

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

127

CRM-M-51560-2023 (O&M)

Date of decision: 11.10.2023

Pavneet Singh

...Petitioner

**Versus**

Atul Kumar

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. P.S. Guliani, Advocate for the petitioner

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**AMAN CHAUDHARY. J.**

1. The present petition has been filed under Section 482 Cr.P.C. for quashing the impugned order dated 18.09.2023, whereby learned Chief Judicial Magistrate, Ludhiana dismissed the transfer petition filed by the petitioner for transfer of complaint No.7436/2019 titled as Atul Kumar vs. Pavneet Singh pending in the Court of Sh. Tarunpreet Singh, JMIC, Ludhiana to any other court of competent jurisdiction.

2. Learned counsel contends that in a complaint filed under Section 138 of the Negotiable Instruments Act, the petitioner was summoned, who is regularly appearing before the trial Court. On 24.08.2023, he was not available due to viral fever and a request was made for an adjournment and on that date, learned Presiding Officer after hearing the learned counsel for the complainant observed that no further adjournment shall be granted, despite the case being neither in the category of old cases or in action plan. Thus, there is apprehension that the trial Judge has already made up his mind to convict the petitioner, the case being listed

for arguments. Thereafter, the petitioner had filed an application before the learned CJM, Ludhiana for transferring the case to any other Court of the competent jurisdiction, but without properly considering it, the same was dismissed vide order dated 18.09.2023, Annexure P-1.

3. Heard.

4. It is apposite to make a reference to the operative part of the order passed by learned Chief Judicial Magistrate, whilst dismissing the application, which reads thus:

“  
XX XX XX  
I have heard the applicant, learned counsel for the respondent and have perused the entire record on file. By way of moving the present application, the applicant has sought the transfer of above said complaint from the court of Shri Tarunpreet Singh, Judicial Magistrate Ist Class, Ludhiana to other Court, on the ground that the learned Presiding Officer has already made up his mind even without hearing the arguments of the case. It appears from the contents of the present application that the same has been filed on the basis of whims and fancies of the applicant. Until and unless the applicant places on record some substantial material in order to support his claim, this Court cannot believe that the learned Presiding Officer is inclined towards a particular party. If any order is not passed according to the convenience of the party, it is not a ground to get the case transferred from the Court of learned presiding officer to another Court. Further, if the litigant is allowed to go on for changing the benches, it would render herculean task for the officers to decide the case.”

5. A gainful reference can be made to **Ashish Chadha vs. Asha Kumari**, (2012) 1 SCC 680 , a case wherein on the refusal of learned Special Judge to grant further adjournment, an application filed for transfer of case was allowed by the High Court, which was set aside by Hon’ble The Supreme Court observing that, “...We do not find any material to substantiate the fear expressed by respondent No. 1 that she would not get a fair trial. The High Court, therefore,

should not have transferred the case to the Special Judge, Kangra. Needless to say that such transfers ordered merely on the say-so of a party have a demoralizing effect on the trial courts. Unless a very strong case based on concrete material is made out, such transfers should not be ordered.”

6. In **Nahar Singh Yadav vs. Union of India**, (2011) 1 SCC 307, whilst discussing the scope of transfer of the case, it was observed and held by Hon’ble The Supreme Court that in the absence of any material demonstrating the apprehension that justice will not be dispensed impartially, objectively and without any bias, an application for transfer of a trial, should not be entertained. Likewise, the apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises was held in **Harita Sunil Parab vs. State (NCT of Delhi)**, (2018) 6 SCC 358.

7. The dismissal by the learned Chief Judicial Magistrate of the application filed by the petitioner cannot be faulted with, in absence of there being any credible material placed on record, that would have fully satisfied the said Court, to invoke the power to transfer. Admittedly, the evidence had been led by the respective parties, the trial is over and the case is listed for arguments. Therefore, the petitioner seeking to get it transferred, at this stage, that too primarily on the ground that the Court while reluctantly granting adjournment, had observed to not grant such an indulgence thereafter, is far from even an apprehension of not getting justice. It is not necessary that only in cases that are included in the category of old or action plan, should a Court deny or be reluctant to grant adjournment. Perspective to view a situation may differ. The matter can be construed as an attempt to avoid a particular Court, that may also well be

unfounded. The Courts are obligated to decide matters, it being the very purpose, but of course after due opportunities to the parties.

8. As an upshot of the aforesaid, the order impugned is neither perverse or illegal warranting any intervention. The present petition being devoid of merit is hereby dismissed.

9. This Court is sanguine that the matter would be decided by the trial Court unfazed of filing of the application.

(AMAN CHAUDHARY)  
JUDGE

October 11, 2023  
M.Kamra

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|---------------------------|---|----------|
| Whether speaking/reasoned | : | Yes / No |
| Whether reportable        | : | Yes / No |