



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M No.58690 of 2024 (O & M)
Date of decision : 25.11.2024

Anu Garg**Petitioner**

Versus

Gulshan Kumar Garg and others**Respondents**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rahul Sharma, Advocate, for the petitioner

SUMEET GOEL, J.

1. The prayer made in the petition in hand reads thus:

'It is, therefore, respectfully prayed that the present petition may kindly be allowed and order dated 30.07.2024 (Annexure P-8) passed by Chief Judicial Magistrate Ludhiana and order dated 11.11.2024 (Annexure P-11) passed by Session Judge, Ludhiana may kindly be set aside and transfer the petition under Section 12 of Protection of Women from Domestic Violence Act titled as "Anu Garg Vs. Gulshan Kumar Garg & Ors." From the court of Sh. Prabhjot Singh, JMIC, Ludhiana to any other competent court in District Ludhiana, in the interest of justice.'
2. Vide order dated 30.7.2024 passed by Chief Judicial Magistrate, Ludhiana, the application (filed by the petitioner herein) for transfer of her case filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005') from the Court of Sh. Prabhjot Singh Bhatti, JMIC, Ludhiana to any other Court of competent jurisdiction within the same district, was dismissed.

3. This order was assailed before the learned Sessions Judge,



Ludhiana who, vide order dated 11.11.2024, dismissed the same. Accordingly, the petition in hand has been preferred assailing these two orders.

4. Learned counsel for the petitioner has submitted that the behaviour of the learned Magistrate/Presiding Officer was totally biased towards the petitioner (herein) and the same is clearly decipherable from the orders passed against her by the said Judicial Officer including the order dated 8.4.2024. In order to buttress his arguments, learned counsel for the petitioner has submitted that operation of the said order dated 8.4.2024 was stayed by the learned Sessions Court, Ludhiana. Learned counsel for the petitioner has further iterated that the opposite side is openly proclaiming that they have complete influence over the learned Presiding Officer/Judicial Magistrate and thus, they are in a position to obtain any favourable order from the said Judge. It has been submitted by learned counsel for the petitioner that justice should not only be done but also appears to have been done & since the petitioner has lost faith in the said Presiding Officer/Judicial Magistrate, the petition in hand ought to be allowed.

5. I have heard learned counsel for the petitioner and has perused the paper book.

6. The prime ground for seeking transfer of the case from the concerned trial Magistrate is that the said Judicial Officer has exhibited bias against the petitioner (herein) which is decipherable from the orders passed by him especially the order dated 8.4.2024 & the operation of the



same has been stayed by the learned Sessions Court which goes on to show that there is illegality in the order.

7. At this juncture, it would be apposite to refer herein to a judgment passed by this Court in '***Sonalika Garg v. State of Punjab and others, Neutral Citation No.2024:PHHC:136390***', relevant portion whereof reads as under:

'12.3 There is yet another aspect nay attention. Litigant(s), sometimes, tend to seek transfer of trial etc. from a particular Court by alleging that the Presiding Officer is biased, or a wrong/illegal order has been passed by the said Presiding Officer on of which apprehension of bias or failure of fair trial is based. It must be borne in mind that a Presiding Officer/trial Judge who discharges his duty may commit errors sometimes. The same can well be rectified by a higher/superior Court, but the factum of an order passed by the Presiding Officer/trial Judge having been found erroneous by a high/superior Court can, by no stretch of imagination, Presiding Officer/trial Judge is biased or influenced or the prospect of fair trial has been compromised. A Presiding Officer/trial Judge has his duty and not to succumb to the pressure put by the litigant(s) by making callous allegations. He is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case function and discharge their duties in environment various stakeholders, literally and figuratively, breathing down their necks. They may, at times, err, owing to tremendous strain, which can be remedied in multiple ways. However, to cast aspersions on or besmirch their judicial work due to a development/order, unacceptable or unpalatable to a litigant, therefore pleading for transfer of trial etc. by such litigant is plainly subterfuge. If this could be the foundation in transfer of a case, it will well neigh yield anarchy in the adjudicatory process. The unscrupulous litigants will indulge themselves in Court/forum hunting which tendency needs to be curbed with an iron hand. If such latitude is to be allowed to litigants, that they need not face the trial in a Court they do not feel comfortable in, it would lead to an infinite regress to find a conducive one. An age old adage, which met approval from the Hon'ble Supreme Court, reads thus:



“...It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks-more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive.

Vexatious and virulent attempt(s) by unscrupulous elements, aimed at misusing the process of law and Courts, ought to be deserted the sanctity of the judicial process will be seriously eroded if such attempt(s) is not responded with firmness. A litigant who misuses the process of law or take liberties with the truth should be left in no doubt about the consequences to follow. Others should be discouraged not to venture along the same path in the hope or on a misplaced expectation of judicial leniency or indulgence. Exemplary costs, in such a situation are inevitable and necessary, so as to ensure that in litigation, as in the law which is rather practiced in our Country, there is no premium on the truth. Such plea(s) apropos transfer of trial etc., which are deficient in any reasonability, have to be construed as trifling with the Courts and the process of justice, therefore, under Cr.P.C. of 1973 provision of costs was enacted with limit of Rupees One thousand on such applicant (seeking transfer) in order to forestall/discourage such frivolous plea(s). Over the time, the amount of cost on such applicant has not only become diminutive owing to overall economic scenario but actually has come to be perceived as inconsequential. Ergo by way of a salutary amendment brought in by enactment of BNSS of 2023, such frivolity has not been left immutable. The legislative intent has now explicit provision for such a sum as the High Court may consider proper in the circumstances of a given case, which has indubitably lent, meaningful intent to the provision.’

8. The order(s) being passed by the concerned Presiding Officer/Trial Magistrate, not being palatable/acceptable to the petitioner (herein), cannot be construed as a ground, in any manner whatsoever for granting transfer of the proceedings in question. Further, the argument



raised on behalf of the petitioner that the opposite side is openly proclaiming influence over the said Presiding Officer/Judicial magistrate is not based on any tangible material and appears to be grossly frivolous *may* the learned Sessions Judge, Ludhiana, while ratiocinating upon transfer application filed by the petitioner (herein), had called for comments of the concerned Presiding Officer wherein the allegations raised by the petitioner (herein) were denied and it was expressed by the said Presiding Officer that he had no objection to transfer of the case to some other Court. At this juncture, it would be apposite to refer herein to Sessions Courts order dated 11.11.2024, relevant whereof reads as under:

'Comments of Ld. Presiding Officer were also called, wherein Ld. Presiding Officer denied the allegations leveled in the transfer application. It is submitted by the Presiding Officer that with regard to order dated 8.4.2024, the petitioner has already filed a revision in which the appellate Court has stayed the operation of said order. However, it is submitted by Ld. Presiding Officer that he has no objection for transfer of the case to some other court.'

In this view of the matter, no ground is made out to grant the petition in hand.

9. The unscrupulous attempt by the petitioner, in casting aspersions on the learned Presiding Officer/Trial Magistrate, by primarily relying upon the veracity of the order dated 8.4.2024 passed by the said Presiding Officer/Trial Magistrate, deserves to be deprecated and responded with abhorrence.

10. Accordingly, costs, which ought to be veritable and real time in nature, to be imposed upon the petitioner. However, keeping in view the



factum of the petitioner being a lady aged about 44 years and the proceedings in question emanating from a matrimonial discord, this Court is proceeding proceedings to quantify the costs with some latitude. Ergo, the petitioner is saddled with costs of ₹10,000/-.

Decision

11. It is thus, directed that:

- (i) The petition seeking transfer of trial is dismissed for the *nonce*.
- (ii) The petitioner shall deposit costs of ₹10,000/- with the Punjab State Legal Services Authority, Mohali within four weeks from today. The payment of costs and production of receipt thereof before the concerned trial Court shall be a condition precedent to enable the petitioner to pursue her petition before the said Court further. To clarify, in case the requisite costs are not deposited as directed for herein, the petition filed by the petitioner under Section 12 of the Act of 2005 shall be dismissed on this score alone by the concerned trial Magistrate.
- (iii) 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.
- (iv) Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

25.11.2024
Ashwani