

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CRM-M-24401-2023
DECIDED ON:15th MAY, 2023

VIVEK KUMAR GAUTAM

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Nishant Nain, Advocate for
Mr. APS Bhinder, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

SANDEEP MOUDGIL. J.

CRM-21910-2023

Application is allowed, as prayed for.

CRM-M-24401-2023

1. The jurisdiction of this Court under Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') read with Section 482 Cr.P.C., for transfer of trial of case FIR No. 107/2021, dated 27.02.2021, under Sections 406 and 420 of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Jind City to the Court of competent jurisdiction in either of the district bordering the State of Delhi adjacently such as Gurgaon, Faridabad, Sonipat.

2. Learned counsel for the petitioner has contended that a false case has been registered against the petitioner at the behest of one Anup Singh. In fact, the petitioner is a victim of criminal conspiracy hatched by the complainant/respondent No.2. The complainant has lodged the afore-said FIR against the petitioner by misusing his powers being posted as Head Constable in Haryana Constable. The assertion is that the petitioner met the complainant/respondent No.2 for the first time in May 2019 and in the month of June, 2019, the petitioner approached the respondent No.2 seeking friendly loan of Rs.1,00,000/-, which was given to him in cash. It is asserted that the petitioner has been arrested in this case on 28.03.2022 without serving him the notice under Section 41-A Cr.P.C., despite being well aware of the guidelines laid down by the Apex Court in the case of **“Arnesh Kumar vs. State of Bihar”; 2014 (6) SCJ 219**. Report under Section 173 Cr.P.C., stands presented on 26.05.2022. Further assertion is that out of the total amount of Rs.29,00,000/-, the complainant/respondent No.2 has refunded an amount of Rs.17,00,000/- to the petitioner and now the respondent No.2 has started issuing threats to the petitioner in the name of his links in Haryana Police that he will ask for his money, he will get an FIR registered against him.

3. From the bare perusal of FIR as well as report under Section 173 Cr.P.C., no offence of cheating is made out against the petitioner and the amount transferred in the account of the petitioner during the year 2019-2021, is the amount which was borrowed by respondent No.2 from the petitioner in cash, as is evident from the received dated 12.10.2021 (Annexure P-8). It is alleged that respondent No.2/complainant has got

registered the afore-said FIR by misusing his powers and contacts, as he is posted as Head Constable in Haryana Police.

4. Before adverting to the case in hand, it would appetite to have a glance of Section 407 Cr.P.C., which reads as under:-

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

5. 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.

6. However, the contention of learned counsel for the petitioner that respondent No.2, who is a complaint in the present case and is posted as Head Constable in Haryana Police might influence the investigation and hamper the petitioner in prosecuting his case before the Court below, which would have resulted in obstruction of administration of justice, does not suffice.

7. In the present petition, there is nothing on record to suggest that there is in any manner, an interference direct or indirect with the investigation of the offences alleged against the petitioner or the trial of the case before the Court below. A general feeling that respondent No.2 being posted in the Haryana Police would hamper the trial proceedings is not sufficient.

8. Accordingly, the present petition is hereby dismissed in limine being devoid of any merit.

15th MAY, 2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No