

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRIMINAL) NO. 330 OF 2020

ANIL GOEL

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

O R D E R

This transfer petition is filed under section 406 of the Code of Criminal Procedure, 1973 (CrPC) seeking transfer of CC/4/2019 titled "*CBI vs. Anil Goel*" pending before the court of the Special Judge (SPE/CBI) at Thiruvananthapuram to any Special Court at Mumbai.

I have heard learned Senior Counsel, Shri Neeraj Kishan Kaul, appearing for the petitioner and learned Additional Solicitor General (ASG), Ms. Aishwarya Bhati, assisted by learned counsel Ms. Archana Pathak Dave, for the respondent and perused the material on record.

Briefly stated the facts are that the petitioner has retired from Indian Revenue Service on attaining the age of superannuation. The petitioner, on joining the Indian Revenue Service, was subsequently promoted as Deputy Commissioner, Joint Commissioner and Commissioner of Income Tax and thereafter promoted as Chief Commissioner of Income Tax and retired from service in January, 2018.

The petitioner is stated to have undergone a Coronary Angiography in the year 2014 having two stents placement and that he was hospitalised for the said purpose. Thereafter in the year 2016, he was diagnosed with Multiple Myeloma and has undergone bone marrow transplant which was conducted in Jaslok Hospital and Research Centre, Mumbai.

That on 18th December, 2015, FIR bearing no. 18(A)/2015 was registered against the petitioner on the basis of Source Information. The said FIR was also registered against other persons. Upon investigation, a final report under section 173(2) of the Cr.P.C. was filed against the petitioner on 31st July, 2017 on certain charges which are extracted in pages 4 and 5 of the petition filed by the petitioner herein.

The sum and substance of the charges is that the petitioner had accepted a favour by staying in an apartment/ guest house without paying rent to M/s. Heera Constructions Private Limited during the period February, 2014 to September, 2015. It is not in dispute that M/s. Heera Constructions Private Limited is an assessee under the provisions of the Income Tax Act, 1961. It is in respect of the said allegation against the petitioner that proceedings have been initiated against him before the learned Special Judge (SPE/CBI), Thiruvananthapuram who has taken cognizance of the said FIR by cognizance order dated 24th September, 2019 passed by the said Learned Special Judge. The petitioner, being a senior citizen and suffering from serious ailments, has filed this petition seeking transfer of the aforesaid proceeding before the Competent Court at Mumbai.

Learned Senior Counsel for the petitioner drew my attention to the details of serious ailments that the petitioner, who is a senior citizen, is suffering from. He has also drawn my attention to the allegations against the petitioner herein and contended that the no prejudice would be caused to the respondent if the aforesaid proceeding is transferred to the Competent Court at Mumbai.

In this regard, it was contended that the petitioner would be in a better position to instruct his learned counsel and also as an accused, to effectively defend and participate in the said proceedings in Mumbai.

It was also contended that the matter is still at the stage of framing of charges and the recording of evidence has not yet commenced. Hence it would be in the interests of the petitioner to transfer the said proceedings from the Court at Thiruvananthapuram to a Competent Court at Mumbai.

Per contra, learned ASG objected to the said transfer of the aforesaid proceeding as about twenty witnesses are residing in Thiruvananthapuram in Kerala State and the prosecution would be better assisted in prosecuting the said proceeding in Thiruvananthapuram rather than at Mumbai. It was also submitted that there will be practical difficulties if the witnesses have to travel all the way from Thiruvananthapuram to Mumbai, as and when, they have to let in their evidence. It was contended that the proceeding would be completed in a faster pace, if it remains before the court at Thiruvananthapuram.

It was also submitted that having regard to the ailments and illness of the petitioner video conferencing facility may be adopted as a mode through which the petitioner could appear along with his counsel and the proceeding need not be transferred to the Competent Court at Mumbai.

By way of reply, learned Senior Counsel appearing for the petitioner, submitted that if video conferencing facility is to be made use of in the instant proceedings then, in that case, the transfer of the case from the court at Thiruvananthapuram to the Competent Court at Mumbai, could be made. The witnesses could be given an option of either be physically present in person before the Competent Court at Mumbai or through video conferencing facility from Thiruvananthapuram.

It was urged that ultimately the learned prosecutor who is in charge of the said proceeding has to take a call and hence liberty may be reserved to the witnesses and as well as the learned prosecutor to appear through video conferencing facility from Thiruvananthapuram by the transferring the matter from the court at Thiruvananthapuram to a Competent Court at Mumbai.

I have considered the pleadings and contentions advanced on behalf of the respective parties.

It is not in dispute that a criminal proceeding has been initiated against the petitioner before the court at Thiruvananthapuram. The respondent has also not disputed the fact that the petitioner is a senior citizen who has retired from service and is suffering from serious illness and the medical condition of the petitioner may not permit him to leave Mumbai so

as to travel to Thiruvananthapuram for the purpose of defending the said case.

In the circumstances, the question that would arise is, as to whether, the interest of justice would be best secured if the proceeding could be transferred from court at Thiruvananthapuram to the Competent Court at Mumbai. In this regard, learned ASG submitted that there are as many as twenty witnesses who have to let in their evidence and hence, it would not be practical for all the witnesses to travel from Thiruvananthapuram to Mumbai for the purpose of deposing in the said matter. Also since the learned prosecutor is based in Thiruvananthapuram the ends of justice would be better served if the proceeding remains at the court at Thiruvananthapuram.

However as against the said submission, it is also to be noted that the petitioner herein is an accused. It is not in doubt that the prosecution must be in a position to effectively prosecute the proceeding against an accused but at the same time the rights of the accused to effectively defend himself in a prosecution against him must also be taken note of. Having regard to the fact that the petitioner who is arrayed as an accused in the aforesaid proceeding is indeed suffering from serious ailments and is not in a position to travel from Mumbai to Thiruvananthapuram on every occasion when the case is posted before the said court, I am of the considered view that the ends of the justice would be best served if the proceeding being CC/4/2019 is transferred from the court of the Special Judge (SPE/CBI) at Thiruvananthapuram to a Competent Court

at Mumbai.

It is also clarified that the respondent is at liberty to prosecute the said proceeding either physically before the competent Special Court at Mumbai or virtually with the aid of video conferencing facility.

The presiding officer of the concerned Special Court at Mumbai may permit the learned counsel for the respondent/ the learned prosecutor and the witnesses for the prosecution to appear either physically in the court at Mumbai to which the proceeding is to be transferred or virtually through video conferencing facility from Thiruvananthapuram.

In the event, video conferencing facility is made use of in the proceeding all safeguards in respect of the said facility, shall be taken care of by the presiding officer/technical staff of the Special Court at Mumbai.

Since the witnesses are in Thiruvananthapuram and if they desire to appear physically before the court at Mumbai on a particular date to depose, the petitioner shall not seek any adjournment on the said date so as to make the travel of the concerned witnesses all the way to Thiruvananthapuram to Mumbai futile.

The learned presiding officer of the Special Court at Mumbai shall dispose of the proceeding as expeditiously as possible with the cooperation of learned counsel on both sides.

The transfer petition is hence allowed and disposed of in the aforesaid terms.

Interlocutory application, if any, stands disposed of.

**.....J.
(B. V. NAGARATHNA.)**

**New Delhi
28th March, 2022**

