

Gauhati High Court

Konthoujam Ibocha Singh And Ors. vs Konthoujam Ibobi Singh And Ors. on 15 March, 1976

Equivalent citations: 1976 CriLJ 1305

Author: K Lahiri

Bench: K Lahiri

JUDGMENT K. Lahiri, J.

1. This is an application under Section 407 read with Section 482 of the Criminal Procedure Code praying for transfer of Criminal Revision No. 36 of 1975 from the file of Mr. Y. Ibotombi Singh, Additional Sessions Judge, Manipur to this Court for disposal. It may be stated here that the Criminal Revision was originally numbered as Criminal Revision No. 54 of 1974 when it was pending in the Court of the Sessions Judge, Manipur.

2. The requisite facts and events are set forth herein below:

3. As far back as 11-11-71 on a police report the Magistrate, 1st Class, Imphal West, drew up proceedings under Section 145 of the Criminal P. C. in respect of some agricultural land. In the said proceedings the present Petitioners were described as "first party" and the Opposite Parties as "second party". The trial Court dropped the proceedings but the said order was set aside by this Court in Criminal Revision No. 15 of 1973. The trial Court decided the proceedings in favour of the present Petitioners and declared their possession in respect of the disputed land on 7-9-1974. Thereafter, the present Opposite Parties, as Petitioners, filed a Criminal Revision before the learned Sessions Judge, Manipur, who admitted the said Revision and registered the case as Criminal Revision No. 54 of 1974 and stayed the operation of the order passed by the trial Court. The present petitioners appeared before the learned Sessions Judge and sought to vacate the stay order but were unsuccessful. It is stated that thereafter the present petitioners moved this Court and obtained orders on 6-11-1974 and on 28-11-1975 from this Court setting aside the orders passed by the learned Sessions Judge on 21-9-1974 and 10-10-1974. In the present petition it is stated that on 26-3-1975 the present Petitioners filed another Criminal Revision before this Court praying for transfer of the Criminal Revision No. 54 of 1974 from the file of Shri N. Budhachandra Singh Sessions Judge, Manipur to a Court of competent jurisdiction etc. In view of the pendency of the said application the learned Sessions Judge at Manipur stayed further proceedings of the Criminal Revision then pending in his Court and it is alleged that being aggrieved by the stay order passed by the learned Sessions Judge the present Opposite Parties filed a Criminal Misc. Case No. 8 of 1975 in this Court praying for direction to the Sessions Judge to dispose of the said Criminal Revision and also praying that the disputed land in question be kept under attachment and a receiver be appointed. It is stated that in the said Criminal Revision Shri Y. Iino Singh, Advocate acted on behalf of the Opposite Parties till 15-12-1975 before the High Court at Imphal Bench. It is further alleged in the petition that previously also the said learned Counsel appeared on behalf of the present opposite parties before the Magistrate as well. It is also alleged in the petition that this Court transferred the Criminal Revision No. 54 of 1974 to the file of Mr. Y. Ibotombi Singh, Additional Sessions Judge of Manipur by its order dated 24-11-1975 in Criminal Misc. Case No. 79 of 1975. Although Mr. Y. Imo Singh, the learned Advocate appeared for the Opposite Parties before the trial Court since as far back as 24-10-73, it is alleged in the present petition that the petitioners could only know about the

engagement of Mr. Y. Imo Singh by the Opposite Parties on 30-12-75 when they came across the order of the High Court passed on 15-12-75. It is alleged that thereafter they made an application on 31-12-1975 before Sri Y. Ibotombi Singh, Additional Sessions Judge of Manipur for postponing the hearing of the case which according to the Petitioners commenced in his Court on 26-12-1975 after being registered as Criminal Revision No. 36 of 1975. In the said application it was stated that further proceedings before the learned Additional Sessions Judge should be stayed because the Petitioners were making necessary arrangement for moving the High Court to have the case transferred from his file. On perusal of the said application and upon hearing the parties, the learned Additional Sessions Judge, Manipur passed an order on 31-12-1975 staying further proceedings. The learned Additional Sessions Judge observed that the present Petitioners received a notice in respect of the transfer of the case to his file on 3-12-1975. But even after knowing that his brother Mr. Y. Imo Singh was engaged by the present Petitioners before the trial Court and also in the High Court, the present Petitioners did not take any steps earlier. According to the learned Additional Sessions Judge the argument of the case continued for 2 days in his Court and the application seeking stay of further proceedings before him was belated and was not made in good faith and it appeared to him that the petitioners were trying to delay the proceedings pending before him. The learned Additional Sessions Judge has categorically stated that the allegation that his brother Mr. Y. Imo Singh was living in a common mess with the learned Judge was completely false. The learned Additional Sessions Judge further observed that his brother Mr. Y. Imo Singh never appeared before his Court in connection with the present case or in any other case. The learned Additional Sessions Judge further observed that the present petitioners sought for transfer of this case from the file of the Sessions Judge and obtained an order to have the case tried and disposed of by him "within one month's time". The learned Additional Sessions Judge categorically observed as follows:

In the circumstances, I consider that there are not sufficient grounds for referring the Hon'ble High Court for the transfer of this case from the file of this Court.

But, in the concluding portion of the order he has observed as under:

However, I feel that justice should not only be done but should also appear to have been done. Therefore, the case is adjourned till 16-1-1976 so as to enable the respondents to move an application to the Hon'ble High Court for the transfer of this case from the file of this Court.

4. Mr. A. K. Bhattacharyya, the learned Counsel appearing on behalf of the Petitioners has categorically and specifically made statements to the effect that he does not rely on "the Affidavit-in-Rejoinder/Reply" filed in this Court on behalf of the present Petitioners on 27-1-1976. The learned Counsel submits that his clients have no allegation against the learned Additional Sessions Judge. He submits that the brother of the learned trying Judge in fact held the brief of the present Opposite Parties before the Trying Magistrate and also before the High Court and acted on behalf of the Opposite Parties in the capacity of an Advocate and that the learned Sessions Judge and the said Counsel live in the same house and as such his clients apprehend that they may not get justice from the trial Judge. His submissions are that the Petitioners have reasonable apprehension that a fair and impartial enquiry or trial in the said Criminal Revision cannot be had in the Court of

the learned Additional Sessions Judge at Manipur and therefore, it is just and expedient that the said Revision be transferred to and tried by this High Court. The learned Counsel also pointed out before me that a Civil Appeal No. 60 of 1970 was so transferred to this High Court for trial itself.

5. Mr. A. Sarma, the learned Counsel appearing on behalf of the Opposite Parties has submitted very fairly that the exercise of the power by this Court is very much there and the Court should exercise the power whenever the Court deems it proper that the case is a fit one for transfer under Section 407 of the Criminal P. C. The submission of the learned Counsel is that on a true and proper construction of the order made by the learned Additional Sessions Judge there cannot be any doubt whatsoever about fairness and impartiality of the trial Judge. According to the learned Counsel the order of the learned Additional Sessions Judge is eloquent enough to show the boldness of a Judicial Officer. According to the learned Counsel, the Additional Sessions Judge did not feel it necessary or expedient to ask for a reference in the instant case. According to the learned Counsel there can be no presumption against the impartiality and fairness of the persons in charge of the administration of Justice. The learned Counsel submits that the burden lay heavily on the person to show and establish that there is at least some foundation rebutting the said presumption and that the petitioners have failed to make out a case necessitating transfer of the case from the file of the trial Judge.

6. Learned Counsel for the Petitioners has submitted that his case is covered by Section 407(1) (a) and (c) of the Code. He submits that the Petitioners have made out a case that a fair and impartial enquiry or trial cannot be had before the learned Additional Sessions Judge. He submits that in any view of the matter it is expedient for the ends of justice that the case be transferred. The learned Counsel lays special emphasis on the last part of the order of the learned Sessions Judge wherein he felt "that justice should not only be done, but should also appear to have been done".

7. Now let me consider the arguments advanced by the learned Counsel for the Petitioners. As stated already, the learned Counsel for the Petitioners was fair enough to submit that "the Affidavit-in-Rejoinders/Re-ply" filed on behalf of the Petitioners on 26-1-1976 should not be taken note of by me as the learned Counsel submitted that he was not going to make any use thereof and the said affidavit may be treated by me not forming a part of the records and that I should not act on it. Therefore, let me see what are the allegations. The first allegation that has been made in the case, which has some casual connection with this transfer application, is that Shri Y. Imo Singh, Advocate appeared on behalf of the Opposite Parties and conducted cases before this High Court in connection with the present case and that the said learned Advocate is full brother of and living under the same roof and having same mess with the learned trial Judge at Imphal. It is also alleged in the petition that the Learned Counsel aforesaid appeared on behalf of the present Opposite Parties in the Court of the Magistrate in Manipur. These allegations have been made in paragraphs 1 and 2 of the petition. The next allegation is made in paragraph 13 of the petition wherein it has been stated that in the Criminal Misc. Case No. 8 of 1975, the said learned Advocate was engaged by the Opposite Parties in this Court and the learned Counsel drew up the affidavit on behalf of his clients and filed power to appear before this Court and in fact did appear until 15-12-1975 in the said case. In paragraph 16 of the petition it has been stated that the said learned Counsel never appeared before the trial Judge but the Opposite Parties used to visit the house of the said learned Counsel

from at least early 1973 to 15-12-1975 in connection with the present case. Besides the above grievances made in the petition the learned Counsel did not press before me or could point out any other factor which I should take into consideration for transferring the case.

8. Therefore, in short, it comes to this that because the Opposite Parties of the present case engaged Mr. Y. Imo Singh, an Advocate in connection with their case in the trial Court as also in the superior Courts and when the matter has been transferred to the file of the trial Judge, who happens to be the brother of the Counsel aforesaid and when the clients used to go to the house of the learned Counsel wherein the trial Judge also lives to common mess and under the same roof, there is a reasonable apprehension in the minds of the Petitioners that they may not get- a fair and impartial Justice before the learned trial Judge.

9. The Opposite Parties have filed an affidavit and they have admitted some of the facts and denied the rest. According to the Opposite Parties, the learned Advocate Mr. Y. Imo Singh was, in fact, engaged by them in the trial Court as also in the High Court, but the learned Counsel appeared in the case on requests made by the Petitioners' leading Advocate Mr. M. Charugopal Singh. It was stated that in view of personal inconveniences and difficulties of Mr. Charugopal Singh and on requests made by the said Counsel the Opposite Parties engaged Mr. Y. Imo Singh, Advocate from time to time in the trial Court as also in the superior Courts. The Opposite Parties admit that the learned Counsel aforesaid did in fact appear before that Magistrate as also in the High Court, as stated in the petition by the Petitioners. The Opposite Parties stoutly deny the fact that the learned trial Judge lives in common mess with the learned Counsel, as alleged by the Petitioners. The Opposite Parties have very categorically and clearly stated in paragraph 16 of their Affidavit-in-Opposition that they never visited the house of the learned Counsel Mr. Y. Imo Singh in connection with this case. They have categorically stated that the learned Counsel had his chamber away from the dwelling house and on occasions when they went to meet the learned Counsel they had conferences in his chamber, which is situated far away from the residential house of the learned Counsel. They have further stated that Mr. Y. Imo Singh is one of the leading members of the Bar and has extensive practice. They have stated categorically that the entire responsibilities of conducting and pleading the case on behalf of the Opposite Parties were entrusted on Mr. Charugopal Singh, Advocate and the engagement of Mr. Y. Imo Singh was on account of certain personal inconvenience of Mr. Charugopal Singh, Advocate. In the present case, the learned Counsel Mr. Y. Imo Singh has not been made a party nor the learned Judge and as such, I have nothing before me to know as to what they have to say in connection with this case excepting the order sheet of the learned Judge dated 31-12-1975. On perusal of the said order sheet it is clear that the learned trial Judge has categorically stated that he was not living in common mess with the learned Counsel and the said allegation was false. The learned Judge has also stated that he did not consider it to be necessary to refer the matter to this High Court for transfer of this case from his file, which is indicative of the fact that the learned trial Judge is neither embarrassed nor feels that there is any possibility of a biased judgment in this case or that there is any cause for even a reasonable apprehension that the parties may not get fair justice. The last part of the Order sheet of the learned Judge, which was very much relied upon by the learned Counsel for the Petitioners was an observation of the trial Judge as to whether he should adjourn the case or not in view of the specific order of this High Court to dispose of this matter within a specified time and accordingly the learned

Judge observed that in view of the circumstances of the case, the Petitioners' should be allowed time to move this Court seeking transfer of this case from his file. There is nothing in the Order sheet to show or indicate that the learned trial Judge has any feeling in his mind that justice may be denied if the case is disposed of by him. He is himself confident about his impartiality.

10. Now, the learned Counsel for the Petitioners submits that the Petitioners consider that they may not get a fair trial. The basis or foundations of this apprehension have already been stated. Each and every imaginary apprehension cannot be the foundation of a transfer of a case. It is undoubtedly true that the justice should not only be done but should also appear to have been done, but along with it, it must be observed that there should not be any unreasonable, impracticable impression in the mind of the public about the honesty and integrity of, the judiciary. I am now considering the application on its merit. The learned Counsel does not deny that Mr. Y. Imo Singh is an Advocate of standing. Rules have been framed under the Advocates Act, 1961 wherein the ethics and duties of the Counsel have been set forth. In the said Rules excepting the bar imposed under Rule 6 of the Rules framed under Section 49(c) of the Advocates Act, 1961 there is no other bar of severance of relationship of an Advocate with a Judge, who happens to be his near relation. I am quoting Rule 6 which reads as under:

An advocate shall not practise before a Judge sitting alone or a Bench of Judges, if the Judges or any other member of the Bench is related to the Advocate as husband, father, grand-father, son, grand-son, brother, father-in-law, son-in-law, brother-in-law, uncle, nephew, first cousin, wife, mother, daughter, sister mother-in-law, daughter-in-law, sister-in-law, aunt or niece.

Therefore, an advocate cannot practise before a Judge sitting alone or a Bench of Judges if the Judge or any member of the Bench is related to the Advocate as brother. There is no allegation that this Rule has been violated. The learned Counsel for the Petitioners admits that on no occasion either in connection with this case Mr. Y. Imo Singh practised before the learned trial Judge (sic). There is no Rule framed by the Bar Council or under the Advocates Act whereby an Advocate is prohibited to live with a Judge having such relationship in the same house. Therefore, there is no bar for a Counsel to live with a Judge in the same house. Conversely, the learned Counsel for the Petitioners could not point out before me any Rules or any provision of any law whereby a Judge is prohibited to live with his relation, who happens to be an Advocate under the Advocates Act, 1961. Under these circumstances, the learned Counsel for the Petitioners has fairly admitted that neither the Judge nor the learned Counsel committed any breach of any ethics in living in the same house. The learned Counsel submits very fairly that ordinarily this cannot be a ground for transfer of a case. He submits that it is not the case of living together alone but the common messing by the trial Judge with the learned Counsel which is creating a reasonable apprehension in the minds of his clients. The learned Counsel submits that on the top of it there is a specific allegation that the clients of the learned Counsel used to visit the house jointly occupied by the trial Judge as also the learned Counsel, As stated earlier, the learned trial Judge has categorically denied that he has a common mess with the learned Counsel. The Opposite parties on oath have denied the said allegation. Under these circumstances, I must hold that the Petitioners have not been able to satisfy me in regard to the allegation of common messing.

11. The next and the strongest point, namely, the Opposite Parties used to visit the house jointly occupied by the trial Judge and the Counsel from 1973 till 15-12-1975, if true, may cause some apprehension that in all fairness the case should not be tried by the learned Judge. I have scrutinised the matter very thoroughly. When the application was made before the trial Judge, the Petitioners did not set out this allegation either expressly or by implication. I find that the said allegation has been made for the first time before this Court. I have also pointed out earlier that the Opposite Parties have clearly and categorically asserted that they did never visit the house of the learned Counsel in connection with this case but they used to meet the learned Counsel casually when occasion required, in his chamber, which is far away from the residential house in question. Under these circumstances, I cannot hold that the Petitioners have made out any case to satisfy my mind that the clients used to visit the house in question as alleged by them in their petition. Further reasons to doubt the correctness of the statement emanates from the conduct of the Petitioners themselves. They came up before this Court seeking transfer of the very case from the file of the learned Sessions Judge and obtained an order from this Court to have the case tried by the learned trial Judge. Even when such an order was made, no objection was raised by the Petitioners to have their case tried by the trial Judge. If, in fact, they had the knowledge that the Opposite Parties used to visit the residence of the learned Counsel from 1973 they would have most certainly objected to the transfer so made by this High Court. Apart from that, the allegation of the Petitioners that they knew about the relationship only in December, 1975 appears to be made for the purpose of this case, as I have already pointed out that the petitioners have stated on oath that they knew that the Opposite Parties used to go to the residence since 1973. If, in fact, the statements were true it cannot be comprehended that they should wait so long to file this application before the trial Judge to postpone the hearing, which, as stated by the learned Judge, came almost to an end after two days of hearing. Further, the admitted fact is that Mr. Y. Imo Singh is a senior Counsel of Manipur having along practise, as stated on oath. I cannot believe that such a Counsel or any other Advocate can ever make any endeavour to influence the mind of a trial Judge in the manner as alleged by the Petitioners. Unless some strong allegations are made and foundation therefor exists, I cannot merely act on imaginary impression in the mind of the parties having no foundation even for a doubt as to the honesty and integrity of a Counsel. I have faith and confidence on the members of the noble legal profession and I shall not accept any allegation against a member of the legal profession unless there is basis or foundation thereof. Similarly, I have implicit confidence in the fairness and impartiality of the subordinate judiciary under this High Court. A mere wild allegation of the nature cannot call for the exercise of the power of the Court to transfer the case. Further, it is apparent on perusal of the affidavit filed by the Opposite Parties that the learned Counsel was casually engaged from time to time and the leading and the sole Counsel in charge of the case and engaged by them was some other Counsel other than Mr. Y. Imo Singh. In view of the discussions made above, on the facts and circumstances of the case, taking into consideration also the time and the manner of allegation made, I come to the irresistible conclusion that there cannot be any reasonable doubt in the mind of any reasonable and prudent person as to the impartiality and fairness of the trial Judge.

12. The learned Counsel on behalf of the petitioners has strongly contended that justice should not only be done but should manifestly and undoubtedly be seen to be done. This is a very well known principle and the origin of this maxim came from Lord Howart, LCJ, in Sussex Justices Case

reported in (1924) 1 KB 256. But on the facts and circumstances of the present case I do not feel that the said principle is at all applicable in the present case in view of my findings stated above that there is no basis for any apprehension of not having a fair trial. I feel tempted to quote a passage from in R. v. Camborae Justices (1955) 1 KB 41, where the Bench consisted of Goddard, LCJ, Cassels and Slade, JJ. and the judgment was delivered by Slade, J. and it was observed as follows:

The frequency with which allegations of bias have come before the Courts in recent times seems to indicate that Lord Hawart's reminder in the Sussex Justices Case that "it is of fundamental importance that Justice should not only be done, but should manifestly and undoubtedly be seen to be done" is being urged as a warrant for quashing convictions or invalidating orders upon quite unsubstantial grounds and, indeed, in some cases upon the flimsiest pretexts of bias. Whilst indorsing and tully maintaining the integrity of the principle reasserted by Lord Hewart, this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important mat justice should appear to be done than that it should in fact be done.

I am in respectful agreement with the observation of Slade, J. in the above case. In the instant case, I feel that the apprehension raised in the mind of the petitioners may very aptly be described as "a flimsy pretext of bias". If these allegations are accepted and acted upon then the principle that "justice should in fact be done", may be sacrificed at the altar of the maxim that "Justice should be seen to be done". Under these circumstances, I hold that the petitioners have failed to make out any case wherein this Court should exercise its power to transfer the Criminal Revision now -pending before the trial Judge.

13. Before parting with the record, I desire to make an observation that if the petition is allowed by the learned trial Judge, the present petitioners are not without any remedy. They can come up before this Court under Section 401 of the Criminal P. C.

14. I desire to make it known to the learned trial Judge that while hearing the matter he should completely forget about the fact that any application of this nature was filed by the Petitioners and should deal with the merits of the case absolutely unconcerned as to the events that have happened. I am further making it clear that it should not be understood by the learned trial Judge that in order to show his impartiality or fairness he should cause injustice to the present Opposite Parties. He should try this case absolutely unaffected by any circumstances, bearing it in mind that the tough and difficult job of the judiciary is to act impartially and fairly. His only concern should be that he should do justice in accordance with law and I am confident that the learned Judge shall show his boldness and dispose of the case impartially and fairly. This matter must be heard and disposed of within three weeks from the date of receipt of the records by the trial Court.

15. I reject the application with a direction to send down the records forthwith.