

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-40569 of 2018
Date of Decision: 17.9.2018**

Vaneet Kumar Nagpal

.....Petitioner

Versus

Poonam Rani

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. C.M.Munjal, Advocate
for the petitioner.

ANITA CHAUDHRY, J

The petitioner is seeking transfer of a complaint from the Court of CJM, Fazilka to any other Court.

The petitioner had approached the Sessions Judge for transfer of the case. The application has been dismissed.

I have heard counsel for the petitioner at great length.

The submission on behalf of the petitioner is that certain adverse orders have been passed against the petitioner. He further submits that record had been summoned by the Appellate Court but the trial Court had summoned the file back from the Appellate Court and was in a hurry to decide the case. Counsel further submits that the matter was not a case under the Action plan.

The petitioner apprehends that he will not get justice from the Court where his case is pending, except this he has not given any details as

application has been passed, the petitioner fears that the Court was against him and had formed an opinion.

The petitioner merely apprehends that he would not get justice. The apprehensions do not appear to be genuine. So far as apprehension is concerned, it has to be established that justice would not be done. It would be profitable to refer to a passage from *Gurcharan Dass Chadha Vs. State of Rajasthan* AIR 1966 SC 1418, wherein it has been held:-

“... The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

In ***Abdul Nazar Madani v. State of T.N.***(2000) 6 SCC 204 has ruled that:-

“...The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible

impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.”

In ***Captain Amarinder Singh v. Parkash Singh Badal and others (2009) 6 SCC 260***, while dealing with an application for transfer petition preferred under Section 406 CrPC, a three-Judge Bench has opined that for transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It has also been observed therein that mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. In the said context, the Court has held thus:-

“19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the

State under Section 407 and anywhere in the country under Section 406 Cr.PC.

20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one.”

Cases are not transferred as a matter of routine or merely because a party has expressed some apprehension. The power of transfer has to be exercised consciously and in an exceptional situation when it becomes necessary. Apprehension in the mind of the petitioner is misplaced. No case for transfer is made out.

The petition is dismissed in *limine*.

**(ANITA CHAUDHRY)
JUDGE**

September 17, 2018
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes