

2024:PHHC:170506



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

CRR 2569 of 2024
Date of Decision: 17.12.2024

Sunny Dhingra		...Petitioner
	Versus	
Vasdev		... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Jatinder Malik, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned order dated 30.11.2024 passed by the Court of Sessions Judge, Faridabad, whereby, the application moved by the petitioner seeking transfer of Criminal Appeal bearing CIS No. 666/2019 titled as “**Sunny Dhingra Vs. Vasdev**”, from the Court of Sh. Pursushottam Kumar, Additional Sessions Judge (I) to some other Court was ordered to be dismissed.
2. Learned counsel for the petitioner contends that vide judgment dated 30.08.2019 and order dated 02.09.2019, the petitioner was convicted by the Court of Judicial Magistrate 1st Class, Faridabad under Section 138 of the Negotiable Instruments Act 1881 and was sentenced to undergo rigorous imprisonment for a period of one year

and to pay a compensation to the tune of Rs. 15 lacs. Feeling aggrieved, the petitioner had filed a criminal appeal bearing No. 666 of 2019 before the Court of Sessions Judge, Faridabad and the same was entrusted to the Court of Sh. Purushottam Kumar, Additional Sessions Judge, Faridabad. On 15.10.2024, the petitioner moved an application before the appellate Court and prayed for remanding back the matter to the Court of Judicial Magistrate 1st Class for *de-novo* trial as the trial went on for around 04 years and the evidence was recorded by different judicial magistrates, which was illegal. The said application was taken up on 15.10.2024, however, in the order dated 15.10.2024, there was no mention with regard to the filing of the said application and the appeal was adjourned to 25.10.2024 for arguments subject to last opportunity. Still further, when the petitioner addressed the application, the Presiding Officer observed that there was no substance in the criminal appeal before him and the application should be withdrawn. Consequently, the present application was filed by the petitioner before the Court of Sessions Judge, Faridabad seeking transfer of his appeal from the Court of Sh. Purushottam Kumar, Additional Sessions Judge, Faridabad to some other Court at Faridabad. The Sessions Judge, Faridabad, wrongly dismissed the said application by completely ignoring the submissions made by the learned counsel for the petitioner. Learned counsel for the petitioner contends that appellate Court made up its mind to dismiss the

application dated 15.10.2024 filed by the petitioner and the petitioner did not expect justice from the Presiding Officer of the Court.

3. I have heard learned counsel for the petitioner and perused the record carefully.

4. In the present case, the criminal appeal was filed before the appellate Court by the petitioner in the year 2019 and after about 05 years, the present application was filed by the petitioner to remand the case back to the trial Court. The main ground taken by the petitioner was that in the order dated 15.10.2024, there was no reference of the application moved by the petitioner and he did not expect justice from the Presiding Officer of the Court. While declining the prayer made by the petitioner, the Sessions Judge, Faridabad, had recorded the following reasons:-

“The applicant-accused/appellant has challenged his conviction under Section 138 of Negotiable Instruments Act. Instant appeal is pending for more than five years. The contention of Ld. Counsel for the applicant that the Court order did not reflect moving of the application of the applicant-accused for remanding the case back, in the order dated 15.10.2024, has been rectified by the Court itself, in order dated 25.10.2024. The Court did not pass any adverse order till date on any such application moved by either of the parties, without hearing the applicant-accused/appellant or the complainant. The order dated 25.10.2024 rather indicates that Court has rectified its mistake of not mentioning about the application seeking remand of the

case moved by the appellant. Mere apprehension of the applicant-accused that he will not get justice from the aforesaid Court is not well founded and is not a ground to transfer the aforesaid case to some other Court. The purpose of judicial system is to adjudicate the matters on merits and even otherwise, if the cases are transferred on such flimsy grounds, then, it will be very easy for any party to seek transfer of the cases at his own whims and fancies. An omission in the court order to give any detail, which has been rectified, resultantly, no ground to cast aspersions on the court. The litigants must have faith in the Court and are required to exercise utmost restraint before seeking transfer of the case from any Court. The case is not to be transferred simply at the drop of a hat. The grounds for seeking transfer, in the instant case, are not of the nature to order for transfer of the aforesaid case from the Court of Sh. Purushottam Kumar, learned Addl. Sessions Judge (I), Faridabad, to some other Court. Hence, I find no merit in the instant application and same is hereby dismissed. Requisitioned file be sent back alongwith a copy of this order. Instant transfer application file of this Court be consigned to record room after due compliance”.

5. I have carefully perused the findings recorded by the appellate Court and find no reasons to differ from the same. In the present case, the petitioner had filed appeal before the appellate Court in the year 2019 and for five years, the appeal was pending before the appellate Court. The present petitioner moved two applications under Section 391 Cr.P.C., which were dismissed. At that stage, the petitioner again moved his application under Section 391 Cr.P.C. for

leading additional evidence. Even on 15.10.2024, when the appellate Court refused to adjourn the case, being an old case and asked the parties to address the arguments, the petitioner moved application for remanding the appeal back to the trial Court for *de-novo* trial. It appears that the present application has been moved by the present petitioner only to delay the disposal of the appeal by the appellate Court.

6. Still further, the law is well settled that the apprehensions expressed by the litigant of not getting a fair and impartial trial is required to be reasonable and not based on conjectures and surmises. The petitioner has simply mentioned that the factum of moving the application by him was not recorded by the appellate Court in the zimni order dated 15.10.2024, cannot be a ground for transfer of the appeal from the one Court to another, especially when the mistake was rectified by the Presiding Officer in the order dated 25.10.2024. In fact, by any stretch of imagination, the prayer made by the petitioner cannot be held to be reasonable and justified.

7. As a consequence, the present petition is meritless and ordered to be dismissed.

17.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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