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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1. CRM-M-46486-2023 (O&M)

Kapil Batra Production and another

...Petitioners

Versus

Gurpreet Singh and another

...Respondents

2. CRM-M-38574-2024 (O&M)

Rajan Batra and another

...Petitioners

Versus

Gurpreet Singh

...Respondent

Date of decision : 19.10.2024

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Pranav Handa, Advocate
for the petitioners.

Mr. Amit Dhawan, Advocate
for respondent-Gurpreet Singh.

MANISHA BATRA, J. (Oral)

1. This common order shall dispose of above mentioned two petitions as they are similar in nature and seek similar relief.

2. These petitions have been filed under Section 407 of Cr.P.C. by the petitioners Kapil Batra and Rajan Batra, who are real brothers, seeking transfer of complaint bearing No. NACT/2049/2020, titled as ***Gurpreet Singh vs. Kapil Batra Productions and another*** as well as complaint bearing

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No. NACT/2050/2020, titled as ***Gurpreet Singh vs. Bear Bull Share Broker and another***, filed by respondent/complainant Gurpreet Singh under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), from the Court of learned Judicial Magistrate First Class, Jalandhar to any other Court of competent jurisdiction.

3. The brief facts relevant for the purpose of disposal of these petitions are that petitioners Kapil Batra and Rajan Batra and their respective firms are facing trial in the aforesaid complaints filed under Section 138 of N. I. Act by respondent/complainant Gurpreet Singh with the allegations that they had taken a loan of Rs. 20 Lakhs and Rs. 04 Lakhs, respectively, from him in the year 2020 as financial help with an assurance to return the same shortly. Petitioner Kapil Batra had even executed a pronote on 27.02.2020 in this regard in favour of the complainant. In order to discharge their liability, petitioner Kapil Batra had issued two cheques of Rs. 10 Lakhs each in favour of the complainant, whereas petitioner Rajan Batra had issued one cheque of Rs. 04 Lakhs to the complainant, which on presentation before the concerned bank, were dishonoured due to 'insufficient funds', resulting to filing of aforesaid complaints. Both the complaints are pending before the trial Court, presided over by learned Judicial Magistrate First Class, Jalandhar.

4. It is alleged by the petitioners that the Presiding Officer is conducting the proceedings of the aforesaid complaint in a biased manner which is reflected from the fact that as on 11.05.2023, the respondent-complainant had summoned one witness from Yes Bank who appeared as CW-1 and was examined in chief. At the time of recording his statement though certain documents were exhibited but the exhibit numbers

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were not put. During cross-examination of the said witness, some time was sought by him to bring some documents from the Bank. This request was allowed by the Court and then the witness left the Court with the same documents which had been exhibited before the Court. This fact was brought to the notice of the trial Magistrate when the petitioners were directed to conduct cross-examination of the said witness and objection was raised. The Magistrate after questioning the witness and even after knowing that he had taken the exhibited documents with him, had still recorded the statement of the witness thereby showing bias against the petitioners.

5. It is further submitted that the petitioners had moved an application for transfer of the complaint from the Court of the concerned Magistrate to some other Court and during the pendency of that application also, the Court proceeded to record the statement of the witness summoned by the complainant. On 16.05.2023, the concerned Magistrate had passed adverse remarks against the petitioners and recorded proceedings behind their back. The adverse remarks have been wrongly made as against them. The petitioners do not expect justice from the concerned Court. Therefore, prayer has been made by them to transfer the aforementioned complaint to some other Court of competent jurisdiction.

6. *Per contra*, learned counsel for the respondent-complainant has argued that the allegations as levelled by the petitioners against the learned trial Magistrate are false and these petitions have been filed only with a view to abuse the process of the Court and to harass the respondent. Petitioner Kapil Batra, by taking advantage of the fact that he is a lawyer by profession, has

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been levelling false allegations against the concerned Magistrate. In fact, he has been trying to delay the proceedings conducted by the Magistrate by adopting one means or the other. It is, thus, prayed that the petitions deserve to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

8. Before delving into the present case, let us have a glance on the provisions of Section 407 of Cr.P.C., which read as under:

407. 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

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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 subsection (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

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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 subsection (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."

9. A careful perusal of the aforesaid provisions would show that this Court can exercise the power of transfer where a fair and impartial inquiry or trial cannot be conducted in any criminal Court subordinate thereto or some question of law of unusual difficulty is likely to arise or 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 securing the ends of justice, it may order 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; 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; any particular case be committed for trial to a Court of Session; or any particular case or appeal be transferred to and tried before itself.

10. Hon'ble Supreme Court in the matter of ***Chadha v. Asha Kumari and another : 2012 (1) RCR (Criminal) 94*** has held that if an order is passed transferring the trial merely on the sayso of a party, it will have a demoralizing effect on the trial courts and further held that that unless a very strong case based on concrete material is made out, such transfers should not

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be ordered. Further in ***Dass Chadha v. State of Rajasthan : AIR 1966 SC 1418***, it was held that transfer of trials should not be ordered merely on the basis of apprehension but there must be a reasonable apprehension. The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. The petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not? In order to judge the reasonableness of the apprehension, the State of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be imaginary but must appear to the Court to be a reasonable apprehension.

11. Similar view was taken by Hon'ble Supreme Court in ***Nazar Madani v. State of T.N. and another : 3 (2000) 6 SCC 204***, wherein it is held that 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 or 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

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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. However, 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 petitioner alone who approached the Court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. Similar ratio of law has been laid down by Hon'ble Supreme Court in ***Capt. Amarinder Singh v. Prakash Singh Badal and others : (2009) 6 SCC 260.***

12. In the case of ***Adambhai Vahora v. State of Gujarat and another : (2016) 3 SCC 370***, Hon'ble Supreme Court has held that seeking transfer at the drop of a hat is inconceivable. An order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of the trial. The power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. There has to be a real apprehension that there would be miscarriage of justice.

13. Now reverting to the facts of the present case in view of the ratio of law as laid down in the aforecited judgments. The main ground for seeking transfer of the aforesaid complaints, pending before the Court of learned Judicial Magistrate First Class, Jalandhar, as taken by the petitioners, is that they are not expecting justice from the Court concerned in view of the fact that while conducting proceedings of the complaints, the Magistrate concerned had

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ignored the fact that one witness summoned by the complainant had left the Court during lunch time on 11.05.2023 while taking the documents already produced in evidence before the Court and on pointing out this fact to the Court, the Magistrate did not take any action against the said witness. Petitioner Kapil Batra is also aggrieved of the fact that one pronote, which was an important document and was on the case file, was found to be missing from the record at the time of when the evidence of the complainant was being recorded and despite the objection being raised by the petitioner/his counsel, the Magistrate did not take any action and the said document was tendered in evidence behind his back.

14. On perusal of the record, it is revealed that the petitioners had moved application for transfer of the aforementioned complaint(s) firstly before the Magistrate and then before the learned District Judge, Jalandhar. A perusal of order dated 27.03.2024, passed by the learned District Judge, Jalandhar, reveals that it was observed therein that the petitioners had been making contradictory allegations for the purpose of getting the case transferred. They had also filed a transfer application against one more Magistrate on 17.01.2022 by levelling frivolous allegations. It was further observed that the petitioners had been trying to delay the proceedings.

15. The grounds which have been taken by the petitioners for seeking transfer of the complaints are not at all convincing and do not inspire any confidence for transfer of the cases as prayed for. Mere apprehension expressed by the petitioners is not sufficient for transferring the cases as the power under Section 407 of Cr.P.C. has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide

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credibility to the trial. However, nothing of that sort has been placed on record or has been shown to this Court by the petitioners so as to arrive at a conclusion that the apprehension of the petitioners is reasonable and there are chances that justice will not be done to them. If the prayer of the petitioners is accepted, that too on these feeble and unreasonable grounds, it will surely demoralize the morale of the trial Court. The unsubstantiated paranoia of ultra-conscious litigants and their illegitimate apprehensions cannot constitute a legitimate ground to transfer the cases from one Court to another. This Court expresses its implicit faith in the trial Court, which would surely arrive at a just decision in accordance with law, reducing the allegations made by the petitioners to nothing but some sort of pressure tactics.

16. In view of the discussion made above and also in view of the ratio of law as laid down in aforecited judgments, but without making any comment on the merits of the case, the present petitions are dismissed.

17. Since the main petitions stand dismissed, pending applications, if any, shall also be treated as disposed of.

18. Let a photocopy of this order be placed on the file of the connected case.

19.10.2024

Waseem Ansari

**(MANISHA BATRA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No