

2024:PHHC:091608



227/3

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44885-2017
DECIDED ON: 01.03.2024

PREM LATA KAPOORPETITIONER

VERSUS

STATE OF HARYANA AND ORS.RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Sidharth Chawla, Advocate
for the petitioner.

Mr. Gurbir Singh Dhillon, AAG, Haryana.

Mr. Ankur Malik, Advocate for respondents No.2 & 3.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 407 Cr.P.C. for transfer of trial in FIR No.913, dated 16.11.2015, under Sections 147, 149, 323, 452, 506, 427, 448, 511, 120-B, 395, 397 IPC and Section 25 of Arms Act, registered at Police Station Model Town, Panipat, pending in the Court of District & Sessions Judge, Panipat to any other Court of competent jurisdiction outside the District Panipat and State of Haryana.

FACTUAL MATRIX

2. The complainant alleged that she is residing in H.No.286-R, Model Town, Panipat for the last 65 years. One Niranjana Dass son of Brij Lal claimed himself to be the owner of the said plot who has filed a civil suit in the

year 1971 which was dismissed in 1978 and appeal against the same before the Lower Appellate Court was also dismissed. As per the narrated version in the FIR on 16.11.2015 at about 3:00 p.m. when the complainant/petitioner was present alone in the house, Tejbir Jaglan and Sonu Jaglan along with 25 persons suddenly entered into the house and pushed the complainant aback. Beating are also alleged to have been given on the person of the complainant/petitioner. It is also the allegation that articles and other goods were thrown away and cash and jewellery went missing since then. The complainant is stated to have suffered huge loss as the CCTV camera installed in the house was also broken. The petitioner has also averred that the aforesaid accused persons have come along with one JCB Machine, one trolley filled up with bricks, a water tanker and labour with the intent to take illegal possession of her house. On raising noise by the complainant-petitioner, the afore-named persons along with their companions advanced threat to kill her and fled from the scene while further shouting that they will come again at night to take possession of the house. The complainant has also suffered certain injuries as per the facts narrated in the FIR who was taken to hospital for treatment by her son-in-law namely Harish Grover. The accused persons were arrested by the police and relevant record including allotment letter, sale deed, Power of Attorney etc. were recovered by the Investigating Officer. It is an undisputed fact that the investigation is complete in this case and challan stands presented to Court on 05.07.2017.

3. This petition came to be filed under Section 407 Cr.P.C. seeking transfer of trial in the instant FIR on 20.11.2017. Notice of motion was issued on 28.11.2017 and thereafter reply on behalf of respondent No.1-State of

Haryana was filed through Deputy Superintendent of Police, (Hd.), Panipat dated 02.08.2018.

SUBMISSIONS:

4. Mr. Atul Lakhanpal, Sr. Advocate appearing on behalf of the petitioner-complainant raised the following contentions seeking transfer of the trial from the Court of District and Sessions Judge, Panipat to any other Court of competent jurisdiction outside District Panipat and State of Haryana:

(i) The accused Satish Jindal is a land grabber and a property dealer who is involved in multiple cases of purchasing disputed properties being hand in glove with civil as well as police administration of District Panipat. The State Authorities do provide indirect help to the said accused in taking forcible possession over such properties along with help of musclemen.

(ii) Other two FIRs bearing No.700, dated 01.10.2009, under Sections 323, 365, 452, 363, 386 and 506 IPC, Police Station Chandni Bagh, Panipat and FIR No.428, dated 28.06.2009, under Sections 452, 323, 506, 34 IPC read with Section 25/54/59 of the Arms Act, Police Station Chandni Bagh, Panipat are pending against him.

(iii) Accused Inder Singh Malik is a retired Tehsildar who is mastermind in forging and fabricating the record using his influence in the Department and on that account, he is also facing prosecution in FIR No.125, dated 15.02.2012, under Sections 420, 467, 468, 471, 120-B IPC, Police Station Model Town, Panipat.

(iv) Another accused Tejbir Jaglan is a political leader and is famous for unauthorized possession of public and private property who along with his son

Sonu Jaglan is executing the *modus operandi* to take possession forcefully over the disputed property by causing threat to the occupants.

(v) Mr. Lakhanpal, learned Sr. Advocate would make an attempt to demonstrate the nexus between the police and civil administration with the accused involved in the instant FIR highlighting following facts:-

(a) On a complaint made by Govind Rai son of the petitioner to the police seeking action against the accused and protection. The DSP vide his order dated 22.7.2015 recommended that a commission may be appointed from the Deputy Commissioner, Panipat and the demarcation of the plot in question be done. Copy of the recommendations made by DSP on 22.7.15 are annexed herewith as Annexure P/3. It is pertinent to mention here that the accused or the alleged purchasers of the plot never made an application to the revenue authorities for demarcation of the plot. It was taken upon by the DSP himself to get the land demarcated. Though he had no power or jurisdiction to do so.

(b) On the recommendation of the DSP the SSP vide his letter dated 28.7.2015 wrote to Deputy Commissioner, Panipat for appointing a commission for demarcation of the land. On 5.8.2015 the Deputy Commissioner, Panipat sent the file to Tehsildar to take action and report the matter back to him. Copy of letter dated 28.7.2015 of SSP and the orders of the Deputy Commissioner dated 5.8.15 are annexed herewith as Annexure P/4.

(c) The Tehsildar vide his letter dated 12.8.2015 informed that as per the documents the House No. 286/L is within the limit of abadi of Model Town, no Khara No. is recorded and without Khasra No. no demarcation is possible and that the action has to be taken by Naib Tehsildar, Municipal Corporation, Panipat in this regard. On the same day the Deputy Commissioner, Panipat

sent the record back to the Tehsildar directing that local commissioner may be appointed for demarcation and to inform the Deputy Commissioner and on 8.8.2015 the accused Inder Singh Malik, retired Naib Tehsildar was appointed as Local Commissioner. Copy of letter dated 12.8.15 of Tehsildar and the orders dated 12.8.15 of Deputy Commissioner and the orders of Tehsildar dated 18.8.15 are annexed herewith as Annexure P/5.

(d) Vide letter dated 6.10.2015 Tehsildar reported the matter to the SDO (Civil) Panipat that the Local Commissioner has demanded Police help. Copy of letter dated 6.10.2015 is annexed herewith as Annexure P/6. SDO (Civil) recommended to Deputy Commissioner, Panipat to provide police help and a Duty Magistrate alongwith appropriate lady police force. Copy of letter dated 6.10.2015 from SDO (Civil) to Deputy Commissioner is annexed herewith as Annexure P/7. On 7.10.2015 it recommended appointment of DRO Panipat as District Magistrate.

(e) On 8.10.2015 the District Magistrate appointed DRO Panipat as Duty Magistrate and requested the SP, Panipat to provide adequate police force. Copy of order dated 8.10.15 is annexed herewith as Annexure P/8.

(f) It is pertinent to mention here that at no point of time at any stage of the entire proceedings being conducted by the police and the civil administration the petitioner was afforded any notice or opportunity of hearing and all the orders were being manipulated, forged and fabricated at the back of the petitioner.

(g) It is also pertinent to mention here that Tehsildar vide his letter dated 12.8.2015 (Annexure P/5) has submitted that no demarcation is possible without the Khasra No. and the matter be referred to Municipal Corporation

for demarcation yet the Deputy Commissioner compelled the Tehsildar to appoint the Local Commissioner for demarcation and in the fitness of the things they appointed Inder Singh Malik, retired Naib Tehsildar an accused as Local Commission.

(h) The entire procedure provided for getting a demarcation of the property was given a go bye and the local police became the applicant to get the land demarcated on behalf of the accused.

(i) Empowered with the orders passed at the back of the petitioner a large number of musclemen around 25 in number armed with lethal weapons alongwith a JCB machine, tractors and tractor trolleys laden with bricks and construction material with the support of large number of policemen descended on the premises of the petitioner forcibly and illegally entered the same threw out all the household articles and manhandled the petitioner and took away cash and jewellery from the house. The entire incident was captured by the CCTV camera installed in the premises which was lateron broken by the accused regarding which FIR No. 913 dated 16.11.2015, Under Sections 147, 149, 323, 452, 506, 427, 448, 511, 120-B, 395, 397 of IPC and Section 25 of the Arms Act, was registered at Police Station Model Town, Panipat. Copy of FIR is annexed herewith as Annexure P/9.

5. During the course of hearing, it was urged that it is inconceivable that for conducting demarcation over a plot the equipment/machinery in the form of JCB, Water tanker, Tractor Trolley and construction material would be needed. The presence of musclemen in large number itself is indicative of force and coercion, the respondent-accused are exercising over the petitioner-complainant.

6. The CCTV footage have not been taken into possession by the police purposely and Mr. Lakhanpal, learned Sr. Advocate refers to the photograph attached to the present petition at Annexure P-10 collectively.

7. In the end Mr. Lakhanpal, Sr. Advocate would press upon the fact that the petitioner is living all alone in the house who is under constant threat under the hands of respondent-accused persons who will not allow the trial to proceed and any witness to depose against them.

8. In these circumstances, he has raised an apprehension in the mind of the complainant-petitioner that she would not receive free and fair trial at District Panipat and relies upon *Surender Partap Singh versus State of Uttar Pradesh*, (2010) 9 SCC 475 pressing with much vehemence that in similar facts and circumstances, the trial was transferred from the State of Uttar Pradesh to State of Madhya Pradesh in order to do fair justice to all the parties.

9. The respondent No.1-prosecution has opposed the transfer of proceedings at this stage contending that the facts as revealed do not make out a case for transfer of the trial even outside the District Panipat and for seeking transfer of trial to any other State, this petition would not be maintainable as the jurisdiction would vests with the Hon'ble Supreme Court of India on that account as envisaged under Section 406 Cr.P.C. At the very outset, the plea of the petitioner has also been challenged on the ground that since the registration of FIR on 16.11.2015, no instance whatsoever has been putforth by the complainant-petitioner showing existence of any threat perception and influence been exercised at the behest of accused persons. It is also submitted on behalf of respondent No.1-State of Haryana that there is no iota of any cogent material shown to the Court that the civil administration and police

authorities in District Panipat are hand in glove with the accused-respondents and this allegation is nothing but absolute lie having no iota of truth in it.

10. State has also made following submissions:

- (i) The police authorities i.e. police station Model Town, Panipat acted promptly on receiving the complaint from the petitioner without any delay and lodged the FIR on 16.11.2015 itself i.e. the same date of alleged occurrence.
- (ii) The investigation was got conducted on the request of the petitioner through State Crime Branch, Madhuban.
- (iii) Subsequent thereto, challan stands presented way back on 05.07.2017 and charges stands framed.
- (iv) The trial is underway with the prosecution evidence, which is alleged to be delayed on the pretext of pendency of present petition before this Court.
- (v) There is no allegation and even a whisper of bias in the State judiciary.
- (vi) There are no allegations of unfair trial so far or fault to any of the proceedings/orders passed by the trial Court till date.
- (vii) Reliance has been placed on “*Nahar Singh Yadav v. Union of India*”, **(2011) 1 SCC 307** wherein this Court noted that the power under section 406, CrPC, 1973 is to be exercised sparingly and that transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially. Other similar decisions have also been brought to our notice.
- (viii) “*Ashish Chandra v. Asha Kumari*”, **(2012) 1 SCC 680** has been cited to refer the observations of this Court that transfer of cases have a demoralizing effect on trial courts.

11. In the light of aforesaid factual aspects, the State of Haryana-respondent No.1 would submit that if the trial is transferred to any other competent Court either within the State of Haryana or outside the State, it will cause extreme inconvenience to the prosecution and most of the witnesses.

DISCUSSION:

12. The grounds on which the petitioner has sought transfer of trial from District and Sessions Judge, Panipat to any other District or any other State can be culled out after giving a thoughtful consideration to the facts involved and the submissions made as has been recorded hereinabove by both the sides to the present *lis* as the accused respondents are alleged to be the influential persons and civil and police administration of District Panipat is hand in glove with them. It is on this aspect alone, apprehension has been raised for not getting fair and just trial before District & Sessions Judge, Panipat.

13. Before proceeding further, I may firstly notice some of the contours in relation thereto by which it stands well established that the apprehension should be well founded to say that justice will not be done which is pre-requisite for transfer of a case. The dictum needs to be reminded for tracking the power of transfer of a case as stated in “***Rex versus Sussex Justices***”, (1924) 1 KB 256 i.e. “it is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.

14. The right to fair trial is a fundamental right under Article 21 of the Constitution of India and its importance cannot be emphasised enough. However, to obtain the transfer of a case, the petitioner is required to show cir-

cumstances from which it can be inferred that he entertains a reasonable apprehension. This apprehension cannot be imaginary and cannot be a mere allegation.

15. The power of transfer under section 406, CrPC, 1973 is to be exercised sparingly and only when justice is apparently in grave peril. The Courts have allowed transfers only in exceptional cases considering the fact that transfers may cast unnecessary aspersions on the State Judiciary and the prosecution agency. Thus, over the years, this Court has laid down certain guidelines and situations wherein such power can be justiciably invoked.

16. In ***Amarinder Singh v. Parkash Singh Badal (2009) 6 SCC 260***, this Court observed as follows:

"19. 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 CrPC, 1973."

17. In ***Nahar Singh Yadav v. Union of India (2011) 1 SCC 307*** after analysing the case-law, the Apex Court enumerated the basic principles of the power of transfer under section 406, CrPC, 1973 as follows:

"29. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under section 406 CrPC, 1973 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 some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice."

18. In "**R. Balakrishna Pillai v. State of Kerala**", (2000) 7 SCC 129, the Supreme Court of India noted the crucial separation of powers between the judiciary and the executive and held that "Judges are not influenced in any manner either by the propaganda or adverse publicity. Cases are decided on the basis of the evidence available on record and the law applicable."

19. The convenience of parties and witnesses as well as the language spoken by them are also relevant factors when deciding a transfer petition, as has been noted by this Court in a catena of judgments.

20. In some of the recent decisions including in *Neelam Pandey v. Rahul Shukla /Transfer Petition (Criminal) No. 298 of 2020, 22 February 2023*], the Supreme Court of India has viewed that transfer of a criminal case from one state to another implicitly reflects upon credibility of not only the State Judiciary but also of the prosecution agency.

21. Coming back to the case in hand on perusal of the submissions and chronological examination of sequence would depict that the accused persons have been alleged to be a sought of land mafia being involved in taking forcible possession over the properties who are involved in multiple prosecution with identical offences. Another leg of argument made on behalf of the petitioners revolves around manner in which the demarcation was ordered to be conducted of H.No.286-R, Model Town, Panipat at the behest of recommendations made by DSP to the Deputy Commissioner who further directed Tehsildar to take necessary action for demarcation if possible. It is by and large on the process of said demarcation and the incident dated 16.11.2015 the transfer of trial proceedings have been sought before this Court attracting Section 407 Cr.P.C.

CONCLUSION:

22. Having given thoughtful consideration to the issue as unfolded before this Court, it is apparent that there is no legal infirmity or any apprehension raised questioning the credibility of the judicial Court before which the trial proceedings are underway. It is to be noticed here that after

completion of investigation, the trial Court has framed the charges and the prosecution evidence is going on but no specific instance whatsoever has been pointed out showing any doubt to the fairness of the proceedings or bias in the mind of the judge conducting the trial.

23. As such, wherein large number of witnesses are to be examined out of which few have already deposed before the trial Court, in the absence of any whisper of bias or unfair trial so far it would be totally unwarranted and inappropriate to transfer the trial at this stage merely on the basis of bald aspersions and apprehensions which lacks any cogent material to substantiate the averments raised on behalf of the petitioner, the transfer of trial to any other District or to any State will definitely cause serious impediment in the deposition of those witnesses who might be reluctant to travel to any other place and case of the prosecution might be severely prejudiced. Moreso it is only the aspersion which has been raised on the conduct of investigating agency and the officials of the State Government deputed in the Revenue Department who were responsible for conducting demarcation whose effective role is now over on presentation of the challan in May 2017 itself which cannot be a valid reason to exercise powers under Section 407 Cr.P.C. to order transfer of the trial from District & Sessions Judge, Panipat to any other Competent Court outside District Panipat.

24. This transfer petition is hence dismissed with no order as to costs.

25. Pending miscellaneous applications, if any, also stands disposed off accordingly.

(SANDEEP MOUDGIL)
JUDGE

01.03.2024

Poonam Negi

Whether speaking/reasoned Yes/No

Whether reportable Yes/No