

**CC No. 352/2019
CBI Vs. Saleem Hamid Etc.**

20.08.2020

**Present: Sh. Umesh Chandra Saxena, Sr. PP for CBI.
Sh. Tanveer Ahmad Mir, Advocate for A-1 Saleem
Hamid, A-2 Anupam Kumar Sen and A-3 Sunil Kumar
Malhotra on bail.
Sh. Rajmangal Kumar, Advocate for Vijay Kumar
Sharma, AR of A-5 M/s VRCC Pvt. Ltd.**

Matter has been taken up in terms of orders of Hon'ble High Court bearing No. 26/DHC/2020 dated 30.07.2020 and 322/RG/DHC/2020 dated 15.08.2020, through "Hyperlink URL For Conferencing Via Cisco Webex."

Arguments addressed by prosecution in part.

**List for remaining arguments of the prosecution on
21.08.2020 at 02.30 PM, as already fixed.**

**Copy of this order be sent to the Computer Branch to be
uploaded on the official website.**

(SUJATA KOHLI)
District & Sessions Judge-cum-Spl. Judge
(PC Act) (CBI)/RADC/ND/20.08.2020

**IN THE COURT OF MS. SUJATA KOHLI, DISTRICT & SESSIONS
JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE AVENUE
COURT COMPLEX, NEW DELHI**

**RC No. 3(S)/2020/SC-III/ND
U/S 67-B of IT Act and 15 & 21 (2) of POCSO Act, 2012
CBI Vs. M/s Semayra Web Services Pvt. Ltd.**

11.08.2020

Present: Sh. Umesh Chandra Saxena, Sr. PP for CBI.

Matter was taken up through video conferencing hosted by Sh. Suneet Singh Negi, Reader of this Court in terms of orders of Hon'ble High Court bearing No. R-235/RG/DHC/2020 dated 16.05.2020; 16/DHC/2020 dated 13.06.2020 and No. 26/DHC/2020 dated 30.07.2020.

The instant FIR/RC has been received from the Court of Sh. Ajay Gulati, Ld. Special Judge (PC Act) (CBI-12), Rouse Avenue District Court, New Delhi vide order dated 07.08.2020.

Perused.

As correctly observed in the order of Ld. Special Judge, it transpires that one of the main provisions attracted in this case is also under Prevention of Children from Sexual Offences Act, 2012 (POCSO Act, 2012) for which, there are specially notified Courts under the special Act.

As also quite correctly submitted by Ld. Sr. PP as well, the jurisdiction under POCSO Act is special and only the notified Courts are seized of the matters under that Act.

Although this FIR/RC was filed by CBI, but I am also of the considered opinion that since at Rouse Avenue District Court Complex, there is no Special Court, notified under Prevention of Children from Sexual Offences Act, 2012 and presently the jurisdiction is only over Prevention of Corruption Act and other Anti-Corruption Laws as well as Labour Laws and Industrial Disputes Act, the matter may be triable before the Court at Rohini Courts, which would have territorial jurisdiction over the matter.

However, as per the provisions of Section 407 CrPC, if a case is to be transferred from the division of one District & Sessions Judge to the division of another District & Sessions Judge, it would be only, and only the Hon'ble High Court, which shall be empowered to entertain and decide the issue of transfer of the matter.

The following two provisions need to be referred as hereunder:

“407 CrPC. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub- section (1) shall be made by motion, which shall, except when the applicant is the Advocate- General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub- section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with copy of the grounds on which it is made; and no order shall be made on of the merits of the application unless at least twenty- four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose: Provided that such stay shall not affect the subordinate Court' s power of remand under section 309.

(7) Where an application for an order under sub- section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub- section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.”

“408 CrPC. Power of Sessions Judge to transfer cases and appeals.

(1) Whenever it is made to appear to a Sessions Judge that

an order under this sub- section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub- sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under subsection (1) as they apply in relation to an application to the High Court for an order under subsection (1) of section 407, except that sub- section (7) of that section shall so apply as if for the words" one thousand rupees" occurring therein, the words" two hundred and fifty rupees" were substituted."

In view of the provisions of Section 407 CrPC, referred above, let this FIR/RC be placed before the Hon'ble High Court for further appropriate orders.

Ahlmad is directed to send the FIR/RC file to the Ld. Register General, Delhi High Court for 25.08.2020 at 11.00 AM, with a request to place the matter before the Hon'ble High Court for further orders.

A copy of this order be sent to the concerned Court of Ld. Special Judge (PC Act) (CBI).

A copy of this order be sent to the Computer Branch to be uploaded on the official website.

(SUJATA KOHLI)

District & Sessions Judge-cum-Spl. Judge
(PC Act) (CBI)/RADC/ND/11.08.2020