IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1368-2015 (O&M)
Date of Decision: March 02, 2015

Harmeet Singh

.....Petitioner

Versus

Navdeep Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Rupinder Khosla, Sr.Advocate with
Mr.Aman Sharma, Advocate
for the petitioner.

Mr.J.S.Bhatti, Advocate
for respondent Nos.1, 4 and 5.

Mr.Shilesh Gupta, Addl.A.G.Punjab.

.....

Naresh Kumar Sanghi, J.

Prayer in this petition filed by Harmeet Singh, Informant/complainant, under Section 407 read with Section 482, Cr.P.C., is for transfer of the case titled `**State vs Arvinder Singh Rana and others**', arising out of FIR No.1, dated 03.01.2014, for the offence punishable under Section 306, IPC, registered at Police Station, Sarabha Nagar, Ludhiana, pending trial in the Court of Shri S.P.Sood, Additional Sessions Judge, Ludhiana, to

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any other Court of competent jurisdiction at Mohali or any other district.

Learned senior counsel, Mr.Rupinder Khosla, submits that respondent No.1-Navdeep Kaur is wife of the petitioner while respondent Nos. 4 and 5 are his parents-in-law. The petitioner and his wife Navdeep Kaur could not pull on well on account of their temperamental differences. After five months of their marriage, respondent No.1-Navdeep Kaur, left the house of the petitioner and started residing with her parents, i.e. respondent Nos.4 and 5. Two petitions, i.e. one under Section 125, Cr.P.C., for grant of maintenance and another under the Protection of Women from Domestic Violence Act, 2005, were presented by respondent No.1-Navdeep Kaur. Respondent No.4-Arvinder Singh Rana, father of Navdeep Kaur, is a practising Advocate at Ludhiana. During her stay with petitioner, Navdeep Kaur was always threatening him (petitioner) and his family members that they would be implicated in false cases since her father was an Advocate at Ludhiana. Due to the abetment and harassment at the behest of Navdeep Kaur, Arvinder Singh Rana and Savjit Kaur, father of the petitioner was forced to commit suicide by jumping into a canal. Before his death, Sukhminder Singh (since

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deceased) had left behind a suicide note. After thorough investigation, the charge-sheet (report under Section 173 Cr.P.C.) for the offence punishable under Section 306, IPC for the prosecution of Arvinder Singh Rana, Savjit Kaur and Navdeep Kaur, was presented. The case was committed to the Court of Session, which was assigned for trial to Shri S.P.Sood, learned Additional Sessions Judge, Ludhiana.

The petitioner wanted to engage a lawyer at Ludhiana to plead his case before the learned trial Court, i.e. Additional Sessions Judge, Ludhiana, but no one accepted his brief. It came to his notice that Bar Association, Ludhiana, had passed a resolution, dated 04.02.2014, Annexure P2, to the effect that no lawyer would appear against the Members of the Bar Association. He further submitted that without the assistance of a lawyer the petitioner would not be in a position to properly put up his version before the learned trial Court. In view of the said circumstances, the learned senior counsel submitted that the case be transferred from the Board of Shri S.P.Sood, Additional Sessions Judge, Ludhiana, to the Court of competent jurisdiction at Mohali or any other Sessions Divisions. In support of his case, the learned senior counsel had placed reliance on **Pankaj**

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Khapra and others vs **State of Rajasthan and another** 2003(3) RajCrlC 1342.

On the other hand, the learned counsel for the State submitted that the Public Prosecutor conducting the cases at Ludhiana would extend his complete assistance to the petitioner side, during trial.

Mr.J.S.Bhatti, learned counsel for respondent Nos.1, 4 and 5 had vehemently opposed the prayer for the transfer of the case from the Board of learned Additional Sessions Judge, Ludhiana, and submitted that the petitioner had no right to intervene in the trial since the same has to be conducted by the Public Prosecutor and not by a counsel to be engaged by the petitioner. In support of his argument, he had placed reliance on **Shiv Kumar** vs **Hukam Chand and another**, (1999) 7 Supreme Court Cases 467; **Sama Ram** vs **State of Rajasthan and another**, 2002 Crl.L.J.3134; and **Maneka Sanjay Gandhi and another** vs **Miss Rani Jethmalani**, AIR 1979 Supreme Court 468.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

In one of the cases decided by his Lordhsip Hewart,

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LCJ, held thus, ‘‘But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.’’

The above quotation was approved by Hon'ble the Supreme Court in **Manak Lal vs Prem Chand**, AIR 1957 SC 425.

To the same effect are the words of Hon'ble Justice Lush, ‘‘One important object, at all event, is to clear away everything which might engender suspicion and distrust of the tribunal and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security.’’ Reference can be made 1877 (2) QBD 558.

In the matter reported in AIR 1926 Lahore 264 it was held that confidence in the administration of justice is an essential element of good Government, and reasonable apprehension of failure of justice in the mind of the applicant should therefore be taken into serious consideration. The criterion is not that the petitioner is apprehensive of a fair trial, but that whether some things have happened or whether the Court has so conducted itself that a reasonable apprehension may arise in the mind of an ordinary reasonable person that he will not have a fair trial (AIR

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1947 Bom 409).

In the matter of **Pankaj Khapra** (supra), Hon'ble the Rajasthan High Court held that the prosecutrix being aggrieved person has a locus standi to oppose the transfer petition. The said observation was made while relying upon yet another judgment of Hon'ble the Rajasthan High Court in the matter of **Radhesh Chandra vs State of Rajasthan**, 1995 CrLJ 3394, where it was held that brother of the deceased woman had locus standi to file such an application.

In the matter of **Pankaj Khapra** (supra),the transfer petition was presented in the Hon'ble High Court on the premise that no proper legal assistance was available to the accused-petitioners at that place as the case related to daughter of an Advocate practising there. It was also apprehended that the accused would not get a fair trial at that place.

In the matter of **Shiv Kumar** (supra), relied upon by Mr.J.S.Bhati, learned counsel for the private respondents, Hon'ble the Supreme Court had explained the object of the provision contained in Section 301, Cr.P.C., while holding that duty of the Public Prosecutor was to act formally and not merely to obtain conviction by any means fair or foul. It was also held that the

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private counsel engaged by the Informant-complainant side was to act under the direction from the Public Prosecutor, who had to conduct the case.

In the matter of **Sama Ram** (supra), it was held that Section 301 (2) Cr.P.C., authorises a privately engaged pleader to act in the case under the direction of the Public Prosecutor.

In the matter of **Mrs.Maneka Sanjay Gandhi** (supra), in para 2, Hon'ble the Supreme Court held as under:-

> "Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more sub-stantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. The grounds for the transfer have be tested on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the Court may

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weigh the circumstances.''

In the facts and circumstances of the said case, Hon'ble the Supreme Court had refused to transfer the case from Bombay to Delhi.

Resolution, Annexure P2, passed by the District Bar Association, Ludhiana, is to the following effect:-

> ''It has come to notice of Executive Committee that Lawyers/Advocates are appearing in personal cases against their fellow advocates in Courts. Recently a senior lawyer has been conducting cross examination on fellow advocate in his personal case in the Court of Ms.Roopa Dhaliwal CJJD Ludhiana. The Executive Committee and members of the bar strongly condemned the act and conduct of that advocate. The Executive humbly request the member not to appear against their fellow advocate as it tarnish the image of the bar on whole.''

Having discussed the factual and legal position, this Court is of the firm view that petitioner, who is the informant and son of the deceased has the locus standi to move an application for transfer of the case from the Court at Ludhiana to any other Court of competent jurisdiction. This Court finds force in the submission of the learned senior counsel for the petitioner that one of the accused is practising Advocate at Ludhiana and the

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Bar has also taken serious note of appearance of fellow Advocate against the members of the District Bar Association, Ludhiana. In such a situation, the petitioner has rightly formed an opinion that he might not get proper justice and, as such, the present petition is allowed. Case titled '**State vs Arvinder Singh Rana and others**', arising out of FIR No.1, dated 03.01.2014, registered at Police Station, Sarabha Nagar, Ludhiana, is directed to be transferred to the Board of learned Sessions Judge, Roopnagar, who may try the case himself or assign it to any other Additional Sessions Judge within his jurisdiction to try the case in accordance with law.

Parties to the lis shall appear before the learned Sessions Judge, Roopnagar, on 16.03.2015.

Learned Additional Sessions Judge, Ludhiana, seized with the present case is directed to send the entire record to the learned Sessions Judge, Roopnagar, immediately.

March 02, 2015 **(NARESH KUMAR SANGHI)**
meenu **JUDGE**

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