

CRM-M-13833-2018

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

CRM-M-13833-2018

Date of Decision: 25.05.2018

Sushma

.....Petitioner

Vs.

Om Parkash Dahiya

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vishal Garg Narwana, Advocate,
for the petitioner.

Mr. Monu Kumar, Advocate, for
Mr. Rajesh Malik, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner seeks transfer of criminal complaint bearing no. COMI/53/2016, instituted on 09.04.2018, stated to be pending before the learned JMIC Sonapat, alleging therein the commission of offences punishable under Sections 195-A, 420, 452, 467, 468, 471, 506 and 120-B IPC, on the ground that the respondent is a member of the Juvenile Justice Board at Sonapat, and therefore the chances of the judgment being clouded, cannot be ruled out.

Upon notice issued, Mr. Rajesh Malik, learned counsel for the respondent, has appeared and today has filed a reply to the petition, and has further submitted that earlier also the petitioner had filed Transfer Application 181 of 2013, seeking transfer of the divorce petition filed by her husband, who is stated to be the son of the present respondent, on the same grounds; with that petition having been dismissed by this Court, vide its order dated 26.03.2016, a copy of

which has been annexed as Annexure R-1 with the reply.

He further submits that as would be discerned from the said order of this Court, in that case the petitioner had stated that her father was 75 years old, residing at Rohtak, and therefore he could not travel to Sonapat as he was suffering from various ailments. However, in the present petition, which has been filed about 05 years later, it has been stated that the petitioners' father is aged 70 years old. He therefore submits that the petitioner is only trying to mislead this Court.

Learned counsel for the petitioner, in reply thereto, submits that at the time when Transfer Application No. 181 of 2013 had been filed, the petitioner was in custody and therefore, possibly for that reason, her fathers' age was erroneously given in that petition, whereas he is actually 70 years old.

He further submits that the petitioner is suffering from Bronchial Asthma, in support of which contention he refers to an 'Out Patient Card', issued by the PGIMS, Rohtak, a copy of which has been annexed as Annexure P-3 with the petition, and is seen to be dated 26.10.2015.

Though the petitioners' father being 70 years old and the petitioner suffering from Bronchial Asthma, (with the 'out patient' record also being about 2.5 years old), are no reasons for transfer of the petition from Sonapat to any other place, the only reason which this Court would consider, is the fact that the respondent is not denied to be a member of the Juvenile Justice Board at Sonapat.

Though learned counsel for the respondent submits that even the factum of the respondent being a member of the Juvenile Justice Board at Sonapat was stated in TA No. 181 of 2013, and therefore with that petition having been dismissed, even though qua different proceedings, the petitioner cannot seek transfer of this case on that basis, however, a perusal of the order of this Court

26.03.2013, passed in that petition, shows that after noticing the facts with regard to the litigation between the parties, it was stated as follows:-

“The transfer of the divorce petition from Sonipat to Rohtak has been sought on the ground that (i) the father of the petitioner, a retired Lab Technician aged 75 years is residing at Rohtak and cannot travel to Sonipat as he is suffering from various ailments; (ii) the distance between Rohtak and Sonipat is about 55 kilometers; (iii) the respondent and his family are very influential and can hamper the trial by using their influence.

After hearing the learned counsel and perusing the averments made in the petition, I find no ground to transfer the divorce proceedings from Sonipat to Rohtak. No proof regarding alleged ailments of the father of the petitioner has been placed on record; the distance of 55 kilometers, cannot be said to be too much. As regards the alleged influence of the respondent or his family's is concerned, such an apprehension without any instance/substance is liable to be rejected. Thus, in my opinion, it is not a fit case for the transfer of divorce petition.

Dismissed.”

Very obviously, the factum of the respondent herein being a member of the Juvenile Justice Board, (in that case he being the father of the respondent therein), was not noticed by this Court while dismissing the previous transfer application of the petitioner, (such transfer application being in respect of divorce proceedings and not the proceedings which are sought to be transferred presently).

When this Court expressed its opinion today that in such circumstances it would be appropriate to transfer the complaint in question out of Sonapat, learned counsel for the respondent submits that it may not, however, be transferred to Rohtak, as is prayed for, because the respondent fears for his life

while going to Rohtak, as the present petitioner and her family belong to that place and he apprehends that he would be physically attacked.

Having considered the matter, though otherwise there would be no reason to transfer the petition, however, since justice is not just to be done but also has to be seen to be done; without (naturally) casting any aspersion on any judicial officer posted at Sonapat, in the opinion of this Court, it would be appropriate that the complaint instituted by the respondent against the petitioner is transferred out of Sonapat; but not to Rohtak, as is prayed for by the petitioner, but to another near-by place, i.e. Panipat.

Ordered accordingly.

Thus, the case file from Sonapat be sent to the learned Chief Judicial Magistrate, Panipat, for assignment to an appropriate Court (at Panipat).

The trial Court at Panipat would proceed from the stage of commencement of pre-charge evidence, i.e. the stage which the proceedings are presently stated to be at in Sonapat.

Disposed of.

May 25, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes