

127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40788-2018 (O&M)

Date of decision 27.03.2019

Gurdeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Meena Bansal, Advocate as Amicus Curiae and
Mr. Arjun Veer Sharma, Advocate
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

Prayer in the present petition is for setting aside the order dated 25.09.2017; passed by the learned Chief Judicial Magistrate, Ludhiana vide which, the application seeking transfer of case No. CHA/1063/2016 titled as State Vs. Gurdeep Singh Kahlon FIR No.59 dated 27.04.2016 under Section 30 of Arms Act, 1959 registered at Police Station Jamalpur, Ludhiana and case No. CHI/2223/2016 titled as State Vs. Gurdeep Singh Kohlan FIR No.110 dated 28.07.2016 under Sections 420, 465, 467, 468, 471, 120-B of IPC, registered at Police Station Jamalpur, Ludhiana, from the Court of Sh. Bhupinder Mittal, Judicial Magistrate 1st Class, Ludhiana to some other Court of competent jurisdiction at Amritsar or Gurdaspur, has been declined.

Notice of motion.

Mr. P.S.Walia, AAG, Punjab, accepts notice on behalf of the respondent-State.

Learned counsel for the petitioner, assisted by Mr. Arjun Veer Sharma, Advocate, submits; and it is also pleaded in the petition; that while granting bail in one of the abovesaid cases, the said Judicial Magistrate had written a wrong Section of Arms Act, which delayed the release of the

petitioner from the custody. This aspect was brought to the notice of the said Magistrate, however, he got infuriated. This resulted in making a representation by the petitioner to the Hon'ble Chief Justice. Hence, the petitioner has a reasonable apprehension that some kind of bias, in the mind of the said Presiding Officer of the Court, can arise. Hence, in all fairness, the trial of the above said case should be transferred to some other Court from the Court of Sh. Bhupinder Mittal, JMIC, Ludhiana.

Learned counsel for the petitioner has further pointed out that for quashing of one of the FIR No.59 dated 27.04.2016 under Section 30 of Arms Act, 1959 registered at Police Station Jamalpur, Ludhiana, from which one of the abovesaid case has arisen, a separate petition CRM-M-19464-2017 has been filed before this Court. In that case, this Court has already passed an interim order dated 10.10.2017 to the effect that the trial Court would adjourn the trial of the case beyond the date fixed before this Court. Thereafter, the said order has been continued and is in operation even till today. However, despite interim order from this Court, the said Presiding Officer has been proceeding in the said case on merits as well. Earlier the Presiding Officer had issued production warrants to the jail Authorities for producing the petitioner on 20.03.2019. The said Presiding Officer had declared the petitioner as proclaimed offender, vide order dated 20.09.2018. Thereafter, even the witnesses are being examined by the said Court. The order dated 17.11.2018 passed by that Court shows that PW Sushil Kumar has been examined. However, since the petitioner had already been declared as proclaimed offender, therefore, the record of the said case was consigned to record room by that Court. But, thereafter, the

petitioner was produced before the said Court and again the witnesses have been summoned. Accordingly, it is submitted by the counsel that since despite the interim order passed by this Court, the said Magistrate is proceeding further with the case on merits and have gone to the extent of even examining the witnesses, therefore, there is a reasonable apprehension that the petitioner would not get justice from the said Court.

On the other hand, learned counsel for the State submits that the Presiding Officer of the Court is not personally interested in the case. He has been proceeding in the matter only in accordance with law and as per duty cast upon the trial Court. However, the learned counsel for the State submits that, in any case, if the Court deems it appropriate to take the case out from the Court of the abovesaid Presiding Officer, then the same may not be transferred out of the District. Instead, the case can be transferred to some other Court at the same place.

It is trite law that justice should not only be done but it should appear to have been done as well. Even though the apprehension of the petitioner may not be much substantiated, however, it cannot be denied that there is some deflection from the appropriate procedure on the part of the said Presiding Officer, knowingly or unknowingly, as is reflected from the fact that proceedings are being undertaken by that Court, despite there being an interim order from this Court. Hence, lest the petitioner, who is an accused in the case, has some kind of apprehension that he is not being granted proper opportunity to put up his case in a fair manner, it would not be unjustified, if his case is transferred to some other Court.

However, this Court finds substance in the submissions made by the learned counsel for the State that instead of transferring the case out

of this district, the trial of the case of the petitioner can be ordered to be transferred to some other court of competent jurisdiction at the same place.

Accordingly, the present petition is disposed of with a direction to the Chief Judicial Magistrate/District and Sessions Judge, Ludhiana to assign this case to some other Court of competent jurisdiction at Ludhiana only.

(RAJBIR SEHRAWAT)
JUDGE

27.03.2019

Hemlata

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