

120.

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

CRM-M-48697-2017

Date of decision:20.12.2017.

MUKESH SALUJA

... Petitioner

versus

TEJINDER SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. G.C. Shahpuri, Advocate,
for the petitioner.

HARI PAL VERMA, J.

Petitioner has filed the present petition under Section 407 Cr.P.C. read with Section 482 Cr.P.C. seeking transfer of complaint case No.148-2 dated 04.05.2016, filed under Section 138 of Negotiable Instruments Act read with Section 420 IPC (for short, 'the Act'), pending in the Court of learned Judicial Magistrate Ist Class, Fazilka, to some other court so as to avoid harassment and attacks on the person of petitioner.

Briefly stated, respondent-complainant has filed the aforesaid complaint under Section 138 of the Act with an averment that the petitioner had borrowed an amount of ₹20 lakhs from the complainant in the month of August, 2015. The petitioner agreed to repay the said amount along with prevailing rate of interest after about six months. Thereafter, in order to discharge his liability towards the aforesaid outstanding amount, the petitioner issued a cheque No.027221 dated 05.02.2016 under account No.61016592347 of State Bank of Bikaner and Jaipur, Branch Saharanpur in favour of respondent-complainant. However, on presentation of said

cheque, the same was dishonoured with the remarks “funds insufficient”, which led to filing of the complaint. The petitioner was summoned in the case. The petitioner has sought transfer of the complaint outside the State of Punjab or near the place of border in the State of U.P., on the ground that the petitioner is running the business of “Glass” at Saharanpur in a rented shop which belongs to one Jasbir Singh son of Gurdit Singh, resident of Saharanpur. He argued that the son of the landlord, namely, Raminder Singh had befriended the petitioner and accordingly, the petitioner started reposing faith in him. When the petitioner met with an accident and remained under treatment for months together, taking advantage of the absence of the petitioner from his business, Raminder Singh stole some blank cheques of the petitioner and after filling up one cheque for ₹10 lakhs, Raminder Singh filed a complaint under Section 138 of the Act which is pending at Saharanpur. Raminder Singh had also misused another blank signed cheque through his close relative, namely, Tejinder Singh (respondent-complainant herein), who, after filling a sum of ₹20 lakhs, deposited the same in his bank account at Fazilka and the cheque was dishonoured. He has further argued that when the petitioner remained admitted in AIIMS Hospital, Delhi in August, 2015, the story propounded by the respondent-complainant for taking a loan is not sustainable and is totally false and baseless. He has further argued that the respondent-complainant in connivance with Raminder Singh has caused injuries to the petitioner at Karnal, when he had gone there for business purpose. Raminder Singh, who has already filed many complaints under Section 138 of the Act, is in the habit of filing such complaints. He has filed one such complaint against Charanjit Singh @ Happy and another complaint against one Tarun Kumar, which are pending

adjudication at Saharanpur. The complaint filed against the petitioner before the learned Magistrate at Fazilka is nothing but an abuse of process of law. In March, 2017 the respondent and his persons attacked the petitioner and caused injuries on his left arm which got fractured resultantly. Therefore, on medical grounds the petitioner is unable to attend the proceedings at Fazilka. The distance between Saharanpur and Fazilka is about 400 kilometers and it is very difficult for the petitioner to attend the proceedings at Fazilka on every date.

I have heard learned counsel for the parties.

Section 407 Cr.P.C. which governs the power of the High Court to transfer cases and appeals reads as under:-

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

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

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(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 offence;

(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 Session; or

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

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be

made by motion, which shall, except when the applicant is the Advocate- General of the State, be supported by affidavit or affirmation.

[\(4\)](#) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

[\(5\)](#) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with copy of the grounds on which it is made; and no order shall be made on of the merits of the application unless at least twenty- four hours have elapsed between the giving of such notice and the hearing of the application.

[\(6\)](#) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose: Provided that such stay shall not affect the subordinate Court' s power of remand under section 309.

[\(7\)](#) Where an application for an order under sub- section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

[\(8\)](#) When the High Court orders under sub- section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

[\(9\)](#) Nothing in this section shall be deemed to affect any order of Government under Section 197.”

The petitioner being an accused cannot opt for a jurisdiction of his choice. The requirement of Section 407 Cr.P.C. does not empower the accused to choose the forum at a place of his convenience. Since the cheque issued in favour of respondent-complainant has been dishonoured, the complainant has a right to pursue the remedy at Fazilka. Merely because it is convenient for the petitioner to attend proceedings at a place where the complainant has filed the complaint under Section 138 of the Act is no ground to transfer the complaint.

In view of above, this Court does not find any ground to transfer the complaint case and accordingly, the present petition is dismissed.

(HARI PAL VERMA)
JUDGE

20.12.2017
sanjeev

Whether speaking/reasoned	Yes/No.
Whether Reportable:	Yes/No.