

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-48374-2022 (O& M)**
Date of decision: 11.01.2023

Suman Petitioner

V/s

State of Punjab and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDIPresent: Mr. Parampreet Singh Paul, Advocate,
for the petitioner.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 407 Cr.P.C. read with Section 482 Cr.P.C. is for the transfer of the proceedings arising out of case FIR No.181 dated 29.11.2020 under Sections 323, 341, 506, 148, 149, 427, 509 IPC registered at Police Station Sri Anandpur Sahib, District Rupnagar (Annexure P-1) titled as "State versus Bharat Bhushan" pending, in the Court of Dr. Sushil Bodh, Principal Magistrate, Juvenile Justice Board, Rupnagar to any other competent Court of jurisdiction outside District Rupnagar or at District Courts, SAS Nagar Mohali or at any other appropriate Forum.

2. The brief facts of the case are that an FIR No.181 dated 29.11.2020 under Sections 323, 341, 506, 148 and 149 IPC at Police Station Anandpur Sahib, District Rupnagar, came to be registered at the instance of the petitioner-complainant against the respondent No.2 and certain other

accused. A copy of the FIR is attached as Annexure P-1 to the present petition.

The accused/respondent No.2 was a juvenile and his Trial was separated from that of the other seven accused and is now pending before the Court of Dr. Sushil Bodh, Principal Magistrate, Juvenile Justice Board, Rupnagar.

3. A cross-case bearing DDR No.25 dated 29.11.2020 under Sections 323, 341, 506, 148, 149, 506 and 201 IPC and Section 434 IPC added later on and Section 13-A of the Punjab Village Common Lands Regulation Act, 1961 was also registered against the petitioner and other co-accused. A copy of the cross-version is attached as Annexure P-2 to the present petition.

4. The petitioner moved an application before the Trial Court for directing the Station House Officer, Police Station Sri Anandpur Sahib to further investigate the matter and to take legal action against the Investigating Officer/JI Jeet Ram and SHO Rupinder Singh for allegedly not conducting a fair and proper investigation. A copy of the application dated 18.11.2021 moved by the petitioner is attached as Annexure P-3 to the present petition.

5. The said application was moved by the petitioner before the Trial Court on 18.11.2021 and the same was pending adjudication. Notice was issued to the prosecution agency for filing a reply and the matter was fixed for consideration on 31.08.2022. The Station House Officer, Sri Anandpur Sahib sought time for filing a reply to the application and the matter was adjourned to 07.09.2022 for filing a reply. A notice was also issued to the Investigating Officer who had filed a reply to the application.

attached as Annexure P-4. The Zimni order dated 31.08.2022 showing that the matter was to come for consideration on 07.09.2022 is attached as Annexure P-5 to the present petition.

6. The Trial Court dismissed the application vide impugned order dated 07.09.2022 on the grounds that neither the petitioner nor anyone else had appeared on her behalf to pursue the said application and the case was adjourned to 14.09.2022 for prosecution evidence. A copy of the said order is attached as Annexure P-11 to the present petition.

7. The learned counsel for the petitioner contends that the dismissal of the application (Annexure P-3) filed by the petitioner is bad in the eyes of law. In fact, since the reply to the application had already been submitted and the matter was fixed for consideration, the Trial Court was bound to pass an order on merits.

In fact, a careful perusal of the record would reveal that the case was adjourned from 07.09.2022 to 09.09.2022 as was borne out from the CIS System of the Court (Annexure P-6). The cause list of the Trial Court (Annexure P-7) also showed that the case was listed for 09.09.2022 for consideration. However, the Court had in a mala fide manner passed the order dated 07.09.2022 showing that the case was adjourned to 14.09.2022.

Faced with this situation and since the petitioner had lost faith in the Trial Court, a reference was sent by the Trial Court to the District & Sessions Judge, Rupnagar with a request to transfer the case to any other Court of jurisdiction. The parties were directed to appear on 30.09.2022 before the District & Sessions Judge, Rupnagar. A copy of the said order is attached as Annexure P-8. However, the District and Sessions Judge, Rupnagar had declined the request of the Trial Court and directed the parties

as there was no other Juvenile Justice Board which has been constituted in the District. A copy of the order passed by the Sessions Judge, Rupnagar date 30.09.2022 is attached as Annexure P-9 to the present petition.

He further contends that a complaint has been moved against Dr. Sushil Bodh, Principal Magistrate, Juvenile Justice Board, Rupnagar to the Hon'ble Chief Justice of India vide complaint dated 15.09.2022 (Annexure P10).

It is, thus, his contention that since the petitioner had an apprehension that she was not going to get a fair and impartial Trial in view of the fact that there was manipulations in the dates pursuant to the order dated 07.09.2022, the Trial of the present case ought to be transferred out as per the prayer of the petitioner.

8. I have heard the learned counsel for the petitioner.

9. Before proceeding further, it would be pertinent to examine the provisions of Section 407 Cr.P.C. and the relevant judgments of the Hon'ble Supreme Court and various other High Court on the issue of transfer of the cases. The said judgments are reproduced hereinbelow:-

“Section 407 Cr.P.C: 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”.

10. The Hon’ble Supreme Court and other High Courts have dealt with the issue in hand in a number of cases and some of the relevant judgments in this regard are enumerated hereinbelow:-

The Hon’ble Supreme Court of India in the case of Ábdul Nazar Madani versus State of Tamil Nadu and another, 2000(2) RCR (Criminal) 770’, has held as under:-

“7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. 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 Criminal Procedure Code 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 on 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 purpose of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society”.

In “R. Balakrishna Pillai versus State of Kerala, 2000(7) SCC 129”, the Hon’ble Supreme Court of India, has held as under:-

“10. Further, the contention raised by the learned Counsel for the petitioner that one of the Judge of the Bench was appointed and has worked as an Advocate to assist Justice K. Sukumaran Commission to inquire into malpractices in the execution of the rectification work in Hydro Electric Project called Edamalayar Project and, therefore, the petitioner is not likely to get justice if the appeal is decided by the said Bench, deserves to be rejected. It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. Before transferring the case, the Court has to find out whether the apprehension appears to be reasonable. To judge the reasonableness of the apprehension, the state of the mind of the person who entertains the apprehension is not doubt relevant but that is not all. The apprehension must appear to the Court to be reasonable, genuine and justifiable. In the present-day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons. Dealing with the transfer petition, this Court in Maneka Sanjay Gandhi v. Rani Jethmalani, 1979(2) SCR 378 observed :-

"Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds 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. Even so, the process of justice should not harass the parties and from that angle the Court may weigh the circumstances."

The Hon'ble Supreme Court in the case of 'Capt. Amarinder Singh versus Prakash Singh Badal and ors., 2009(6) SCC 260', has held as under:-

"12. It is a well-established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, undoubtedly, the proceeding has to be transferred elsewhere by exercise of power under Section 406 Criminal Procedure Code For a 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 is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is

apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

13. 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 Criminal Procedure Code. 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”.

The Hon’ble Supreme Court in the case of ‘Nahar Singh Yadav and another versus Union of India and others, 2011(1) SCC 307’, has held as under:-

“24. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 of the Criminal Procedure Code should be exercised, it is manifest from a bare reading of sub-sections (2) and (3) of the said Section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide

credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are :-

- (i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;
- (ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;
- (iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State Exchequer in making payment of travelling and other expenses of the official and non-official witnesses;
- (iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and
- (v) existence of some material from which it can be inferred that the some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.

The Kerala High Court in the case of ‘The State of Kerala represented by the Public Prosecutor High Court of Kerala and others versus Sunil N.S. @ Pulsar Suni aged 29 years S/o Surendran, Neduvelikkudy House Elambarkkapilly Kara, Nettancity Bhagam, Vengoor West, Ernakulam 683546 and others, 2021(1) Ker L.J. 564’, has held as under:-

“22. The contention of the petitioners of the Special Judge being biased ought to be examined in the above legal backdrop. When the question is one of transfer of a criminal case on the ground of judicial bias, mere allegation of apprehension of bias is not enough, the court has to see whether such apprehension is reasonable or not. The moot question here is whether the instances pointed out by the petitioners are sufficient to hold the apprehension of bias to be reasonable”.

11. Coming back to the facts of the present case, the entire case of the petitioner is premised on the fact that the matter was last posted for hearing on 07.09.2022 on which date as per her, the case was adjourned for hearing to 09.09.2022 but in fact, as per the order passed by Dr. Sushil Bodh, Principal Magistrate, Juvenile Justice Board, Rupnagar, the case was shown to be posted for hearing on 14.09.2022. It is her claim that as the date had been manipulated and the order dated 07.09.2022 had been passed in haste, the petitioner had lost faith in the Court, and therefore, the Trial ought to be transferred.

12. In the present case, an application under Section 156(3) Cr.P.C. was moved by the petitioner-complainant on 18.11.2021. A reply to the said application was submitted on 03.08.2022. On 31.08.2022, the matter has been categorically and clearly adjourned to 07.09.2022. For reasons best known to the petitioner, she chose not to appear on that date and it was only on that count that the application came to be dismissed. Merely because the Reader of the Court had adjourned the case to 09.09.2022 and the order in question dated 07.09.2022 shows that the case had been adjourned for 14.09.2022 in no manner shows manipulation in any date to the prejudice of the petitioner-complainant. The relevant date for hearing the application was 07.09.2022 on which date she was not present in the Court. Whatever was to transpire subsequent thereto either on 09.09.2022 or 14.09.2022 would not cause any prejudice to the petitioner. In the present case, however, the facts do not substantiate the allegations of bias on the part of the Court so as to warrant transfer of the case as prayed for. Interestingly, it appears that the order dated 07.09.2022 has also not been challenged.

13. Further, the Principal Magistrate, Juvenile Justice Board, Rupnagar, vide his order dated 21.09.2022 has explained the manner in which the case came to be adjourned to 14.09.2022 from 07.09.2022. He categorically stated in his order that the case had not been adjourned from 07.09.2022 to 09.09.2022 nor was it fixed for consideration on the application because the application was already disposed of on 07.09.2022. A separate show cause notice was, however, issued to the Reader of the Court to explain as to why disciplinary action should not be taken against her for having fixed the date in the present case as per the CIS System of the Court from 07.09.2022 to 09.09.2022. Further, as per the order dated 30.09.2022 (Annexure P-9), the learned counsel for the petitioner-complainant had stated at the bar that he had no objection if the case was dealt with by the same Court and that he would file a transfer petition before the High Court if the need arose. If the petitioner had felt strongly about the conduct of the Court, she should have at that very moment raised a strong objection because she was certainly present in the Court as is apparent from a reading of the order, Annexure P-9.

14. I would hasten to add here that while an aggrieved party certainly has a right to move an application under Section 407 Cr.P.C. for transfer of the case in case it feels that a fair and impartial Trial could not be held in the said Court, however, it must also be borne in mind that frivolous and unsubstantiated allegations against the Court have an effect of demoralising the Court. Therefore, the plea for transfer of the case should not be entertained on the mere apprehension of a hypersensitive person who claims apprehension of bias on unsubstantiated allegations and before transferring a case, the Court must find out whether the apprehension appears to be

15. In view of the above, I find no merit in the present petition.
Therefore, the same is dismissed.

January 11, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No