

Court No. - 48

Case :- WRIT - B No. - 3789 of 2023

Petitioner :- Abdul Qyyum

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Alauddin, Fakhruddin

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamsheery, J.

1. Heard Sri Alauddin, learned counsel for the petitioner.

2. Petitioner has challenged the impugned order dated 13.10.2023 whereby the transfer petition filed by petitioner was rejected on following grounds:

" उभयपक्ष के तर्कसंगत बहस को सुनने एवं पत्रावली के अवलोकन से स्पष्ट है कि यह स्थानान्तरण प्रार्थना पत्र उप संचालक चकबन्दी सिद्धार्थ नगर के विरुद्ध प्रस्तुत किया गया है , जिसमें वादीगण द्वारा अवर न्यायालय के पीठासीन अधिकारी के ऊपर कोई ऐसा आरोप नहीं लगाया गया है , जिससे यह सिद्ध हो कि अवर न्यायालय में वादीगण को न्याय नहीं मिल सकता , बल्कि मुख्य कारण निगरानीकर्ता सन्तराम की बहू रेशमा द्वारा अवर न्यायालय के पेशकार व कानूनगो के विरुद्ध किये गये शिकायत के आधार पर अवर न्यायालय की पत्रावली अन्तरित किये जाने हेतु अनुरोध किया गया है , जबकि न्यायालय में वाद का गुणदोष के आधार पर निर्णय लेने का अधिकार पीठासीन अधिकारी को है। ऐसी दशा में प्रस्तुत वाद आधारहीन व बलहीन होने के कारण निरस्त किया जाना उचित प्रतीत होता है।"

3. Learned counsel for the petitioner submits that since the petitioner has an apprehension that he will not get fair order from the concerned authority, therefore, matter ought to have been transferred.

4. Learned counsel for the petitioner submits that since substantial ground exists to transfer the case, therefore, this Court may interfere with the impugned order.

5. It would be apposite to refer a co-ordinate Bench judgment of this Court in **Transfer Application (Civil) No.524 of 2014, Kaneej Fatma Vs. Mohd. Tayyab decided on 12.11.2014.** Relevant paragraphs of said judgment are reproduced hereinafter:

"21. The mere observations of Presiding Officer of the Court while hearing a case does not mean that he has made up his mind in a particular manner so as to justify an allegation of bias against such Presiding Officer and this would not justify transfer of case from one Court to another. A Judge is not expected to remain silent during course of hearing and not to express any opinion. A sphinx like attitude is not expected from a Presiding Officer. There has to be an effective discussion and effective attempt to conciliate or to clarify the misunderstanding or to get the issues clear, so that the issues can be settled or a just and proper decision can be arrived at. If in that process the Presiding Officer would make a statement it should not be misunderstood as an expression of decision. (Smt. Sangeetha S. Chugh vs. Ram Narayan V. and others, AIR 1995 Karnataka 112 and Official Assignee, Madras vs. Inspector-General of Registration, Bangalore and Anr., AIR 1981 Madras 54 or 24).

xxx

23. The allegations of bias of Presiding Officer, if made the basis for transfer of case, before exercising power under Section 24 C.P.C., the Court must be satisfied that the apprehension of bias or prejudice is bona fide and reasonable. The expression of apprehension, must be proved proved/ substantiated by circumstances and material placed by such applicant before the Court. It cannot be taken as granted that mere allegation would be sufficient to justify transfer. In Smt. Sudha Sharma (supra) the Court observed that it is the duty of learned counsel to draft the application and made allegations with utmost care and caution. Hon'ble B.M. Lal, J. (as His Lordship then was), said:

"9. a foremost duty casts upon the counsel concerned while drafting and making allegations in the transfer petition against the Judge concerned with utmost care and caution, particularly in making wild allegations against the Presiding Judge. But, it appears that now-a-days it has become common feature to make allegations against the Court Presiding Judge. The counsel should realise that they are also officers of the Court. Introducing fanciful and imaginary allegations as grounds for transfer and harbouring apprehension such grounds that fair and impartial justice would not be done should always be deprecated.

10. Nonetheless, it is also important for all those who are engaged in the task of administering justice to remember that it is incumbent on them to create and maintain such confidence and atmosphere by giving every litigant an assurance by their judicial conduct that fair and impartial justice will be imparted. It is necessary to create such a confidence in the mind of the litigants so that their faith may not be shaken in Courts of law."

24. Mere suspicion by the party that he will not get justice would not justify transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise. (**Rajkot Cancer Society vs. Municipal Corporation, Rajkot, AIR 1988 Gujarat 63; Pasupala Fakruddin and Anr. vs. Jamia Masque and Anr., AIR 2003 AP 448; and, Nandini Chatterjee vs. Arup Hari Chatterjee, AIR 2001 Calcutta 26**).

25. Where a transfer is sought making allegations regarding integrity or influence etc. in respect of the Presiding Officer of the Court, this Court has to be very careful before passing any order of transfer.

26. In the matters where reckless false allegations are attempted to be made to seek some favourable order, either in a transfer application, or otherwise, the approach of Court must be strict and cautious to find out whether the allegations are bona fide, and, if treated to be true on their face, in the entirety of circumstances, can be believed to be correct, by any person of ordinary prudence in those circumstances. If the allegations are apparently false, strict approach is the call of the day so as to maintain not only discipline in the courts of law but also to protect judicial officers and maintain their self esteem, confidence and above all the majesty of institution of justice."

(Emphasis Supplied)

6. I have carefully perused the transfer petition and it is evident that it was mainly filed on an alleged allegation that the opposite party has filed a complaint against Peshkar, Kanungo as well as that erroneous orders were passed by the Authority.

7. Aforesaid grounds were considered in the impugned order and

as held in Kaneej Fatma (supra) such ground cannot be sufficient to transfer the case and in case the petitioner is aggrieved by any order passed in a legal proceedings, he always has a remedy to challenge it in accordance with law.

8. In the aforesaid circumstances, I do not find any ground to interfere with the impugned order.

9. Writ petition is accordingly dismissed.

Order Date :- 9.11.2023

SB