

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

CRM-M-43486 of 2015

Date of Decision: June 01, 2016

Gurlal Singh Grewal

...Petitioner

Versus

Pritpal Singh Grewal and another

...Respondents

CRM-M-43558 of 2015

Gurlal Singh Grewal

...Petitioner

Versus

Pritpal Singh Grewal

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. K.S. Khehar, Advocate
for the petitioner.

Mr. APS Mann, Advocate
for the respondents.

FATEH DEEP SINGH, J.

Though, by these two separate petitions both under Section 482 Cr.P.C. the petitioner in both these petitions Gurlal Singh Grewal, who also happens to be the complainant and who had initially filed two similar complaints before the learned Judicial Magistrate, 1st Class

Ludhiana Annexure P/3 (in both the petitions) in which complaints same set of accused namely Surjit Singh Grewal, Guriqbal Singh Grewal, Smt. Surinder Kaur, Gurparshad Singh Grewal (respondent No.2 in CRM-M-43486 of 2015) and Pritpal Singh Grewal (respondent No.1 in both petitions) were arrayed so. Both these complaints have been preferred under Sections 406,418 read with Section 34 IPC revolving over the dispute over Gurkartar Trust, Ludhiana (in short, 'the Trust'). In these two petitions two orders both of even date i.e. dated 4.12.2015 Annexure P/6 (in both petitions) though, separately passed have been challenged. Since in both these petitions common facts and law points are involved and, thus, are being taken up together for the sake of brevity.

Upon hearing learned counsel for the parties. The factual background which has led to the filling of these two petitions stems out of the fact when a transfer application was preferred by the accused side seeking transfer of the complaint from the Court of learned Judicial Magistrate 1st Class Ludhiana to the Court of learned Additional Chief Judicial Magistrate Ludhiana for disposal and on which impugned orders dated 04.12.2015 Annexure P/6 were passed by the learned Chief Judicial Magistrate, Ludhiana, thereby, withdrawing the respective cases from the said Court of Judicial Magistrate 1st Class, Ludhiana and transferring the same to the Court of learned Additional Chief Judicial Magistrate, Ludhiana for disposal in accordance with law. The complainant feeling aggrieved has come up before this Court by virtue of these two petitions challenging the same under Section 482 Cr.P.C in exercise of inherent powers of this Court.

A close look at the application preferred under Section

410 Cr.P.C. by the accused side moved before the Court of learned Chief Judicial Magistrate, Ludhiana adequately highlights that the applicant had highlighted his plight that he is an old age person about 83 years and since both these complaints by the same very complainant over the same set of allegations, against the same set of accused are pending in two different Courts and which are listed for different dates and, thus, to ward off undue hardship had sought that both these complaints pending in different Courts be ordered to be tried by one and the same Court as it would facilitate better means to him to defend himself. The complainant has opposed this prayer in his reply by taking the stand that the applicant was trying to unduly delay the proceedings with an ulterior motive and that both the complaints were at different stages before different Courts and, thus, sought dismissal of the application. Thus, it is sufficiently clear that the application has not been moved by any malice or threatened act during the course of proceedings by the Presiding Officer and rather is on the ground of undue hardship being faced by the applicant having been made to attend these two cases before two different Courts on different dates for which they are being adjourned.

The Code of Criminal Procedure, 1973 has been framed by way of uniform procedure to be adopted by the Courts as guidance in the dispensation of justice and it is with this end in view Section 12, sub Section 3(b) of Cr.P.C. provides for administrative control of the cases before the Magistrate. The same is reproduced below to lay emphasis:-

“12 (3) (b) Subject to the general control of the Chief Judicial Magistrate, every sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrate (other than Additional Chief Judicial Magistrate) in the sub-division as the High Court may, by general or special order, specify in this behalf.”

and, thus, highlights as to the role and purpose of Chief Judicial Magistrate in the administration of justice and to have general control over the subordinate Magistrates in the sub-division. It was with this in view the Enactors of the Code in their wisdom have enacted provisions of Section 410 Cr.P.C. whereby, powers have been vested in the Chief Judicial Magistrate to withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him and may inquire into or try such case himself, or refer it for enquiry or trial to any other such Magistrate competent to inquire into or try the same. However, such an exercise of powers certainly is not unbridled and to have restrictions over the exercise of such powers Section 412 Cr.P.C. has been brought about ensuring that whenever there is exercise of powers under Section 410 Cr.P.C. the Magistrate needs to record his reasons for making it. It needs to be made emphatically clear that such a reasoning in terms of Section 412 Cr.P.C. apply to all cases where either order of transfer is made as a result of own order of the Magistrate on administrative ground or as a result of an application. Though, with much vehemence and force learned counsel for the petitioner has sought to place reliance on **2012(2) RCR (Criminal) 259 Rajesh Talwar vs. Central Bureau of Investigation and others** and **2012(1) RCR (Criminal) 94 Ashish Chadha vs. Smt Asha Kumari and another** to hammer home the point that mere inconvenience to a party cannot be the basis of transfer of a criminal proceedings as it would have a demoralising effect. The cited ratios are not only factually at much variance as there were apparently denial of legitimate right to defend which is not so in the present case. The so called transfer application had only sought convenience of

both the matters being listed before one of the same Court so that they could be taken up at one date of hearing. The impugned order in question clearly reflects that while passing the same the learned Chief Judicial Magistrate has specifically underlined that without commenting on relied contentions and averments made by the parties in the interest of justice and fair play (sic play) thought and considered it that let the cases be dealt with by some senior officer. The relevant part of the order is reproduced below to lay emphasis:-

“ _ _ _ Without commenting on relied contention and averments made by the parties, in the interest of justice and fair play it is consider appropriate that let the cases be dealt with by some senior officer _ _ _ _ ”

Thus, plain reading of this order shows that the Court had never taken into consideration the contentions or the averments of the parties but in larger interest of justice as well as for fair play had thought it prudent and apparently learned Chief Judicial Magistrate must have been convinced that the very nature of the dispute and the parties involved demands that it be handled by a Senior Officer, thus, in itself a legitimate reasoning as to what has led to passing of this order which is more by way of exercise of administrative duties and functions as well as powers rather than acting on mere asking of a party. Thus, these orders are mere exercise of administrative powers by the learned Chief Judicial Magistrate to have general control and supervision over the work of judicial Magistrate subordinate to him and, therefore, no fault can be found in this exercise of special powers given to him by virtue of his being the person having general control and supervision over such Magistrates and which is certainly

legitimate exercise of powers and cannot be given the tinge of colourable exercise of powers and, therefore, the arguments that have been put forth on behalf of the petitioner are rendered fallacious. Since the transfer in the present case is purely on administrative ground in exercise of powers under Section 192 Cr.P.C. and, therefore, cannot be put to challenge by such a means by invoking powers under Section 482 Cr.P.C. The learned Chief Judicial Magistrate in such a situation is the sole authority to decide the question whether it was a fit case for withdrawal and transfer and where in the facts and circumstances of the case should be at all withdrawn are indeed matters to which private individual cannot be allowed to impugn.

Thus, in the light of foregoing discussions, detailed and discussed above both the petitions are certainly meritless and stand dismissed.

(FATEH DEEP SINGH)
JUDGE

June 01, 2016
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