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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 21.10.2024

Rakhi Gupta

...Petitioner

V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. J.S. Mundi, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. PKS Phoolka, Advocate for respondent Nos.2 to 4.

SUMEET GOEL, J. (Oral)

1. The instant petition has been preferred by the petitioner under Section 407 read with Section 482 of Code of Criminal Procedure, 1973 for transfer of case/trial arising out of the FIR No.139 dated 03.09.2016 (Annexure P-1) registered under Sections 323, 498-A, 406, 506 read with Section 34 of Indian Penal Code, 1860 at Police Station Canal Colony, Bathinda, Punjab (hereinafter to be referred the 'FIR in question') to a Court of competent jurisdiction at District Ludhiana, Punjab.
2. The gravamen of the FIR in question pertains to the demand of dowry, harassment and cruelty being meted out to the victim (petitioner herein) by accused-respondent Nos.2 to 4 respectively and hence an FIR *ibid* got registered by father of the victim. It is further the allegation that sufficient dowry was also given at the time of marriage including gold articles, cash etc.
3. Learned counsel for the petitioner has iterated that the petitioner had been maltreated by the accused/respondent No.2 to 4 (herein) on which

account her father was constrained to have the FIR in question registered.

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The petitioner comes from a very poor family and is unable to afford the cost of travelling to Bathinda on each and every date of hearing of the case. According to learned counsel, the petitioner has no source of income to support herself or cover the expenses of the litigation, making it extremely difficult for her to contest the case before the Court at Bathinda. It has been further iterated that travelling from Ludhiana to Bathinda is particularly challenging to the petitioner due to her lack of financial resources. Furthermore, it is important to note that the petitioner has also instituted a complaint under Section 12 of Domestic Violence Act, 2005 as also a petition for the grant of maintenance under Section 125 of Cr.P.C., 1973 besides a criminal case titled as Rakhi Gupta vs. Manoj Kumar and others. The petitioner is living at Khanna, District Ludhiana and she is required to travel to attend the Court at District Bathinda, Punjab which is situated at a distance of about 142 kilometers. Learned counsel has further submitted that the cases emanating from matrimonial discord are to be considered sympathetically in favour of the wife when a transfer petition is instituted at her instance. It has been further argued that there are total 35 witnesses in the instant case out of which 21 witnesses are either from District Ludhiana or nearby places to Ludhiana and hence it would be convenient for the witnesses to appear before the Court at District Ludhiana. Therefore, it has been submitted that the instant petition be allowed and the trial emanating from the FIR in question be transferred from District Bathinda, Punjab to a Court of competent Court of jurisdiction at District Ludhiana.



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4. Learned State counsel has opposed the grant of instant petition by raising submissions in tandem with the reply/status report dated 21.07.2024 filed on behalf of the State; relevant whereof reads as under:-

“7. That it is pertinent to mention here that the petitioner is not the complainant of the FIR in question, she is only one of the prosecution witnesses, being victim. The complainant Shashi Bhushan (father of the petitioner) is appearing before the learned trial court on each and every date of hearing and the petitioner is not required to attend the learned trial court on each and every date of hearing except for her own examination as witness. In such a situation, no ground is made out for transfer of the case in question to any other court of competent jurisdiction at District Ludhiana. If the case is transferred to Ludhiana, the proceedings of the case will definitely prolong and the petitioner is also not unaware of this fact and further, it is not easy for the police to take the witnesses of the case to Ludhiana.

8. That total distance between Ludhiana and Bathinda is 142 KMs. There is no need to transfer the same to any learned court to Ludhiana in view of the position explained above. The present petition is based on false facts. No cause of action has accrued to the petitioner to file the present petition.”

5. Reply has been filed on behalf of respondent No.2 and with regard to respondent Nos.3 and 4 only oral arguments have been advanced. Learned counsel appearing for the said respondents has orally contended that from the bare perusal of the FIR, it is crystal clear that there is no version of any dowry exchanged between the parties or any entrustment to the petitioners. According to the learned counsel, there are only vague allegations of harassment and beatings which are not supported by any independent testimony or corroborated by any medical evidence. Learned counsel has vehemently opposed the petition by arguing that no cause is made out to transfer the petition as most of the witnesses are residents of



Bathinda and hence it will be inconvenient for them to repeatedly travel to Ludhiana to have their testimony(s) recorded.

6. I have heard learned counsel for the rival parties and have perused the record.

7. It would be apposite to refer herein to a judgment passed by this Court titled as *Sonalika Garg vs. State of Punjab and others: Neutral Citation No.2024:PHHC:136390*; relevant whereof reads as under:

“10. Section 407 of Cr.P.C., 1973 encapsulates the statutory provision regarding the power of the High Court to transfer cases and appeals from one Court to another within its jurisdiction. At this juncture, it would be germane to reiterate that the equivalent provision contained in Section 447 of BNSS, 2023 is, in essence, on similar lines insofar as the parameters for transferring of criminal cases/appeals is concerned.

11. An elementary reading of the above provision(s) reflects that the parameters for consideration for exercise of power under this provision are viz. fair and impartial enquiry or trial; a question of law of unusual difficulty arising; the general convenience of parties to the lis; the general convenience of the witnesses; the law (Cr.P.C. or BNSS) requiring such an order to be passed & expediency for the ends of justice.

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

13. More often than not, a plea for transfer of trial is primarily based upon the convenience of parties to trial and/or witnesses. The statutory mandate; as contained in Section 407 of Cr.P.C, 1973/Section 477 of BNSS, 2023; does prescribe for transfer of trial etc., on account of general convenience of parties or witnesses. This transfer jurisdiction of the High Court ought to be exercised sparingly. Ordinarily, the trial proceedings ought to be undertaken at its jurisdictional place as prescribed by law. The convenience of a party/witness ought not to be given a very liberal meaning lest it causes easy shifting of trial. The High Court must exercise caution to ensure that, the threshold for such transfers is not set too low, thereby preventing the justice system from being manipulated by baseless requests that could hinder the fair and efficient administration of justice.



13.1 *Further; the convenience has to be adjudged on the touchstone of relative convenience and difficulties of all the parties concerned in the process i.e. the accused, victim/complainant, witnesses and State (prosecution). In other words; the concept of convenience herein entails triangulation of comparative convenience of accused, victim/complainant and the Society at large (represented by State/prosecuting agency). The Hon'ble Supreme Court in the judgment of **Nahar Singh Yadav** (supra) has enunciated that comparative inconvenience and hardships likely to be caused to all concerned is a factor which should be borne in mind while considering a plea for transfer of trial. Indubitably, in FIR cases, the expenses and difficulties likely to be undertaken by the Investigating Officer, prosecution witnesses (which may include government doctors etc.) would also be a ground for consideration.*

14. *Of late, this Court has been receiving unrelenting spate of plea(s) seeking transfer of trial proceedings in an FIR case under Section 498-A of the IPC (now Section 85 of BNS, 2023) relating to dowry harassment etc., primarily on account of convenience of the complainant/victim-wife. Indubitably, the convenience of the complainant/victim-wife is a key aspect to be considered but concurrently the relative convenience and likely hardship of the other stakeholders in the trial proceedings cannot be overlooked. The complainant/victim-wife, in a matrimonial related offence FIR, has a right to participate in the trial, in accordance with law, yet the State is the prime prosecuting agency in a FIR case. The Investigating Officer/Pairavi official of the FIR usually remains present in the Court on each and every date of hearing to assist the Public Prosecutor of the case. Further; there are Police officials, Government Doctors etc. cited as prosecution witnesses. Convenience nay comparative convenience of all the concerned is required to be taken into consideration while adjudicating a transfer plea. In matrimonial matters; such as petition for grant of divorce, petition for maintenance filed under Section 125 of Cr.P.C./Section 144 of BNSS, 2023; given the background of general socioeconomic paradigm in our society, wife's convenience in a transfer petition is required to be accorded pre-eminence and be considered at a higher pedestal. However, this principle cannot be said to be applicable with same vigour to FIR cases involving offence of Section 498-A IPC/Section 85 of BNS, 2023 etc. for the reason, firstly, matrimonial litigation such as a divorce petition is primarily between two individuals, namely husband and wife wherein the wife is required to*



independently and solely pursue her case; whereas in the FIR case it is the State/Police, which is the main prosecuting agency; secondly, the FIR case involves several of the official witnesses such as Police personnel, Government Doctors etc.

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

17. As a sequitur to the above rumination, the following principles postulates:

I. (i) Transfer of trial/appeal etc.; exercising powers under Section 407 of Cr.P.C., 1973/Section 447 of BNSS, 2023; can be ordered for by the High Court in case it appears fair trail is not possible at the place where the trial/proceedings is pending.

(ii) The apprehension, of the fair trial being in peril, has to be based on tangible basis/material and not on any conjecture/surmise.

(iii) Before ordering for transfer of trial etc. the High Court ought to consider whether the situation (causing fair trial to be prejudiced) can be managed or resolved by taking any remedial step(s).

II. If an order passed by a Presiding Officer/trial Judge is found to be erroneous by a superior Court, this by itself cannot be presumed as such Presiding Officer/trial Judge being biased. Very strong/cogent material is pertinently required for ordering for transfer of trial etc on account of a Presiding Officer/trial Judge being biased.

III. The factum of non-applicant (in a transfer petition) being a lawyer himself or being in close relationship with a lawyer practicing in the Court where the trial is pending adjudication cannot be a ground, sufficient by itself, for shifting of trial. For such a transfer petition to succeed, the applicant (seeking transfer) is required to show discernible prejudice being caused or likely to be caused to such applicant (seeking transfer).

IV. General convenience of parties to trial or witnesses is a factor which may be considered for transfer of trial etc. However, it is not the convenience of one party alone but it is the comparative convenience of all concerned i.e. the accused, victim/complainant, witnesses and the State (Prosecution/Police) which is to be taken into account.

V. In FIR cases pertaining to matrimonial related offence(s); the convenience parameter of the wife, as applicable in divorce/maintenance case etc., shall not apply with same vigour since the convenience of all concerned especially the State/Prosecution is also to be accounted for.

VI. No universal guidelines or parameters can possibly be enumerated for exercise of power of the High Court under Section 407 of Cr.P.C.,



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1973/Section 447 of BNSS, 2023 as every case has its own unique factual conspectus.”

8. The transfer of the trial emanating from the FIR in question has been sought for by pleading the cause of convenience of the petitioner (herein)-wife by stating that the instant FIR was lodged by her father while she was living in Bathinda and thereafter, she had shifted her residence to Ludhiana where she has also instituted a complaint under Section 12 of Domestic Violence Act, 2005; a petition for the grant of maintenance under Section 125 of Cr.P.C., 1973 besides a criminal case titled as *Rakhi Gupta vs. Manoj Kumar and others* is also pending. It is not in dispute that the trial in question emanates from an FIR which is being primarily prosecuted by the State. The petitioner, who has a right to participate in the trial in accordance with law, can well be represented by a Counsel at Bathinda Court. She is not mandatorily required to attend each and every date of hearing in Court since she is the victim. Her interest, in the trial, can well be taken care of by a Counsel. It is neither pleaded nor is decipherable from the factual matrix of the case that she is facing any difficulty in engaging a Counsel. Nevertheless, if the need so arises, she may seek the assistance of a Legal Aid Counsel by making requisite plea before concerned quarters. Further, out of total 35 cited prosecution witnesses, there are 10 Police officials/Government doctor who would be required to travel to Ludhiana, in case this Court grants the instant transfer petition. Further the distance between Ludhiana to Bathinda is about 142 kilometers only. Therefore, from the totality of the facts of the case in hand, it cannot be said that it would be pragmatic to transfer the trial from Bathinda (Punjab) to Ludhiana in view of the convenience of the petitioner.



Decision

9. It is thus, directed that:
- (i) The petition; seeking transfer of trial emanating from FIR No. 139 dated 03.09.2016 (Annexure P-1) registered under Sections 323, 498-A, 406, 506 read with Section 34 of Indian Penal Code, 1860 at Police Station Canal Colony, Bathinda, Punjab from the Court of Sh. Varun Nagpal (ACJM), Bathinda to any other Court of competent jurisdiction at District Ludhiana (Punjab); is dismissed for nonce.
- (ii) Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the trial Court shall proceed further, in accordance with law, without being influenced with them.
- (iii) Pending applications), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

October 21, 2024
Ajay

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