

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-2591 of 2017 (O&M)

Date of Decision: 30.01.2017

Mahender Aggarwal

--Petitioner

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Hakam Singh, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J

The instant petition has been filed under Section 407 Cr.P.C seeking transfer of criminal trial titled as 'State Vs. Mahender Aggarwal' bearing FIR No.15 dated 17.03.2015 under Sections 7, 13, 49, 88 of Prevention of Corruption Act, registered at Police Station, State Vigilance Bureau, Hisar District Hisar bearing Trial No. PC-07/2015 pending in the court of learned District & Sessions Judge, Sirsa to a court of competent jurisdiction at Sirsa itself.

The solitary contention raised by counsel for the petitioner is that the District Attorney Smt. Usha Bishnoi, respondent no.2 is inimical towards the present petitioner and is taking personal interest in the trial.

It would be apposite to take note that the petitioner had earlier also approached this court by filing a petition under Section 407 Cr.P.C seeking transfer on the same basis and grounds and such petition had been dismissed by a Coordinate Bench in the light of order dated 29.09.2016 and which reads in the following terms:-

“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, bearing 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 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 circumstance 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”

I am of the considered view that for the same very reasons assigned in the order dated 29.09.2016 and as reproduced herein above, the present petition also merits dismissal. That apart, it has not been disputed that it is one Sh. S.K. Kaushik, Assistant District Attorney who has been deputed to conduct the trial in the case and not respondent no.2 i.e. Smt. Usha Bishnoi. The apprehension raised by the counsel that the Assistant District Attorney is subordinate to respondent no.2 and as such, would interfere and influence the trial under the directions of respondent no.2, is wholly ill founded.

No ground for transfers and for entertaining the prayer is made out.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

30.01.2017
lucky

Whether speaking/reasoned: Yes
Whether Reportable: No