

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

CRM-M No. 43164 of 2014

DATE OF DECISION :- August 14, 2018

Munish Kakkar and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Vishal Gupta, Advocate for the petitioners.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

Ms. Nidhi Kakkar-respondent no. 2 in person.

This petition under Section 407 Cr.P.C. read with Section 482 Cr.P.C. for transfer of criminal case titled as 'State of Punjab versus Munish Kakkar and others' registered vide F.I.R. No. 215 dated 17.8.2005 under Sections 406, 498-A IPC registered with Police Station Nawanshahar pending in the Court of Additional Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar to some other Court of competent jurisdiction outside District SBS Nagar has been filed by petitioner Munish Kakkar and Swaran Kakkar, both of them being accused in the said case.

By way of filing the instant petition they have also challenged order dated 28.10.2014 passed by Sessions Judge, SBS Nagar. Inter alia in the petition, the petitioners have contended that respondent no. 2 Nidhi Kakkar has falsely involved petitioner Munish Kakkar her husband and Swaran Kakkar her mother-in-law, Gulshan Raj Kakkar her father-in-law in this case; that parent-

in-law of complainant are aged more than 70 years.

After filing of challan in the Court, the case is pending since the year 2005. In addition to this case, other cases in respect of the same parties are pending at Jalandhar. Divorce petition between petitioner and respondent no. 2 is pending in Hon'ble Supreme Court of India; that during the trial before Additional Chief Judicial Magistrate SBS Nagar, the complainant-respondent no. 2 had made a statement running into about 80 pages as cross examination-in-chief whereas statement given by her under Section 161 Cr.P.C. runs into 1½ page only and original complaint was of two pages only. Although the objections were taken by the petitioners with regard to such statement and the Court being inconsistent with the statement given by the complainant to the police under Section 161 Cr.P.C. but those objections were not considered by the trial Court, that about 96 opportunities have been granted to the prosecution to conclude the evidence but same is still going on. Despite an application having been moved for closing the prosecution evidence on behalf of parents of petitioner no. 1 that request has not been considered and the requisite order has not been passed thereon. It is contended that respondent no. 2 is a practicing Advocate at Nawanshahar since the year 2007 and is member of Bar Association SBS Nagar. She is contesting all the cases on her own; that learned trial Court is pressurizing petitioner to conclude cross-examination of the complainant/respondent no. 2 at the earliest and is disallowing the questions being put to her. The trial is getting delayed at the instance of prosecution/complainant and not due to any fault of petitioner. In the petition several interim orders have been reproduced. The petitioners have alleged bias towards respondent no. 2 who is a practicing Advocate at Nawanshahar. The petitioners had statedly moved an application before learned Sessions Judge,

SBS Nagar for transferring the case from the Court of ACJM SBS Nagar to some other Court but the application was dismissed in default on 26.9.2014 since petitioners could not appear there for the reason that hearing in the matter for grant of divorce was pending before Hon'ble Supreme Court; that Mrs. Sapna Jaggi, who had been appearing for petitioners had withdrawn her vakalatnama on 4.9.2014 on objection being raised by the complainant on technical grounds. Thereafter the petitioners had engaged Sh. Hardeep Singh, an Advocate of Banga, since no local counsel was willing to be engaged against respondent no. 2 as it was her personal matter. Sh. Darshan Singh Dayal, Advocate practicing at Jalandhar who was representing the petitioners had earlier gone abroad and the fact was within the knowledge of the trial Judge that petitioners were handicapped in engaging another counsel; that during the trial when several questions were disallowed Sh. Hardip Singh, Advocate representing petitioners felt uncomfortable and left the matter midway. Petitioner no. 1 had to cross examine the complainant himself though he had no qualification and experience in the matter. The petitioners prayed for transfer of the case to some other Court outside SBS Nagar.

The request is being opposed vehemently on behalf of the complainant. The official respondents also crave for dismissal of petition.

I have heard learned counsel for the petitioners and learned State counsel besides going the record and I do not see any reason to accept the petition.

It may be mentioned here that the allegations in the petition are quite general and vague. Respondent no. 2-complainant may be a member of the local Bar or practicing Advocate at SBS Nagar but that does not mean that she is so influential or powerful so as to interfere with the judicial functioning

of a Court. It is neither alleged nor any evidence on file to show that the Presiding Officer is acquainted with the complainant having cordial relations with her resulting in having a favourable tilt towards her. Merely because complainant is stated to be a member of local Bar Association does not mean that she can be made to interfere with the process of law and to get favourable verdict.

Learned Sessions Judge has rightly dismissed the application for transferring of the case moved by the petitioners since no favourable or justifiable reason could be furnished for the same. Though it is said that no lawyer accepted the brief on behalf of the petitioners but the petitioners are contradicted by their own contentions when they give the name of three lawyers who had been representing them earlier. There is nothing on record to show that the petitioners brought the fact of their being unable to engage a counsel from the local Bar due to influence of respondent no.2-complainant to learned District and Sessions Judge SBS Nagar or Member Secretary of the District Legal Services Committee. It is not the case of the petitioners that they had reported the matter to the police lodging any complaint against the complainant.

Section 303 Cr.P.C. deals with right of a person against whom proceedings are instituted to be defended. It provides that any person accused of an offence before a criminal Court or against whom proceedings are instituted under this Code may of right to be defended by a pleader of his choice. Section 304 Cr.P.C. deals with providing legal aid to the accused at State expense in certain cases. It provides that where in a trial before the Court of Sessions the accused is not represented by a pleader and where it appears to the Court that accused has not sufficient means to engage a pleader the Court

shall assign a pleader for his defence at the expenses of the State.

Therefore, if the petitioners have got any grouse they can of course contact learned District and Sessions Judge or Secretary, District Legal Services committee or request the Court that they be provided with a lawyer.

The complainant has referred to various authorities in support of her contention that for the reasons given in the petition the case cannot be transferred. First such authority was “D.A.V. College, Hoshiarpur Society (Regd.) and another versus D.M. Sharma and others” 2005 (1) RCR (Civil) 71 by a coordinates Bench of this Court wherein it was observed that when transfer of a suit was sought on the ground that respondent was a practicing Advocate in the Court at Hoshiarpur for last many years it was observed that merely because a litigant is a practicing Advocate would not constitute a valid ground for transfer of the case . In “Satish Jaggi versus State of Chhattisgarh and others 2007(2) Crimes (SC) 289” the Apex Court had summed up the law regarding transfer of case from one Court to another under Section 406 and 407 Cr.P.C. as follows :-

- “(1) 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.
- (2) 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.
- (3) It is one of the principles of the administration of justice that justice should be done but it should be seen to be done. AIR 1966 Supreme Court 1418 relied.
- (4) Grounds for the transfer have to be tested on this touchstone bearing in mind the rule that normally the complainant has the right to choose any Court having

jurisdiction and the accused cannot dictate where the case against him should be tried. AIR 1979 Supreme Court 468 relied.

- (5) When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Code. 2000(2) RCR (CrI.) 770 (SC) relied.
- (6) 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.
- (7) Convenience of parties including witnesses to be produced at the trial is a relevant consideration for deciding the transfer petition. 2000(2) RCR (CrI.) 770 (SC) relied.
- (8) Where public confidence in the fairness of the trial is likely to be seriously undermined under the circumstances of the case, transfer petition could be allowed. AIR 1958 Supreme Court 309 relied.”

Here the allegations levelled against the Presiding Officer are general and sweeping type which do not provide any reason for transfer of case from his Court to some other Court of competent jurisdiction in the Session Division or outside. Accordingly, the petition being without merit stands dismissed.

(H.S. MADAN)
JUDGE

August 14, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No