

CRM-M-53812-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(164)

CRM-M-53812-2023

Date of Decision:- 06.11.2023

Bimlesh Mittal

...Petitioner

VERSUS

CHD Developers Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Priya Pandey, Advocate for
Mr. Ashish Kapoor, Advocate for the petitioner.

SUVIR SEHGAL, J. (Oral)

1. Instant petition has been filed under Section 407 of the Code of Criminal Procedure, 1973 for transfer of complaint case bearing No. NACT/486/2023 dated 09.03.2020 titled as "*Bimlesh Mittal Versus CHD Developers Limited and others*" instituted under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420, IPC from the Court of learned Judicial Magistrate, Bathinda to the Court of competent jurisdiction at Yamunanagar.

2. Counsel for the petitioner submits that the respondents had issued three post dated cheques in October, 2019 for discharge of a legally enforceable debt. However, on their presentation to her banker, ICICI Bank, Bibi Wala Road, Bathinda, they were dishonoured on account of insufficient funds. Counsel submits that after serving a legal notice, complaint, Annexure P-1, was instituted before the learned Judicial

Magistrate, Bathinda in March, 2020 and after the summoning of the accused-respondents, it is pending for their appearance. Counsel submits that the petitioner is a 69 year old lady, who had instituted the complaint at Bathinda as she was residing there with her son, who has been transferred to Mumbai and the petitioner is now staying with her brother at Yamunanagar. It has been submitted that the petitioner has filed a civil suit for the recovery of money under the cheques against the respondents at Yamunanagar and the complaint, Annexure P-1, deserves to be transferred to Yamunanagar, so that both the criminal and civil proceedings can be tried at the same place.

3. Arguments addressed by the counsel for the petitioner have been considered and paper-book has been perused.

4. Supreme Court in *Umesh Kumar Sharma Versus State of Uttarakhand*, AIR 2020 (Supreme Court) 5488 has held that the power to transfer conferred on the Court is to be invoked sparingly and it is only when fair justice is in peril that a plea for transfer may be considered. It has been further observed that there must be some credible material before the Court to direct transfer and matters cannot be transferred on conjectures and surmises.

5. Petitioner has not placed any material on the record to show that she has any apprehension of not getting justice from the Courts at Bathinda. An argument has been raised that as petitioner has changed her residence, the criminal proceedings should follow her. This contention being absurd and untenable, is rejected. Even, if the petitioner has chosen to file a suit for recovery at Yamunanagar that will not give her a ground for transfer of the

criminal complaint as both the remedies are distinct and independent of each other. It is not the case of the petitioner that the Courts at Bathinda do not have the territorial jurisdiction. Power to transfer of case under Section 407, Cr.P.C. cannot be exercised in a perfunctory or cavalier manner merely on the asking of a party or because it is convenient to it.

6. There is no merit in the petition, which is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

06.11.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No