

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

1. CRM-M No.9545 of 2015

Mohd. Alyas Abdali

... Petitioner

Versus

State of Punjab and another

... Respondents

2. CRM-M No.43947 of 2014

Vijay Kumar Chopra

... Petitioner

Versus

Sham Lal Gupta and another

... Respondents

Date of decision: 27th March, 2017

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.S. Ahluwalia, Advocate for the petitioners
in CRM-M No.9545-2015.

None for the petitioners in CRM-M No.43947 of 2014.

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab
for the respondent/State.

Mr. G.S. Bhatia, Advocate
for respondent No.2 in CRM-M No.9545-2015;
for respondent No.1 in CRM-M No.43947 of 2014.

FATEH DEEP SINGH, J.

The first petition by petitioner Mohd. Alyas Abdali is by way of prayer under Section 407 read with Section 482 of the Code of Criminal Procedure (in short, 'the Code') for transfer of appeal No.146 dated 23.12.2010 pending in the Court of learned Additional District & Sessions Judge, Sangrur and the second petition by petitioner Vijay Kumar Chopra is under Section 482 of the Code seeking dismissal of the

criminal appeal No.11 dated 08.02.2011 filed by Sham Lal Gupta against the present petitioner Vijay Kumar Chopra against the judgment of acquittal dated 11.12.2010 passed by learned Judicial Magistrate 1st Class, Malerkotla whereby complaint of respondent No.1 Sham Lal Gupta against the petitioner Vijay Kumar Chopra was dismissed.

The first petition is on the grounds that complaint (Annexure P1) was filed by Sham Lal Gupta respondent No.2 against the petitioner Mohd. Alyas Abdali under Section 500/501/34 IPC and after preliminary evidence the present petitioner was summoned to face trial. It was after trial the Court of learned Judicial Magistrate 1st Class, Malerkotla through judgment dated 11.12.2010 held the accused guilty for commission of offence under Section 500 IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. It is against these findings of conviction, present petitioner instituted criminal appeal which is pending before the Court of learned Sessions Judge and against which the petitioner in the first petition Mohd. Alyas Abdali has sought transfer of the appeal by virtue of the provisions of Section 407 of the Code from the learned Additional Sessions Judge, Sangrur to this Court.

By another quirk of fate, Vijay Kumar Chopra had instituted second petition under Section 482 of the Code for dismissal of this criminal appeal preferred by Sham Lal Gupta against Vijay Kumar

Chopra whereby learned Judicial Magistrate 1st Class, Malerkotla through same very judgment dated 11.12.2010 had acquitted one of the accused Vijay Kumar Chopra, petitioner in the second petition.

Appreciating the submissions of Mr. Preetinder Singh Ahluwalia, Advocate for the petitioners in the first petition; Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab representing the State and Mr.G.S. Bhatia, Advocate representing Sham Lal Gupta. Initially Sham Lal Gupta (petitioner in the first petition) had filed against Vijay Kumar Chopra, Mohd. Illyas Abdali and Smt. Rehmi a complaint under Sections 500/501/34 IPC on the grounds that the petitioner complainant was holding a social status and commands respect in the society and by virtue of the news item published in Hind Samachar group of papers he has been demeaned and sought prosecution for its malicious publication of the news item. It was through judgment dated 11.12.2010 the Court of learned Judicial Magistrate 1st Class, Malerkotla had acquitted Vijay Kumar Chopra accused No.1 in the complaint (petitioner in the second petition) and convicted accused No.2 Mohd. Illyas Abdali (petitioner in the first petition) under Section 500 IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. It is worthwhile to refer here that proceedings against accused No.3 Smt.Rehmi had abated during the course of trial. It is as a

consequence of these impugned findings, these different petitions have come about.

Section 407 of the Code of Criminal Procedure deals with powers of the High Court to transfer cases and appeals and which is reproduced as below:

“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 Session Judge and rejected by him.

(3) Every application for an order under sub section (1) shall be made by motion, which shall, excel 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 a copy of the grounds on which it is made, and no order shall be made on the merits of the applications 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 interest 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.”

Furthermore, Section 378 of the Code deals with appeals in cases of acquittal and sub-section (4) empowers the High Court to deal with appeals arising out of the orders of acquittal passed in any case instituted upon complaint. Whereas Section 374 of the Code enlists that any person convicted on a trial held by a Court other than Sessions Judge or Additional Sessions Judge and thus, convicted on trial by a Magistrate may appeal to the Court of Sessions. Thus, by this common judgment has lead to an appeal preferred by the complainant against acquittal of one of the accused which is pending before this Court and against conviction an appeal by a convict is already pending before the Court of Additional Sessions Judge. Thus, to the mind of this Court an innocuous situation has cropped up as in the event of findings given by the two concerned courts i.e. the High Court and in the other case Court of learned Sessions Judge are materially self-contradictory, would create a situation which is not only undesirable but may bring forth a situation which will give rise to more controversies and contradictions and thus, would have its bearing on the dispensation of justice. Thus, to prevent any such situation from being brought about, it is desirable for this Court to exercise its inherent powers by virtue of Section 482 of the Code of Criminal Procedure and to ward off any such situation being given birth, to order that the matter pending before the Court of learned Additional Sessions Judge, Sangrur

i.e. Appeal No.146 dated 23.12.2010 be transferred to this Court and that the appeal bearing No.11 dated 08.02.2011 and the appeal that is being ordered to be transferred from the first appellate Court to this Court, be listed together so that they are heard and disposed off together.

In view thereof, both the present petitions stand disposed off.

(FATEH DEEP SINGH)
JUDGE

March 27, 2017

rps

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