

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. M-35420 of 2014
Date of decision: 27.01.2015**

Poonam

...Petitioner

versus

Dimple and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Ankit Goel, Advocate,
for respondent No.1.

Mr. K.S. Lakhanpal, Advocate,
for respondent No.4.

Ms. Anmol Grewal, AAG, Punjab.

RITU BAHRI, J.

This petition under Section 407 read with Section 482 Cr. P.C. is for transfer of criminal appeal titled as 'Dimple Vs. Rajinder Kalsi and others', arising out of Complaint No.33T dated 26.04.2002, decided on 22.03.2014 (Annexure P-3) from the Court of Ms. Jatender Kaur, Addl. Sessions Judge, Patiala, to some other Court of competent jurisdiction.

Marriage of Dimple-respondent No.1 was solemnized with Rajinder Kalsi-respondent No.2 on 01.07.1994 at Patiala as per Hindu rites and rituals. Subsequently, matrimonial dispute arose between them and respondent No.1 filed a petition under Sections 18, 19, 20 and 22 of Protection of Women from Domestic Violence Act, 2005. The petitioner along with respondent Nos. 2 and 3 filed an application for dismissal of the

said petition, which was dismissed vide order dated 08.10.2012 (Annexure P-1) passed by the Judicial Magistrate, Ist Class, Patiala. Revision against the said order was also dismissed by the Additional Sessions Judge, Patiala, vide order dated 01.05.2014 (Annexure P-2). Meanwhile, respondent No.1 filed a complaint under Sections 406/498-A IPC, wherein vide judgment dated 22.03.2014 (Annexure P-3), the present petitioner and respondent Nos. 4 & 5 were acquitted. Against the said judgment, complainant-respondent No.1 filed an appeal before the Sessions Judge, Patiala, which was entrusted to the same Court, which had earlier dismissed the revision petition filed by the petitioner along with respondent Nos. 2 and 3. Therefore, they made an application under Section 408 Cr.P.C. for transfer of the said appeal to some other Court of competent jurisdiction, as the same Court had dismissed their earlier application in a complaint under the Protection of Women from Domestic Violence Act, 2005. The Sessions Judge, Patiala, vide order dated 04.10.2014 (Annexure P-5), dismissed the said application.

In the present case, grievance of the petitioner is that the Judicial Magistrate, Ist Class, Patiala, vide order dated 08.10.2012 (Annexure P-1) had dismissed the application made by the present petitioner along with respondent Nos. 2 and 3 for dismissal of the complaint filed by respondent No.1 under the Protection of Women from Domestic Violence Act, 2005. Revision against the said order has been dismissed by the Additional Sessions Judge, Patiala, vide order dated 01.05.2014 (Annexure P-2). Now the same Court (Additional Sessions Judge, Patiala) has been entrusted with the appeal filed by respondent No.1 against the judgment dated 22.03.2014 (Annexure P-3), whereby the present petitioner and respondent Nos. 4 & 5 were acquitted of the charges under Section 406, 498-A IPC. As per the

petitioner, the said Court had already expressed its opinion in earlier revision and the petitioner apprehends that once the trial Court and the revisional Court vide orders dated 08.10.2012 and 01.05.2014 (Annexures P-1 and P-2) had given an opinion with regard to cruelty meted out to complainant-respondent No.1, her appeal against the judgment of acquittal (Annexure P-3) passed by the trial Court be transferred to some other Court.

The application of the petitioner for transfer of the appeal has been dismissed by the Sessions Judge, Patiala vide order dated 04.10.2014 (Annexure P-5) on the ground that making of remarks by trial Judge cannot be considered as biased approach on the part of Judge that would create an apprehension in the mind of parties to proceedings and it was not a ground for transfer of the case. In this regard, reference has been made to a judgments delivered in **Imtiazkhan Saeedkahan Pathan and others Vs. State of Gujarat and others**, 2010 Criminal Law Journal, 4510 and **Ashish Chadha Vs. Asha Kumari and another**, 2012 (1) Criminal Cases 102, wherein it has been observed that unless a very strong case is made out, transfer of a case should not be made.

A perusal of the orders dated 08.10.2012 and 01.05.2014 (Annexures P-1 and P-2) shows that no finding has been recorded to the effect that respondent No.1 had been treated with cruelty. Only her allegations in the complaint have been reiterated, which led to her desertion from matrimonial house. Moreover, the application for dismissing the complaint was dismissed at the initial stage itself. Respondent No.1-complainant is required to lead relevant evidence to substantiate her allegations. Mere assertion of the allegations in the complaint would not amount to final opinion of the trial/revisional Court on the complaint.

Respondent No.1-complainant will have to lead evidence to show that the offences under Sections 18, 19, 20 and 22 of Protection of Women from Domestic Violence Act, 2005 were actually made out. At this stage, passing of the orders dated 08.10.2012 and 01.05.2014 (Annexures P-1 and P-2) cannot be a ground to transfer the criminal appeal to some other Court of competent jurisdiction.

The judgment referred by learned counsel for the petitioner in **Zora Singh Vs. State of Haryana**, 1996 CriLJ 1374 will not be applicable to the present case because in that case, the Additional Sessions Judge had given a definite finding in the Sessions case titled as 'State Vs. Mukand Singh' that the murder of Avtar Kaur wife of Sher Singh was a strong motive on the part of the accused persons to commit the murder of Jasbir Singh and others. In the present case, no such definite finding has been recorded by the trial Court, as it was merely an application for dismissal of a complaint under the Protection of Women from Domestic Violence Act, which has been dismissed. Respondent No.1-complainant has not led any evidence, on the basis of which, the trial Court could give a finding that actually, cruelty had been meted out to her.

The Hon'ble Supreme Court in **Ashish Chadha Vs. Asha Kumari and another**, (2012) 1 Supreme Court Cases 680, while examining a case of transfer from one district to another has observed as under:-

“30. It is also significant to note that while the order was being dictated by the learned Special Judge, Respondent 1 moved an application for transfer of the case since allegedly an opportunity of being heard through an advocate of her choice was denied to her. This application was rightly rejected by the Special Judge for want of jurisdiction. The learned Special Judge then framed charges against Respondent 1 and the other accused. Respondent 1 then requested the High Court to transfer her case from the file of the learned Special Judge, Chamba to the Court of the Special Judge,

Kangra on the ground that she had reasonable apprehension that she will not get a fair trial. The High Court, in our opinion, wrongly transferred the case as desired by Respondent 1. Apprehension expressed by Respondent 1 that she would not get a fair trial was baseless.

31. We have already noted the number of dates on which the learned Special Judge adjourned the proceedings. It is only when he was satisfied that Respondent 1 was purposely seeking adjournment and that Mr. Malhotra, counsel appearing for Respondent 1 had argued her case that the learned Special Judge refused to grant further adjournment. We do not find any material to substantiate the fear expressed by Respondent 1 that she would not get a fair trial. The High Court, therefore, should not have transferred the case to the Special Judge, Kangra. Needless to say that such transfers ordered merely on the say-so of a party have a demoralising effect on the trial Courts. Unless a very strong case based on concrete material is made out, such transfers should not be ordered.”

In the aforesaid case, the Hon'ble Supreme Court has laid down that apprehension in the mind of litigant will not be a sufficient ground to transfer the case. Such kind of transfers would have a demoralising effect on the trial Courts.

In the light of the above discussion and the law laid down by the Hon'ble Supreme Court in **Ashish Chadha's** case (supra), this Court is of the view that no ground is made out to transfer the criminal appeal titled as 'Dimple Vs. Rajinder Kalsi and others', from the Court of Ms. Jatender Kaur, Addl. Sessions Judge, Patiala, to some other Court of competent jurisdiction.

Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

27.01.2015
ajp