

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

**Crl. Misc. No.M-36245 of 2014 (O&M)
Date of decision : 26.02.2016**

Manish Tandon

.....Petitioner(s)

Versus

Ankita Bhutani

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Manish Tandon-Petitioner in person.

Respondent in person with
Mr. Raghav Goel, Advocate.

ANITA CHAUDHRY, J(ORAL)

The petitioner is seeking transfer of the petition filed under Section 125 Cr.P.C., pending before the Family Court at Sonapat.

The petitioner is a practising lawyer at Delhi. His wife has filed a petition seeking maintenance. He seeks transfer on the ground that he was threatened by the lawyers representing the wife when he went to attend the Court hearing in the FIR case. He was threatened by lawyer representing the wife and he was afraid of attending the Courts at Sonapat and the respondents were also creating pressure upon the Court. The petitioner had pleaded that he was practising at Delhi. He had pleaded that he had aged parents and his father was bed ridden and no good lawyer would represent him before the

Courts at Sonapat on account of the influence exercised by the wife and her family. The petitioner had further pleaded that the uncle of the respondent was influential 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 a number of authorities in his petition which need not detain us here.

Notice was given to the respondent. The respondent 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 cost. It was pleaded that the petitioner had made false allegations that he was threatened by the complainant's counsel and wrong plea had been taken that they were creating any pressure on the Court. It was pleaded that transfer petition filed by the petitioner had been dismissed by the Supreme Court. It was pleaded that petitioner was a lawyer and known to other advocates and there was no question of creating pressure and since he was travelling from one city to another to attend cases, therefore, he could also attend his own case and he was creating pressure on her being a lawyer and belonged to an influential family.

The petitioner had filed a rejoinder.

I have heard both the sides.

The petitioner had contended that his sister was arrested and bail was allowed on 02.03.2013 in the FIR case and though bonds were furnished on 04.03.2013, she could be released only on 07.03.2013. He had further contended that his father was bed ridden and his brother was schizophrenic and his mother was diabetic and when he had gone to attend the Court hearing, he was heckled and he had made a statement in the Court. The petitioner had referred to Annexure P-7. The petitioner further submitted that he had approached the Supreme Court for transfer of the case to some other State but the petition was dismissed, however, the observations made therein were important. He had referred to Annexure P10 to P12. 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, the order could not be passed. The petitioner states that he had made the complainant as a party but there was an objection and therefore, he had to make the necessary amendments. The petitioner had referred to Annexure P-7, the statement made by him on 28.02.2013. The counsel further contends that he had filed a review petition placed but the same was dismissed and the order is available on the file. 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 respondent was that the petitioner was seeking transfer on the ground that his sister's release was delayed by two days but the complainant nor the complainant's counsel has any role in 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. It was urged that request for transfer is a mere ruse for delaying 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 already 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 wife 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 his sister 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 petitioner at length. None of the judgments are helpful. It is the facts of each case, which are to be seen. Each case

has its own facts. It is not necessary to give the detailed facts of each case as that would only burden the record.

The seminal issue is whether the case should be transferred to some other district. The petition has been filed at Sonapat. The wife is residing at Sonapat. No threat was given by the wife or her uncle. The petitioner has alleged that he was threatened by the lawyer representing the wife.

The petitioner has not approached the police with 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 an 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 petitioner till date has not filed his reply. The case has been delayed. There is no justification for transfer. The petition is dismissed. The parties would appear before the Court below on the next date. The Court would endeavour to decide the case at the earliest.

26.02.2016
sunil

(ANITA CHAUDHRY)
JUDGE