

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

CRM-M-53637-2019
Date of Decision:-20.12.2019

KRISHAN LAL @ KISHAN LAL

... Petitioner

Versus

CENTRAL BUREAU OF INVESTIGATION

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Abhishek Sanghi, Advocate &
Ms. Kanika Ahuja, Advocate
for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court challenging order dated 10.12.2019 passed by learned Special Judge (CBI), Haryana whereby an application filed on behalf of the petitioner/accused seeking transfer of the case arising out of RC-8(S)/2003/SCB/CBI/CHG dated 9.12.2003 titled as CBI Versus Baba Gurmeet Ram Rahim Singh and Others, to any other Court of competent jurisdiction has been dismissed.

2. Learned counsel for the petitioner, while assailing impugned order, has submitted that present case arising out of RC-8/2003 as well as another case regarding another murder in respect of which RC-10(S)/2003/SCB/CBI/CHG dated 9.12.2003 was registered, infact had arisen from a statement of Khatta Singh recorded in terms of Section 164 Cr.P.C. and who has also appeared as witness in both these cases. It has been submitted that while trial in respect of RC-10/2003 stands concluded wherein accused have been convicted, the trial in respect of present case arising out of RC-8/2003 is still pending.
3. Learned counsel has submitted that the entire case of the prosecution is mainly based on the testimony of PW-Khatta Singh and since the Presiding Officer of the Court concerned while deciding the trial arising out of RC-10/2003 has heavily relied upon the statement of aforesaid Khatta Singh and also on his statement recorded in terms of Section 164 Cr.P.C., there is every likelihood that a similar opinion is likely to be formed in the present case based on testimony of aforesaid Khatta Singh who had been held to be reliable witness in the other case.
4. Learned counsel in order to hammer-forth his aforesaid submission has drawn the attention of this Court to Volume-III of High Court Rules and Orders, Chapter 26, Part-A, Rules 9 to 11, which read as follows:-

“9. In cases where the judge or Magistrate happens to be connected with one or the other party by relation-ship; friendship, etc., it is advisable for him to move the proper authority at once to transfer the case to some other Court; for however straight forward and impartial he may be, there is always the danger of his actions being regarded with suspicion and misinterpreted. An immediate transfer of the case would avoid the possibility of an application

for transfer being made later stage and consequent delay in the disposal of the case.

10. *The same course would be advisable in cases in which the Judge or Magistrate has already formed and expressed a definite opinion on the material issues requiring decisions, against the accused concerned.*
11. *As regards the last category, the presiding officers of Courts should carefully bear in mind that it is their duty not only to be thoroughly impartial, but to conduct themselves in such a manner as not to give rise to any reasonable apprehension in the mind of an accused person that he will not have a fair and impartial enquiry or trial. In dealing with an application for transfer the Court has to consider not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. As observed by Lush J. In Serjeant versus Dale [(1877) 2 Q. B. D. 558] "the law has regard, not so much perhaps to the motives which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, are so to promote the feeling of confidence in the administration of justice which is essential to social order and security." (vide I.L.R. 3 Lah. 443 and I.L.R. 6 Lah. 396) ."*

5. I have considered submissions addressed before this Court and have also perused the impugned order.
6. The apprehension of the petitioner is that the trial Court would be prejudiced against the accused more particularly since the entire case of the prosecution is based on the testimony of same witness, whose testimony had found favour with the Court in earlier case. This Court is of the opinion that the aforesaid apprehension is rather misconceived inasmuch as the trial Court while finally deciding the case arising out of RC-8/2003 would be appreciating all such evidence which is led during the course of present trial

in order to reach at an independent finding as to whether the charges framed against the accused are established or not. It is only the substantive evidence recorded or produced in the present case which form basis of any finding as may be reached at by the trial Court. There is no such concept in criminal jurisprudence that if an accused is found guilty in one case, he would be held to be guilty in other identical case. Each case has to be established by prosecution by leading evidence independently. Thus any evidence recorded in RC-10/2003 or any finding recorded against the accused therein can not be *ipso-facto* imported in the present case. It is only in accordance with settled principles of evidence that any such evidence or judgment may be held to be relevant.

7. The mere fact that the trial Court found testimony of Khatta Singh reliable in an another case cannot lead to a conclusion that the trial Court would be influenced by the said fact while deciding another case. The trial Court would examine all the facts and circumstances in the present case so as to reach an independent conclusion as regards veracity of statement of PW Khatta Singh.
8. As far as Rules 9 to 11 of Volume-III of High Court Rules and Orders, Chapter 26, Part-A as reproduced above are concerned, Rule 9 would be applicable in a case where Presiding Officer happens to be related or known to either of the party which is not the case in hand. Rule 10 would be applicable in a case where the Presiding Officer has already formed definite opinion pertaining to material issue against the accused. The present case arising out of RC8/2003 is altogether a different matter from subject matter of RC10/2003 as both these cases pertain to two different murders.

Although one of the witness may be common in both the cases and whose testimony has been relied upon by Presiding Officer while deciding the other case arising out of RC-10/2003 but the said fact *ipso-facto* cannot be construed to mean that the Presiding Officer has already formed opinion about the veracity of the statement of the aforesaid witness in the present case. There is nothing on record to show that Presiding Officer is prejudiced in any manner against the accused. As such the present case would not attract aforesaid Rule 10 or 11 (supra). Needless to mention it shall always be open to the petitioner to raise submissions at appropriate stage before Trial Court so as to impeach the credibility of the aforesaid Khatta Singh.

9. This Court does not find any infirmity in the impugned order and the same is upheld. The petition, as such, is sans merit and is hereby dismissed.
10. It is clarified that the trial Court while deciding the present case shall decide the same independently without being influenced by any finding recorded in judgment arising out of RC-10/2003 titled as CBI Versus Baba Gurmeet Ram Rahim Singh and Others.

(GURVINDER SINGH GILL)
JUDGE

20.12.2019
Gaurav Sorot

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