

Neutral Citation No. 2024:PHHC:017459

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

CRM-M-51188-2023 (O&M)
Date of decision: 09.02.2024

Samita Singla ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Manu Loona, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 407 Cr.P.C. seeking transfer of the case bearing No. CHI-107 of 2022, titled as *State vs. Sanjeev Kumar*, arising out of FIR No. 108 dated 14.07.2019, registered under Sections 323 and 498-A of the IPC at Police Station City-1 Sangrur, District Sangrur, from the Court of learned Judicial Magistrate First Class, Sangrur to the Court of competent jurisdiction at Panchkula.
2. The brief facts relevant for the purpose of disposal of this petition are that the aforesaid FIR was registered on the statement of the present petitioner on 14.07.2019 alleging therein that she was married to respondent No. 2-Sanjeev Kumar on 13.04.2004. Two children have been born out of the said wedlock, who are now 15 and 12 years of age, respectively. Huge amount

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of money was spent in the marriage. Sufficient dowry including a car was given in the marriage. However, the petitioner and his family members started subjecting the petitioner/victim to harassment and cruelty on account of demand of dowry and she was also given beatings by her husband. On many occasions, she brought cash money from her father on the demand of her husband and his family members but they kept on harassing her, which led her to filing the present FIR. After completion of the necessary investigation and usual formalities, *challan* was presented in the Court and presently, the trial is going on. However, the petitioner, by way of filing the present petition, is seeking transfer of the trial to the Court of competent jurisdiction at Panchkula.

3. Learned counsel for the petitioner has argued that apart from the aforesaid FIR, the petitioner has filed two more litigation, i.e. a petition under Section 12 of the Domestic Violence Act and a petition under Section 125 Cr.P.C., which are pending before the Courts at Panchkula. The petitioner is also residing at Panchkula. The distance between Sangrur and Panchkula is about 130 Kms. and it is difficult for the petitioner to pursue the case at Sangrur on each and every date as she is already facing financial problems and mental agony due to aforesaid litigation. Respondent No. 2 is an influential person. He can create hindrance and manipulate the trial and can also hamper the police proceedings as on a date when the case was fixed, he had claimed that he would never allow the trial to conclude and would assure that the petitioner does not get justice. With these broad submissions, it is argued that the present petition deserves to be allowed.

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4. On the other hand, learned State counsel, in terms of status report filed on 24.01.2024, has opposed the prayer of the petitioner. She has argued that after framing of charge on 20.07.2023, PW-1/ASI Paramjeet Singh was examined-in-chief on 20.11.2023 and his cross-examination was deferred. The petitioner/complainant has also been partly examined-in-chief on 07.12.2023 and her further examination-in-chief was deferred. Both of these witnesses are to be cross-examined and now the case is fixed for 21.02.2024. In the meanwhile, the petitioner/complainant has filed an application under Section 319 Cr.P.C., which is to be decided by the trial Court. It is further submitted that there are total 08 prosecution witnesses, out of whom, PW-1 and PW-2 stood partly examined and out of remaining 06 prosecution witnesses, only one witness is the resident of Panchkula and the remaining 05 witnesses are the residents of Sangrur. It is argued that if the case is transferred to Panchkula, a great hardship will be faced by them in attending the Court at Panchkula. Therefore, it is urged that the present petition is liable to be dismissed.

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

6. Before delving into the present case, let us have a glance on the provisions of Section 407 of Cr.P.C., which reads 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

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(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 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

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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 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."

7. 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 the ends of justice, it may order that any offence be inquired into or tried by any Court not

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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.

8. 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 be ordered. Further in ***Dass Chadha v. State of Rajasthan : AIR 1966 SC 1418*** has 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 entertained but must appear to the Court to be a reasonable apprehension.

9. Similar view is 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 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***.

10. 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

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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.

11. Now reverting to the facts of the present case in view of the ratio of law as laid down in the aforecited judgments, this Court is to determine as to whether the apprehension of the petitioner that she would not get justice or fair trial as respondent No. 2 has claimed, so is reasonable or not? The petitioner has also claimed that she is facing difficulties in travelling to Sangrur to attend the Court proceedings, which is 130 kms. away from Panchkula, where she is presently residing. The petitioner has only stated that two other cases, i.e. a petition under Section 12 of the Domestic Violence Act and a petition under Section 125 Cr.P.C., are already pending before the Courts at Panchkula, therefore, the present case be also transferred from the Court of Judicial Magistrate First Class, Sangrur to the Court of competent jurisdiction at Panchkula. No apprehension much less the reasonable apprehension has been expressed or pleaded in the transfer petition, which is *sine qua non* for transferring the case under 407 of Cr.P.C. The aforesaid criminal case under Sections 323 and 498-A of IPC is pending consideration before the Judicial Magistrate First Class, Sangrur since the year 2019 and the petitioner has also joined the proceeding before the trial Court and she has been partly examined-in-chief and vide order dated 09.01.2024, her further examination has been deferred on account of an application having been filed by her under Section 319 Cr.P.C., which is pending consideration before the

trial Court. Mere allegation that the respondent-accused had claimed that he would not allow her to get justice and would never allow the trial Court to conduct a fair trial cannot be stated to be a reasonable apprehension. There is not doubt that there is a distance of about 130 Kms. between Panchkula and Sangrur but this is also significant to note that the petitioner has already been partly examined-in-chief and she does not need to appear before the trial Court on each and every date as she is definitely being represented by her counsel. If the prayer of the petitioner is accepted, that too on these feeble and unreasonable grounds, it will surely demoralize the morale of the trial Court. The unsubstantiated paranoia of an ultra-conscious litigant and her illegitimate apprehensions cannot constitute a legitimate ground to transfer the case from one Court to another. Although, the respondent-accused would have made certain remarks as claimed by the petitioner but this is also to be kept in mind that to get afflicted by prejudice may be a human infirmity but the capability of man to disabuse himself from all prejudices is the first virtue of a Judge. This Court expresses its implicit faith in the trial Court, which would surely arrive at a just decision in accordance with law, reducing the remarks made by the respondent-accused to nothing but some sort of boasting only.

12. 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 petition is dismissed.

09.02.2024

(MANISHA BATRA)

Waseem Ansari

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes