

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

**Crl. Misc. No.M-14198 of 2015
Date of decision : 26.02.2016**

Manish Tandon and another

.....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Manish Tandon-Petitioner no.1 in person.

Ms. Dimple Jain, AAG, Haryana,
counsel for respondent no.1-State.

Respondent no.2 in person with
Mr. Raghav Goel, Advocate.

ANITA CHAUDHRY, J(ORAL)

The petitioner is seeking transfer of the trial pending at Sonapat. The FIR was lodged on the complaint made by his wife under Section 498-A, 406, 420, 323, 506, 34 IPC.

Petitioner no.1 is a lawyer. Petitioner no.2 is his sister. The wife had got the FIR registered in 2012. The police filed the challan in January, 2013. The transfer has been sought on the ground that he was threatened by the lawyers representing the complainant when he went to attend the Court proceedings. The petitioner had pleaded that he was scared of attending the Courts at Sonapat and there was a threat to his life. It was also pleaded that

the respondents were also creating pressure upon the Court and there was a possibility that the trial would not be fair or independent. The petitioner is seeking transfer to any other place in Haryana, preferably to Faridabad or Gurgaon as it was not possible for him to attend the cases at Sonapat. He had aged parents. His father was bed ridden and no good lawyer would appear to represent him before the Courts at Sonapat on account of the influence exercised by the complainant and her family members. The petitioner had further had pleaded that the uncle of the respondent was influential and a Director of a company and the complainant had his support. The petitioner had also pleaded that he had filed a transfer petition before the Supreme Court and ex parte interim order was passed in his favour but later it was dismissed on 13.12.2013 but liberty was granted to approach the High Court. The petitioner had referred to number of authorities in his petition which need not detain us here.

Notice was given to the respondents. The State had filed the reply and had denied that any incident had taken place on 27.02.2013. It was pleaded that the complainant was represented by the Public Prosecutor in the State case and the petitioner had been filing various petitions before the High Court and the Supreme Court and when no order was passed by the High Court or the Supreme Court, the petitioner had concocted a false story levelling allegations of threats by the lawyers representing the complainant. It was

pleaded that the petitioner cannot get the case transferred as per his choice. It was pleaded that if the petitioner was unable to get lawyer from Sonapat, he could engage a lawyer from another place.

Respondent no.2 in her reply had pleaded that the petition was vexatious, fabricated and contained frivolous allegations with a view to cause harassment. It was pleaded that the petition was liable to be dismissed with heavy costs. It was pleaded that the petitioner had levelled false allegations that he was threatened by the complainant's counsel and false plea had been taken that they were creating any pressure on the Court.

The petitioner had filed a rejoinder.

On 19.09.2015, the petitioners were directed to approach the competent authority in case they felt any threat to their life. The State of Haryana was directed to take necessary steps. The co-ordinate Bench had also directed the Court to adjourn the hearing beyond the date fixed by this Court. Therefore, since the time of filing of this petition, there is no progress in the trial.

The submission by petitioner no.1 was that his sister was arrested and bail was allowed on 02.03.2013 and though the bonds were furnished on 04.03.2013, she could only be released on 07.03.2013. He had further contended that his father was suffering from paralysis and when he had gone to attend the Court hearing, he was heckled and he had made a statement (Annexure P-7) in the

Court. The petitioner had submitted that he had approached the Supreme Court for transfer of the case to some other State but the petition was dismissed, however, observations made therein were important. The petitioner had referred to Annexure P-10 to P-12 and also the order placed at page no. 139. The petitioner had submitted that the Apex Court had observed that they could have passed an order for transfer of the case to another Court in Haryana but since the complainant had not been impleaded, therefore, even that order could not be passed. The petitioner had stated that he had made the complainant as a party but there was an objection and therefore, had to make necessary amendments. The counsel had further contended that he had filed a review petition in the Supreme Court but it was dismissed. The petitioner had extensively referred to the judgments and had placed reliance upon ***Gurdev Singh and others Vs. State of Punjab 2000(3) AICLR 559, Annavarapu Dhanaraj, Appa Rao Vs. Annavarapu Manikyam, Annavarapu Dhanaraju 2011 LawSuit (AP) 464, Sandip Saha Vs. State of West Bengal & Ors. CRR No.675 of 2008, D.O.D. 06.03.2009, Mrs. Maneka Sanjay Gandhi and another V. Miss Rani Jethmalani, AIR 1979 SC 468, Transfer Petition (CRL) Nos.77 of 2003 -78 of 2003 (SC), Vikas Kumar Roorkeval Vs. State of Uttarakhand and others Transfer Petition (CRL) No.29 of 2008, D.O.D.-11.11.2011 and Shiv Kumar Vs. Hukam Chand and another = <http://JUDIS.NIC.IN> (D.O.D. 30.08.1999.***

On the other hand, the submission on behalf of the State as well as the complainant was that the petitioner was seeking transfer on the ground that his sister's release was delayed by two days but the complainant nor her counsel has any role on it. It was urged that there have to be good grounds for transfer and if there was any threat, the petitioner would have approached the police. The counsel has further submitted that the petitioner has referred to the statement made by him but he has not shown the order that was passed subsequent to that statement and false and baseless allegations have been levelled and the only endeavour is to delay the proceedings. It was contended that the wife had filed a petition under Section 125 Cr.P.C. and transfer of the case would involve more expenses. It was urged that the cases should not be transferred on the mere asking on un-substantiated allegations. It was contended that the petitioner had approached the Court for quashing of the FIR which had been dismissed. Reliance was placed upon ***Sham Sunder Vs. State of Haryana 2001(3) AICLR 249, 2000(4) AICLR 405, Chandra Sekhar Bhattacharya Vs. Smt. Subhra Bhattacharya 2006(2) AICLR 493 and Smt. Mahua Bhowmick Vs. Bobby Bhowmick 2003 CriLJ 2638.***

The parties were called for re-conciliation. The talks had failed. The petitioner no.1 had stated that he was not ready to pay additional amount to the complainant in case of travel.

The petitioner is seeking transfer of the case from Sonapat to any other district in Haryana and prefers it to be Faridabad or Gurgaon. The petitioner is staying in Faridabad and he practices at Delhi. The complainant lives in Sonapat with her parents. The grounds on which transfer is sought are:-

- 1) The lawyers representing the complainant had threatened him on 27.02.2013,*
- 2) He was practising in Delhi, therefore, it was not possible for him to come to Sonapat,*
- 3) His parents are old,*
- 4) He was not able to get a good lawyer because of the influence of the complainant and her uncle,*
- 5) The release of petitioner no.2 on bail was delayed,*
- 6) The petitioner did not expect a fair and independent hearing,*
- 7) The uncle of the complainant was an influential industrialist,*
- 8) The Supreme Court had observed that it could have transferred the case but since the complainant had not been impleaded, therefore, no orders were passed.*

I have gone through the judgments which have been referred to by the petitioners. None of the judgments are helpful to the petitioners considering the facts. It is not necessary to give the detail facts of each case as it would only burden the record.

The seminal issue is whether the case should be transferred to some other district. The FIR had been lodged at Sonapat. The complainant is residing at Sonapat. No threat was given by the complainant or her uncle. The petitioner has alleged that he was threatened by the lawyer representing the complainant. The State has denied that any such incident had occurred.

The petitioner had not placed on the record any order (if any) passed on the statement given to the Magistrate. He did not approach the police with a complaint nor he had filed any complaint. No allegations have been levelled against the Presiding Officer. The petitioner merely apprehends that he would not get a fair and just trial. The apprehensions do not appear to be genuine. So far as apprehension is concerned, it has to be established that justice would not be done. It would be profitable to refer to a passage from *Gurcharan Dass Chadha Vs. State of Rajasthan* AIR 1966 SC 1418, wherein it has been held:-

“... The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not

only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

In *Abdul Nazar Madani v. State of T.N.*(2000) 6 SCC

204 has ruled that:-

“...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. 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. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on

misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.”

In ***Captain Amarinder Singh v. Parkash Singh Badal and others (2009) 6 SCC 260***, while dealing with an application for transfer petition preferred under Section 406 CrPC, a three-Judge Bench has opined that for 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 has also been observed therein that mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. In the said context, the Court has held thus:-

“19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.PC.

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.”

Cases are not transferred as a matter of routine or merely because a party has expressed some apprehension. The power of transfer has to be exercised consciously and in an exceptional situation when it becomes necessary. Apprehension in the mind of the petitioner is misplaced. The trial has not started. The matter is getting delayed on account of repeated applications being filed by the petitioners. No case for transfer is made out. The petition is dismissed. The parties should appear before the Court below and the Court would make endeavours to decide the case at the earliest.

26.02.2016
sunil

(ANITA CHAUDHRY)
JUDGE