

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. M-34421 of 2015
Date of Decision: 14.09.2016

Jasmeen Kaur

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Rupinder S. Khosla, Sr. Advocate with
Mr. Kshitij Sharma, Advocate and
Ms. Ishrat Phulka, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 407 read with Section 482 CrPC is for transfer of criminal case titled as *State Vs. Satpal Singh* in FIR No.79 dated 21.4.2015 under Sections 420/406/506 IPC registered at Police Station City-1, Abohar to Chandigarh, Mohali, Ludhiana or at least out of Fazilka.

The present petition has been moved at the behest of the petitioner-complainant, who is a widow and presently working as English Lecturer with U.T. Administration, Chandigarh.

Learned senior counsel appearing on behalf of the petitioner has submitted that prayer for transfer of abovesaid case has been

necessitated for the reason that no lawyer is accepting the brief of the petitioner-complainant and therefore, she herself has to appear in Court in person on each date of hearing. Since she is neither a law graduate nor trained enough to pursue her case in person, she needs a legal practitioner to put forward her case effectively. He submitted that no prejudice would be caused to the accused persons if the case is transferred to a place out of Fazilka and around Chandigarh. However in case this Court finds that the case cannot be transferred to a place around Chandigarh, the same may be transferred to a place which is convenient to both the parties.

It has been also submitted that the approach of the police and prosecution is casual and the police is least interested in bringing the culprit to book. The petitioner has legitimate and reasonable apprehension that in such like situation she may not get justice in the trial Court at Abohar, Fazilka. In case, the present case is transferred to a place either in Chandigarh, Mohali, Ludhiana or at least outside Fazilka, the petitioner would be able to keep the regular track of the case instituted by her. She is a widow and is required to travel a distance around of about 300 kilometers each side i.e. from Chandigarh to Fazilka on each date so as to ensure that the case instituted by the complainant reaches at a logical conclusion. The petitioner apprehends her safety more specifically being a widow, while travelling a long distance i.e. from Chandigarh to Fazilka. Each time when the petitioner had gone to Fazilka, she has been threatened by dozen of affiliates of the accused, who are otherwise found present in the Court complex by stalking, passing dirty remarks browbeating the petitioner. He referred the incident dated 11.9.2015 while the accused, his affiliates as

well as the Sarpanch of the village of the accused have threatened the petitioner not to pursue the proceedings, as the same would neither be in her interest nor in the interest of her youngest son, of which the petitioner has given a written complaint to the police in the Court complex. She had to hurriedly left the place after receiving the threat. He further states that no prejudice would be caused to the accused in case the matter is transferred out of Fazilka.

Reply by way of affidavit of Shri Gurbhej Singh, PPS Deputy Superintendent of Police, Sub Division Abohar, District Fazilka has been filed.

On the basis of the reply, learned State counsel has submitted that most of the prosecution witnesses are Government officials and are residents of Abohar and therefore, it would be very inconvenient for the witnesses to appear at a place other than Fazilka. He further submitted that in the case in hand, police has already completed investigation and challan has been presented, but the prosecution evidence has not yet started. Learned State counsel further states that even the petitioner or her son, who are also the witnesses of the case, if apprehend any danger while going to Abohar for their evidence in the case, they can seek police protection for those days but no such request has been made by the petitioner.

I have heard learned counsel for the parties and with their able assistance, gone through the material on record.

Though for transfer of case from one Court to another Court, no universal or hard and fast rules can be prescribed but such like applications are always to be decided on the basis of the facts and

circumstances of the each case. Even the convenience of the parties including witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. In the case of **Satish Jaggi vs. State of Chhattisgarh and others 2007(2) RCR (Criminal) 116**, the Hon'ble Apex Court while laying down the guidelines for transfer of case from one Court to another, has observed as under :-

“5. The law with regard to transfer of cases is well settled. This Court in the matter of **Gurcharan Dass Chadha v. State of Rajasthan (AIR 1966 SC 1418)** held that 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. This Court said that 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. This Court further held that it is one of the principles of the administration of justice that justice should not be done but it should be seen to be done. The court has further to see whether the apprehension is reasonable or not. This Court also said that to judge 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.

6. It was further held by this Court in **Mrs. Maneka Sanjay Gandhi and Anr. V. Miss Rani Jethmalani (AIR 1979 SC 468)** that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or availability of legal services or any like grievance. Something more substantial, more compelling, more imperiling, from the

point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. This Court, in the facts and circumstances of the case, said that the grounds for the transfer have to be tested on this touchstone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. It further said that even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

7. In **Abdul Nazar Madani v. State of Tamil Nadu (AIR 2000 SC 2293)** this Court stated that 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 of the Code. 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, if any, the witnesses and the larger interest of the society.”

The petitioner is a widow and is working as Lecturer posted in Chandigarh. She has put the criminal machinery in motion as the FIR was registered on the basis of her complaint. Therefore, she being aggrieved person is required to follow the trial. Since the distance from Chandigarh to Abohar is more than 300 kilometers and when she had been going to Abohar to attend the proceedings of the case, she had been threatened by the accused, which lead to apprehension in her mind that she can be harmed by the accused. There is a delusion in the mind of the petitioner that in case the case is not transferred from Abohar to a place outside Abohar, she may not be able to pursue her case effectively.

The very purpose enacting Section 407 Cr.P.C. is to confer power upon the High Court to order transfer of the cases in certain conditions. The object of the Parliament while enacting such a provision is to manifest that the High Court should have sufficient power to transfer the case to any other Court which in ordinary circumstances would not have jurisdiction to try the case. It is also to be considered that for the purpose of fair and impartial justice and to maintain the public confidence in fairness of the trial, in case it appears to the Court that dispensation of the criminal justice is not effected in any manner and also for the convenience of the parties including the witnesses to be produced at the trial, then this power provided under Section 407 Cr.P.C. can be exercised.

Section 407 Cr.P.C. provides power to High Court to transfer cases and appeals, which is reproduced as under:-

407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court:

(a) and (b)

(c) that an order under this Section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice.

It may order-

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offences;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction.

(iii) that any particular case be committed for trial to a Court of Sessions; or

(iv) that any particular case or appeal be transferred to and tried before itself.

Hon'ble the Apex Court in the case of **Abdul Nazar Madani Vs. State of Tamil Nadu**, 2000 (2) RCR (Criminal) 770, while dealing with such like situation, has observed as under:-

“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 Cr.PC. 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.”

Considering the limited prayer made on behalf of the petitioner, which is a fair one, this Court direct that the aforesaid case titled as *State Vs. Satpal Singh* in FIR No.79 dated 21.4.2015 under Sections 420/406/506 IPC registered at Police Station City-1, Abohar be transferred to Sangrur.

Learned Sub Divisional Judicial Magistrate, Abohar, who is presently seized with the matter, is directed to send the entire record of the case to learned District and Sessions Judge, Sangrur, who shall forward the same to Chief Judicial Magistrate, Sangrur. Learned Chief Judicial Magistrate, Sangrur shall be at liberty to either retain the case file with him or entrust the same to any other Court of competent jurisdiction who shall dispose of the matter in accordance with law. The concerned Court shall

proceed with the case from the stage it is transferred, to onward. Parties are directed to appear before the learned Chief Judicial Magistrate, Sangrur on 30.11.2016.

Accordingly, the present petition is disposed of.

September 14, 2016
AK/Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?	Yes / No
Whether reportable?	Yes / No