

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18789-2016 (O&M)

Date of Decision:-24.05.2018.

Vijay Kumar Dhall and others

.....Petitioners

Versus

Amarjit Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Gurbachan Singh Bhatia, Advocate for the petitioners.

Power of Attorney of Amarjit Kaur-in person.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioners have sought for transfer of Criminal Complaint No.COMI/14/2014 dated 03.01.2014 titled as “***Amarjit Kaur Vs. Vijay Kumar and others***” pending in the Court of Sh. Varinder Kumar, Judicial Magistrate, Ferozepur for 06.06.2006 to a Court of competent jurisdiction at Chandigarh.

2.) Learned counsel for the petitioners submitted that petitioners are not able to appear before the Ferozepur Court as they are harassed by the relatives of the respondent. Further it is also submitted that Bar Association of Ferozepur have taken a decision not to take up the matter of the petitioners. Therefore, it is contended that it is not feasible to continue the proceedings in the Court of Judicial Magistrate, Ferozepur and it be transferred to Chandigarh.

3.) *Per contra* learned counsel for the respondent submitted that

respondent is a old woman and she cannot travel from Ferozepur to Chandigarh to the attend the case. It was also contended that there is no specific resolution insofar as petitioners are concerned that they will not take up the case. It is only excuse.

4.) Heard the learned counsel for the parties.

5.) Under the provisions of Section 407 Cr.P.C, following conditions are required to be taken note of for the purpose of invoking aforesaid Section for transferring a case:-

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 of 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 a copy of the grounds on which it is made; and no order shall be made on 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 of 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.

Respondent being a woman, it is a fact that she cannot travel from Ferozepur to Chandigarh as and when case is listed at Chandigarh, if the case is transferred. If there is a non-cooperation from the counsel or members of the Bar at Ferozepur in not taking up the petitioners' case and they are not willing to engage as their counsel, in that event, petitioners are permitted to approach District Legal Services Authority to provide a counsel. If the petitioners approach District Legal Services Authority, Ferozpur, Member Secretary of the District Legal Services Authority would examine and provide a counsel, in accordance with law.

6.) With the above observations, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

May 24, 2018.

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Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.