

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TPCR No. 24 of 2016**

1. Mangal Manikpuri S/o Babudas Aged About 56 Years R/o Kota Tahsil & Police Station Kota, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Station House Officer, Police Station Kota, District Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner

Shri Dharmesh Shrivastava, Advocate

For Respondent-State

Shri U. N. S. Deo, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order on Board****23/11/2016**

1. This application under Section 407 of the Cr.P.C. has been preferred against the order dated 08.11.2016 passed by the Sessions Judge, Bilaspur, as also for transfer of S.T. No.64/2015 from the Court of 9th Additional Sessions Judge, Bilaspur to any other Court of competent jurisdiction.
2. The applicant is an accused for committing offence under Sections 302 and 201 read with Section 34 of IPC and is facing trial in the Court of 9th Additional Sessions Judge,

Bilaspur presided by Shri Rajeev Kumar in S.T. No. 64/2015.

3. The transfer of the case has been sought on the ground that the prosecution moved an application under Section 321 of the Cr.P.C. to withdraw the prosecution, which was dismissed by the trial Court on 30.08.2016 and the case was posted on 02.09.2016 for arguments on charge, however, the arguments on charge did not materialize and the matter was adjourned to 09.09.2016. On the said date, the applicant moved an application for exemption from personal appearance, which was allowed and the case was posted on 21.09.2016. The applicant again moved an application for exemption on 21.09.2016, which was allowed and thereafter it was posted on 27.09.2016. The petitioner again moved an application for exemption from personal appearance, which was dismissed on the ground that the applicant is trying to avoid the hearing and orders on framing of charge. Resultantly, the bail granted to the applicant was cancelled and non-bailable warrant of arrest was issued against him.
4. On 27.09.2016 itself the applicant's counsel made a complaint to the High Court against the Presiding Officer vide Annexure A-4 and thereafter the transfer petition was moved

before the Sessions Judge, which came to be dismissed by the impugned order.

5. It is argued that the Presiding Officer is prejudiced against the applicant and is not conducting the proceeding in a fair and proper manner. The applicant's counsel has also made a complaint against the Presiding Officer that the Presiding Officer is colluding with the complainant, therefore, the case deserves to be transferred.
6. It appears, the allegations are fanciful and imaginary. Merely because the trial judge has rejected the application for exemption and cancelled the bail and thereafter the complaint has been moved against the Presiding Officer, it cannot be concluded that the Presiding Officer is biased against the applicant. On the contrary, it appears, the complaint has been moved only to make out a ground for seeking transfer of the criminal trial.
7. In the matter of **Abdul Nazar Madani v. State of T.N.** {(2000) 6 SCC 204}, the Supreme Court has held thus in para-7:-

“7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. The apprehension of not getting a fair and impartial

inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. However, no universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition.”

8. In the matter of **Jayendra Saraswathy Swamigal (II) v. State of T.N.** {(2005) 8 SCC 771}, the Supreme Court held that the apprehension entertained by the party must be a reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.
9. In the matter of **Captain Amarinder Singh v. Parkash Singh Badal and Others** {(2009) 6 SCC 260}, the following has been held in paras-18 & 20:-

“**18.**For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether the apprehension alleged is reasonable or not.

The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one.”

10. In view of the settled legal position of law and applying the same to the obtaining factual matrix, it would clearly appear that the grounds of transfer of case are imaginary and fanciful. The criminal trial need not be transferred on mere asking of the accused on the ground that he may not get fair hearing. The applicant had no complaint with the Presiding Officer when his application for exemption from personal appearance was allowed twice on previous dates of hearing, but as soon as his third application was rejected and his bail was cancelled, he nurtured the misplaced apprehension that justice may not be done with him. If criminal trials are transferred on this ground, the subordinate judiciary would be demoralized and they may not be able to discharge their duty with independent mind.
11. At this stage, it would be profitable to refer to the observations made by the Supreme Court in the matter of **Ishwar Chand**

Jain v. High Court of Punjab and Haryana and another
{(1988) 3 SCC 370}, wherein the following has been held in
para 14:

“**14**.....An independent and honest judiciary is a sine qua non for rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.....”

12. As a sequel, the present transfer petition *sans stratum* is liable to be and is hereby dismissed at the motion stage itself.

Sd/-

Judge
Prashant Kumar Mishra

Gowri