could not face a fair trial and thereby, in the interest of just, the case has to be transferred to some other competent Special Court for CBI Cases in Chennai.

5. Having heard the arguments of opposition of Mr.K.Srinivasan, learned Special Public Prosecutor and perused the medical records produced by the petitioner with regard to the health condition of the petitioner, this court

had directed the learned Special Public prosecutor to verify the truthfulness of the same.

6. Pursuant to the directions of this court, a Report dated 11.12.2023 came to be filed by the Superintendent of Police, HoB/CBI/ACB, Chennai alongwith the Reports obtained from various hospitals.

7. Having perused the said Report, this court found that the petitioner had undergone Chemotherapy at Gem Hospital, Chennai, from 26.03.2023, and surgery for Adenocarcinoma of Oesophagoastric on 11.06.2023, and subsequently, he had been on continuous Chemotherapy and thereby, called for the remarks from the Trial Judge on the Affidavits of the petitioner and the Report filed by the CBI.

8. The Trial Judge, vide his letter in Dis.No.33/2024 dated 9.1.2024, has submitted his remarks, relevant portion of which is extracted hereunder for ready reference:-

"(5) I further submit that when the petition in Crl.M.P.No.7718 of 2023 was taken up for enquiry, I directed the respondent to file counter along with medical condition of the petitioner as such counter along with xerox copy of the medical certificate issued by Gem Hospital was filed. The Gem hospital certified that the accused was diagnosed to have Adenocarcinoma OG Junction, Siewert Type II, Post 4 Cycles FLOT Chemotherapy and he underwent Minimally Invasive Ivor-Lewis Esophagectomy on 11.6.2023. Since, the petitioner was not hospitalized for taking treatment as an inpatient at the time of passing of order in Crl.M.P.No.7718 of 2023, I dismissed the petition and I proceeded with parted trial.

(6) *I further submit that during the trial, I am always keeping in mind that in every enquiry or trial the proceedings shall be continued from day to day until all the witness in attendance have been examined unless the court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded in terms of sub section (1) of section 309 Cr.P.C.*

(7) *I further submit that the petitioner in Crl.O.P.No.24531 of 2023 has not assigned any valid reason to consider any circumstances were existed beyond his control in terms of proviso of sub section (2) of section 309 Cr.P.C. to grant adjournment before attendance of the witness examined in C.C.No.6 of 2019...."*

9. A perusal of the remarks submitted by the Trial Judge makes it clear that the Trial Judge was apprised of the illness being suffered by the petitioner and on that ground, postponement of the case was sought for. However, the Trial Judge had proceeded with the trial after declining such a request only on the basis of the embargo in the legal provisions.

10. The relevant legal provisions relating to the power of the court to postpone or adjourn the proceedings are extracted hereunder:-
"309. Power to postpone or adjourn proceedings.

(1) *In every inquiry or trial, the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.*

(2) *If the Court, after taking cognizance of an offence,*

or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable ...

.....

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing

.....

Provided also that --

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party."

11. No doubt, the above legal provision puts a check on the postponement of the case unnecessarily, however, it does not totally ban such action. A reading in between the lines would make it clear that postponement of the case can be made by recording reasons/circumstance therefor, which, if found beyond the control of the party seeking such postponement.

12. In the case on hand, the petitioner had sought for such postponement on medical ground and when the same has been declined by the Trial Judge, it appears that the petitioner had developed an apprehension that his interest could be prejudiced if the trial is proceeded before the same Judicial Officer. A thorough reading of the remarks submitted by the Judicial Officer makes it clear that he is guided only by the sole intention of speedy

trial without any bias and slightly overlooking the genuineness of the plea of the petitioner for postponement of the trial considering his inability to pursue the case due to his health condition, which resulted into an unpleasant and inconducive situation for proceeding the trial before the same Judicial Officer.

13. While the Judicial Officer concentrates on the concept of speedy trial, the petitioner apprehends hasty decision on rejection of his plea for postponement of the trial even on medical grounds. Normally, the right of speedy trial would be claimed by the party, who faces the trial to get a verdict in either way so as to get rid of the ordeal of the criminal case. Such a right is well guaranteed by the statute. Per contra, when postponement of trial is sought by the party, who faces the same, it would be assumed and presumed as a delaying tactics to gain the personal liberty availed pending the trial. Therefore, a balanced view needs to be taken after a thorough analysis between the scope for speedy trial and the intention of the party who pleads for postponement.

14. There is no doubt about the theorem that justice delayed is justice denied. By the same token, hasty justice is not a preferred alternative to delayed justice. While an attempt to expedite the processing of criminal cases need to be appreciated, it should be borne in mind that it should not be at the cost of discouraging the defence to putforth their case. Therefore, while considering the necessity of elimination of delay in the disposal of criminal cases, due care needs to be exercised to prevent undue speed or haste in the matter of disposal, because it would result into unfair play. Therefore, considering the balance of convenience, this court is of the view that in the interest of justice, it would be proper to withdraw and transfer the case in C.C.No.6 of 2019 pending on the file of VIII Additional District Sessions Judge, Court of Principal Special Judge for CBI Cases, Chennai to some other Court for CBI Cases at Chennai.

15. Accordingly, the case in C.C.No.6 of 2019 pending on the file of VIII Additional District Sessions Judge, Court of Principal Special Judge for CBI Cases, Chennai is withdrawn and transferred to the file of XIV Additional

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