

Court No. - 11

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 110 of 2023

Applicant :- Sri. Himanshu Gupta

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Another

Counsel for Applicant :- Sheikh Wali Uz Zaman

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Shri Manoj Kumar Yadav, Advocate has filed Vakalatnama on behalf of opposite party no. 2 in Court today which is taken on record.

2. Heard.

3. Present application has been filed seeking transfer of the Case No. 336/2018 (Ritu Gupta Vs. Himanshu Gupta), filed under Section 125 Cr.P.C., pending before Additional Principal Judge, Family Court, Faizabad to any other competent Court outside Faizabad.

4. Grounds to seek the relief, as indicated by learned counsel for the applicant are to the effect that (i) the father of the opposite party no. 2 i.e. Smt. Ritu was running a canteen situated within the premises of the Civil Court and now the said canteen is being run by the brother of the opposite party no. 2 and as such they are in a position to influence the trial Court and (ii) the order(s) dated 11.08.2023 and 15.09.2023 were passed on the dates on which the advocates were abstaining from judicial work on account of call of Bar in the entire state.

5. To substantiate the allegations which are to the effect that the father and brother of the opposite party no. 2 are influential on account of the facts related to running of canteen within the premises of Civil Court, reliance has been placed on Annexure Nos. 17 and 18 to the application but this Court is not impressed on this aspect of the case. The allegations based upon this aspect of the case are completely vague and bald and have been made only to scandalize the judicial

officer.

6. With regard to the order(s) dated 15.09.2023 and 11.08.2023, which were passed when the advocates were abstaining from judicial work on account of call of Bar, it is to be noted that in view of the various pronouncements of the Hon'ble Apex Court, the order can be passed by the Presiding Officer even if the advocates were abstaining from judicial work on account of call of Bar. The Hon'ble Apex Court has observed that it is the duty of all Courts to go on with the matter on their board even in absence of lawyers. The Court must not be privy to strikes or calls for boycotts.

7. It is settled principal of law that mere apprehension or 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 Court 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. Reference can be made to the judgment passed in the cases of **Gurucharan Dass Chadha Vs. State of Rajasthan, AIR 1966 SC 1418**, **Abdul Nazar Madani Vs. State of T.N. (2000) 6 SCC 204**, **Captain Amarinder Singh Vs. Parkash Singh Badal and Ors. (2009) 6 SCC 260**, **Lalu Prasad alias Lalu Prasad Yadav Vs. State of Jharkhand (2013) 8 SCC 593**, **Nahar Singh Yadav and Anr. Vs. Union of India and Ors. (2011) 1 SCC 307**, **Usmangani Adambhai Vahora Vs. State of Gujarat and Ors. AIR 2016 SC 336**, **Amit Agarwal Vs. Atul Gupta 2014 (11) ADJ 414 (All.)**, **Ajay Kumar Pandey, Advocate, In Re., (1998) 7 SCC 248**, **Smt. Munni Devi and others Vs. State of U.P. and others, 2013(2) AWC 1546**, **Chetak Construction Ltd. Vs. Om Prakash & Ors., (1998) 4 SCC 577** and **R.K. Anand Vs. Registrar, Delhi High Court (2009) 8 SCC 106**.

7. For the reasons aforesaid as also taking note of settled principal of law on the issue, this Court is of the view that the present application is liable to rejected and is accordingly **rejected**. Cost made easy.

Order Date :- 6.12.2023

Mohit Singh