

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

Crl. Misc. No.M-34083 of 2015 (O&M)

Date of Decision: 20.10.2015

Manpreet Singh Narang

....Petitioner

Versus

Amarjeet Kaur

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Rakesh Gupta, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Crl. Misc. No.34959 of 2015

This application has been filed under Section 482 Cr.P.C for placing on record Annexure P-4 (colly.).

Criminal Misc. Application is allowed and Annexure P-4 (colly.) is taken on record.

Crl. Misc. No.M-34083 of 2015

The present petition has been filed under Section 407 read with Section 482 Cr.P.C for transfer of the petition filed under Section 125 Cr.P.C bearing Case no.30 of 2015 titled as Amarjeet Kaur vs Manpreet Singh Narang from the Court of Chief Judicial Magistrate, Panipat to any other Court of competent jurisdiction at District Kurukshetra.

Briefly, the facts of the case are that the marriage of petitioner and respondent was solemnized on 13.02.2011. Out of the said wedlock, a female child was born on 27.08.2012. Thereafter, some differences arose between the parties. The respondent filed a petition under Section 125

Cr.P.C against the petitioner which is pending before the Chief Judicial Magistrate, Panipat. An application under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act was also filed. The petitioner also filed a petition under Section 9 of the Hindu Marriage Act. An application for transfer of the case was moved by the petitioner on the ground that the brother of the respondent threatened to kill him through some anti-social elements and his life is in danger. The daughter of the petitioner, who is about three years of age, is also with the petitioner. The child was left by the respondent when she was only six months and thereafter, she was never worried about the welfare of the child. The daughter of the petitioner has been diagnosed as a patient of renal disorder and her regular check up is necessary. The petitioner is having an old aged mother. Keeping in view the interest of the girl child, old aged mother as well as danger from the respondent, the application has been moved by the petitioner.

Learned counsel for the petitioner submits that not only the interest of the family of the petitioner and minor daughter is involved but the petitioner is also apprehending danger to his life at the instance of brother of the respondent. The said case is pending in the Court at Panipat and the petitioner is residing in District Kurukshetra.

Heard the arguments of learned counsel for the petitioner and have also perused the documents available on the file.

Section 407 of the Code of Criminal Procedure is reproduced as under :-

“407. 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 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.”

The request for transfer of the case has been prayed on the ground that the petitioner is apprehending threat at the instance of brother of the respondent and the minor daughter of the petitioner, who is taking regular treatment from the hospital.

Learned counsel for the petitioner was directed to place on record the copy of the prescription slip of the doctor to show as to how the regular medical check up is necessary .

Learned counsel for the petitioner has placed on record some documents by way of moving separate application, which shows that the daughter of the petitioner is taking treatment from “Medanta” hospital and the prescription dated 02.08.2014 has been placed on record. No further prescription of the doctor or any opinion to show that any regular check up or follow up is necessary, has been placed on record. Moreover, the treatment is from the hospital, which is at Gurgaon and the petitioner is asking for transfer of the case from Panipat to Kurukshetra and the distance is not much more.

This Court has power under Section 407 of the Code of Criminal Procedure for transfer of the case from one Court to another but that power is to be exercised if special and convincing reasons are there.

In the present case, the prayer for transfer of the case has been made only on the ground that a threat has been given to the

petitioner by the brother of the respondent and daughter of the petitioner is taking treatment from “Medanta” hospital. Nothing has been brought to the notice of the Court from the averments made in the petition or in the arguments raised by learned counsel for the petitioner that any complaint was made to the police when a threat was given to the petitioner. Neither any specific date and time has been mentioned in the petition nor in the arguments.

Before transferring the case from one Court to another, an opinion is to be formed by the Court to find out as to whether such apprehension in the mind of the petitioner is reasonable or not. The apprehension must appear to the Court to be reasonable, genuine and justified but no such apprehension has been shown except to place on record the document that the daughter of the petitioner is taking treatment from “Medanta” hospital which is also not latest and the same is without any opinion of the doctor. It is not a case of the petitioner that her daughter is taking treatment at a place, where, the petitioner is residing.

Accordingly, I find no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

20.10.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE