

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

CRL. MISC. No.M-34548 OF 2016
DATE OF DECISION : 1st DECEMBER, 2016

Gurwinder Singh & another

.... Petitioners

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Ashok Bhardwaj, Advocate for the petitioners.

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A. B. CHAUDHARI, J. (ORAL)

Heard learned counsel for the petitioners at length.

The prayer is for transfer of case No.6/25.05.2015 in FIR No.89 dated 25.07.2014 registered under Section 306, IPC, from the court of Sh. Shatin Goyal, Additional Sessions Judge, Sangrur to another Court.

Learned counsel for the petitioner contended that there are other courts of Additional Sessions Judge and therefore in the given circumstances the case of the petitioner should be transferred to the other court. In support of this contention he invited my attention to the deposition of PW-4 Harpreet Kaur and the observations made by the trial Court while recording the evidence. I quote the relevant portion from the proceedings in respect of deposition of PW-4 Harpreet Kaur:

“PW-4 Harpreet Kaur summoned by this Court u/s

311 is present and examined. Keeping in view his

deposition, Ld. Addl. PP submitted that in the investigation conducted by the deceased I.O., name of this witness does not fine mention. From the deposition made so far, it becomes necessary that a formal application of secondary evidence be filed and got decided from the court. He submitted that depending upon the fate of the application, if needed, this witness may be re-summoned or discharged as the case may be.”

Learned counsel for the petitioners contended that it is clear from the above recording of deposition that the trial court has suggested filing of application for secondary evidence and not only that it is also suggested that it should be got decided from the same court, which according to him amounts to prejudging the issue which is predatory to the interest of the petitioners. He submits that the trial Court needs not make such order to advise the parties. This is, therefore, valid reason to transfer the case to other court. Learned Sessions Court has dismissed the application for the reasons given by him.

In my opinion, merely because there are other Additional Sessions Judge at Sangrur, there is no ground to transfer the case from one court to another as it would amount to showing loss of faith in the particular Presiding Officer in the absence of justifiable material. That apart the submission that the trial Court suggested filing of application for secondary evidence and that it would be decided by the Court, does not show any animosity, prejudice or predatory act on the part of trial Court, as alleged by counsel for the petitioner. It is the duty of the court

to streamline and regulate the proceedings in order to find out the truth and deliver the justice. It is rather the duty of the court to control the proceedings for fair and proper trial for the interest of justice. I, therefore, do not find that trial court has made any mistake in making observations regarding suggestions to prosecution to file application for secondary evidence. The Apex Court in its judgment has held that the application for secondary evidence cannot be allowed in a casual manner unless the ingredients therein are fully satisfied. I, therefore, reserve the liberty in favour of the petitioner to contest the application for leading secondary evidence tooth and nail. The application would obviously be decided in terms of the stringent parameters laid down by the Apex Court in the matter of leading secondary evidence.

This court hopes and trust that the trial Court would not get prejudiced for whatever has happened, namely filing of the application for transfer before the sessions court and this court.

Disposed of accordingly.

1ST DECEMBER, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No.