

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Misc. No.M- 3161 of 2017(O&M)

Date of Decision: February 16 , 2017.

Subhash Bansal

..... PETITIONER (s)

Versus

State of Punjab and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vikram Chaudhri, Senior Advocate with
Mr. Sartaj Singh Gill, Advocate
for the petitioner.

LISA GILL, J.

CRM No.5204 of 2017

A copy of the application dated 13.02.2017 praying for transfer/recusal from the case (Annexures P9), a copy of the order dated 13.02.2017 passed by the learned Additional Sessions Judge, Moga (Annexure P10), a copy of the order dated 13.02.2017 passed by the learned District & Sessions Judge, Moga declining the reference (Annexure P11) and a copy of order dated 13.02.2017 passed by the learned Additional Sessions Judge, Moga (Annexure P12) are taken on record subject to just exceptions. Filing of certified copies thereof is dispensed with.

Application is disposed of.

CRM No.M-3161 of 2017

This petition has been filed under Section 407 read with Section 482 of the Code of Criminal Procedure for transfer of the Sessions Case

No.103/13 arising out of FIR No.188 dated 28.11.2010 under Sections 304B/302 IPC registered at Police Station City South Moga, District Moga from the court of Smt. Lukhvinder Kaur Duggal, Additional Sessions Judge, Moga to any other court of competent jurisdiction.

During the pendency of this petition, an application dated 13.02.2017 was moved by the petitioner before the Presiding Officer with a prayer to transfer the case or recuse herself from the said case in view of the fact that one of the witnesses, namely, Dr. B.S.Bhogal (PW2) is a close relative of the Presiding Officer.

It is to be noted that the said witness was recalled vide order dated 08.07.2016 (Annexure P5) passed by the predecessor of the present Presiding Officer for seeking clarification of some facts. The petitioner did not raise any objection to the same as is evident from a bare perusal of order dated 08.07.2016. The relevant part of the order reads as under:-

“XX XX XX XX

This court is of the view that it is necessary to recall PW2 Dr. B.S.Bhogal to seek clarification of some facts from him. Court apprised learned APP for State, learned counsel for complainant as well as learned defence counsels of the proposal of court to recall PW2 Dr. B.S.Bhogal for his further examination by the court, but all of them stated that they do not want to say anything in this matter and court can recall Dr. Bhogal for further examination. Accordingly, it is ordered that Dr. B.S.Bhogal be summoned for 28.07.2016.”

PW2 Dr. B.S.Bhogal was thereafter re-examined on 03.11.2016 before the present Presiding Officer. Despite objection raised by the

prosecution as well as counsel for the complainant, an opportunity to cross-examine the witness was duly afforded to the counsel for the accused-petitioner. PW2 Dr. B.S.Bhogal was duly cross-examined by the defence counsel. A copy of the deposition of PW2 on 03.11.2017 is annexed with this petition as Annexure P7.

A perusal of the application dated 13.02.2017 as well as the present petition reveals that there is not a whisper against the impartiality of the concerned officer. Para 2 of the application dated 13.02.2017 filed by the petitioner for recusal/transfer of the case before the learned Additional Sessions Judge, Moga reads as under:-

“2. That with utmost respect and humility at my command, I am humbly beseeching the kind indulgence of Your Honour in peculiar circumstances. At the outset, I may clearly express that I have complete, utmost and unflinching faith in the administration of justice and I hold the Court presided by Your Honour in the highest esteem. However, certain recent developments that have come to my notice have necessitated me to make the instant representation. I, therefore, urge Your Honour to consider the instant representation in a holistic and magnanimous perspective. The case is now listed for hearing on 6.2.2017.”

After mentioning the relationship between the Presiding Officer and PW2 Dr. B.S.Bhogal as well as the contradiction in the testimony of the defence witness and PW2 Dr. B.S.Bhogal it is mentioned in the application that:-

“7. That, Your Honour, I again humbly reiterate that there is not even a remote occasion for me to raise any question about the just decision in my trial but relying on the age old salutary principle of

law, equity and justice that '*justice should not only be done but should also be manifestly seen to be done*', I am making a humble prayer that Your Honour may consider transferring the trial for final decision to another appropriate Court.

8. That Your Honour, I may tender an unqualified apology in case Your Honour finds that there is breach of any impropriety or impertinence on my part. I steadfastly put my faith to the cause of justice and my respect and regard for the courts is utmost and unflinching.”

Para 13 of the present petition reads as under:-

“That be that as it may, the petitioner humbly submits that though there is not even a remote occasion for him to raise any question about the just decision in the trial but relying on the age old salutary principle of law, equity and justice that '*justice should not only be done but should also be manifestly seen to be done*', he is making a humble prayer that this Hon'ble Court may consider transferring the trial for final decision to another appropriate Court.”

The learned Additional Sessions Judge, Moga on 13.02.2017 referred the matter to the learned District & Sessions Judge, Moga while observing that keeping in view the facts mentioned in the application, the Presiding Officer has no objection if this case is transferred before any other court. The learned District & Sessions Judge, Moga however declined the reference vide order of even date i.e. 13.02.2017 while observing that no allegation has been levelled against the Presiding Officer and furthermore, there is no averment that the Presiding Officer is in any way prejudiced against the petitioner.

Learned senior counsel for the petitioner submits that though there is a factual error in order dated 13.02.2017 passed by the learned District & Sessions Judge, Moga to the effect that there is no admission of the relation by the learned Presiding Officer, it is however submitted that the only reason for moving this application as well as the present petition was merely to save the Presiding Officer from any kind of embarrassment at the time of appreciation of evidence/final decision of the case. The petitioner it is submitted has absolutely no doubt regarding the integrity or impartiality of the Presiding Officer and is otherwise sanguine that justice shall be done. Therefore, keeping in view the facts and circumstances of the case learned senior counsel for the petitioner seeks to withdraw this petition.

Dismissed as withdrawn.

February 16 , 2017.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No