

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

Cr. Misc. M 34046 of 2016  
Date of decision: 29.9.2016

Mahender Aggarwal

Petitioner

vs.

State of Haryana and another

Respondent

Present: Mr. PS Jammu, Advocate.

**M.M.S.BEDI,J.**

The petitioner is a former Assistant District Attorney, who is facing trial before Sessions Judge, Sirsa . He seeks transfer of trial on the ground that respondent No.2, who is the over all incharge as District Attorney Sirsa, has got personal enmity with the petitioner, being earlier a colleague of the petitioner. The apprehension of the petitioner is that respondent No.2 being an over all prosecutor as District Attorney in the court of Sessions Judge Sirsa, is likely to exercise her influential position upon the Sessions Judge by taking personal interest for conducting the trial against the petitioner.

Counsel for the petitioner, during the course of arguments, informs that Sh. S.K.Kaushal, Deputy District Attorney, has been deputed to conduct the trial against the petitioner but still counsel for the petitioner has got apprehension that respondent No2. being District Attorney Sirsa, would be able to influence the decision by the Sessions Judge Sirsa.

I have considered all the facts and circumstances of the case

and I am of the opinion that after presentation of challan the scope of improvement at the hands of District Attorney or Public Prosecutor is remote. It is not within the control and hands of the District Attorney, after presentation of challan to make any improvement in the case. After presentation of challan the scope of making any improvements or influencing the witnesses will not matter much so far as the criminal proceedings are concerned. Even if the Prosecutor takes extra interest, the prosecution cannot go beyond the record or the material, which forms part of the record u/s 173(2) Cr.P.C. Any unreasonable improvement made is always considered with suspicion, for which the benefit of doubt goes to the accused. I am satisfied that respondent No.2 would not be in a position to influence the adjudication of the trial qua the petitioner.

Counsel for the petitioner submits that complainant Raman Kumar against the petitioner, is a convict in a criminal case, in which he has filed an appeal against conviction. Counsel submits that the appeal of Raman Kumar is also pending before the Sessions Judge Sirsa, where the petitioner is facing trial and in order to generate pressure on him, the prosecution agency at the instance of respondent No.2 has opted to file an appeal for enhancement of the sentence against Raman Kumar. Though the said circumstance may not be of much relevance for independent trial of the petitioner but if deemed appropriate the petitioner may avail legal remedy, available to him in that context.

In view of the said circumstances, the complainant being under the grip of the State would be compelled to toe the line of the Prosecutor.

I have considered the facts and circumstances of the case and

I am of the opinion that the above circumstances can be used by the

petitioner as defence in case the prosecution agency or any Prosecutor is over zealous to make improvements to create circumstances for adjudication of the matter against the petitioner.

No ground is made out for transfer of the trial.

Dismissed.

Nothing said in this order will prejudice the right of the petitioner to raise the defence pleas, available to him, in accordance with law.

September 29 ,2016  
TSM

( M.M.S.BEDI )  
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether Reportable

Yes/ No