



CRM-M-19068-2024

1

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

225



Date of decision: 01.10.2024



...Petitioner

V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gurnoor Singh, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

Ms. Jashanpreet, Advocate for

Ms. Rajni Gupta, Advocate for respondent Nos.2 to 4.

SUMEET GOEL, J.

1. The instant petition has been preferred by the petitioner under Section 407 read with Section 482 of Code of Criminal Procedure, 1973 for transfer of case/trial arising out of the FIR No.0125 dated 16.08.2023 registered under Sections 498-A, 323, 34 of Indian Penal Code, 1860 at Police Station city Budhlada, District Mansa, Punjab (hereinafter to be referred the 'FIR in question') to a Court of competent jurisdiction at Bathinda, Punjab.

2. The gravamen of the FIR in question pertains to the demand of dowry, harassment and cruelty being meted out to the complainant by accused-respondent Nos.2 to 5 respectively and hence an FIR *ibid* got registered by her. It is further the allegation that sufficient dowry was also given at the time of marriage including gold articles, cash etc.



CRM-M-19068-2024

2

3. Learned counsel for the petitioner has iterated that the petitioner had been maltreated by the accused/respondent No.2 to 4 (herein) on which account she was constrained to have the FIR in question registered. The parents of the petitioner are old and her father is suffering a knee ailment and there is no other adult male member in the family of the petitioner who can accompany her to appear before the Court at Budhlada, District Mansa, Punjab. The petitioner is living alongwith her parents at Bhucho Mandi, District Bathinda (Punjab) and she is required to travel to attend the Court at Budhlada in District Mansa, Punjab which is situated at a distance of about 80 kilometers. Further, the petitioner has also instituted a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 at Bathinda as also a petition for the grant of maintenance under Section 125 of Cr.P.C. at Bathinda. Learned counsel has further submitted that the cases emanating from matrimonial discord are to be considered sympathetically in favour of the wife when a transfer petition is instituted at her instance. It has been further argued that the trial Judge is prejudiced against the petitioner which factum is decipherable from order dated 02.08.2024, whereby bailable warrants were issued against the petitioner (herein), for her non-appearance as a prosecution witness. Therefore, it has been submitted that the instant petition be allowed and the trial emanating from the FIR in question be transferred from Budhlada, District Mansa, Punjab to a Court of competent Court of jurisdiction, Bathinda.



4. Learned State counsel has opposed the grant of instant petition by raising submissions in tandem with the reply/status report dated 28.05.2024 filed on behalf of the State; relevant whereof reads as under:-

“(ii) During the investigation proceedings, all the private respondents No.2 to 4, had joined the investigation on 27.08.2023, in compliance of the order dated 23.08.2023, passed by the Ld. Court of Additional Sessions Judge Mansa. After joining all the accused persons in the investigation proceedings, all of them were released on bail by the IO, on furnishing of personal bonds by them. During the investigation of present case/FIR, offence under section 406 IPC was added in the present case/FIR, vide DDR No.34, Dated 21.11.2023. On 22.02.2024, all the accused persons got the concession of anticipatory bail for the enhanced offence under section 406 IPC. Then after completion of investigation in the present case/FIR, challan against all the private respondents was presented by the IO, before the Ld. Court of Illaqa Magistrate Budhlada i.e. Sub Divisional Judicial Magistrate Budhlada, for the offence under section 498-A/406/323/34 IPC, on 05.03.2024. On 23.04.2024, charges were framed by the Ld. Trial Court against the accused persons. There are total 15 Prosecution Witnesses in the present case/FIR which is now pending for 02.08.2024 for evidence of Prosecution witnesses

(iii) It would be pertinent to mention here that apart from the complainant, father of the complainant and other private witnesses there are total 08 official witnesses which include 01 doctor posted at SDH Budhlada and 07 police official(s)/officer(s) witnesses. In case trial of the case is transferred from the Ld. Court of Sub Divisional Judicial Magistrate Budhlada to other competent Court of Law outside Budhlada, then it will be difficult to examine the official witnesses and to carry the record files from Budhlada to Bathinda. Moreover, till date no application or information regarding passing of threat to the life and liberty of the petitioner or any of the family member of the petitioner by the respondents no.2 to 4, was ever received with the police authorities of DPO Mansa, as such, there is no threat to the life and liberty of the petitioner. In these circumstances, petitioner does not deserve any relief of transfer of the proceedings of the case or any other alternative relief from this Hon'ble Court and present petition deserves to be dismissed qua the answering respondent.”



CRM-M-19068-2024

4

5. No written reply has been filed on behalf of respondent Nos.2 to 4. However, learned counsel appearing for these respondents has vehemently opposed the petition by arguing that no cause is made out to transfer the petition as the witnesses are residents of Budhlada and hence it will be inconvenient for them to repeatedly travel to Bathinda to have their testimony(s) recorded. Learned counsel has further argued that there is no threat to the petitioner at Budhlada, District Mansa and hence the instant petition be dismissed.

6. I have heard learned counsel for the rival parties and have perused the record.

Prime Issue

7. The prime issue for consideration in the instant petition is as to whether the trial emanating from the FIR in question deserves to be transferred from Budhlada, (District Mansa, Punjab) to a Court of competent jurisdiction at Bathinda (Punjab).

The seminal legal issue, that arises for consideration is, as to what are the parameters for consideration for transfer of a criminal case under Section 407 of Cr.P.C./Section 447 of BNSS, 2023.

8. Relevant Statutory provisions

The Code of Criminal Procedure, 1973(hereinafter to be referred as 'the Cr.P.C.)

Section 407 of Cr.P.C, 1973 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*

(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 sub-section (7).*

(5) *Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on 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 sub-section (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.”

The Bharatiya Nagarik Suraksha Sanhita, 2023

Section 447 of the BNSS, 2023 reads as under:

“447. 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 Sanhita, 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 197 to 205 (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 or bail bond for the payment of any compensation which the High Court may award under sub-section (7).*
- (5) *Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on 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 interest 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 346.*
- (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 as it may consider proper in the circumstances of the case.*



(8) *When the High Court orders under sub-section (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 the Government under section 218.”*

Relevant Case Law

9. The precedents, *apropos* to the matter(s) in issue, are as follows:

(i) In a judgment titled as ***Mrs. Maneka Sanjay Gandhi and another vs. Miss Rani Jethmalani, 1979(4) SCC 167***, a three Judge Bench of the Hon'ble Supreme Court has held as under:-

“3. *One of the common circumstances alleged in applications for transfer is the avoidance of substantial prejudice to a party or witnesses on account of logistics or like factors, especially when an alternative venue will not seriously handicap the complaint and will mitigate the serious difficulties of the accused. In the present case the petitioner claims that both the parties reside in Delhi and some formal witnesses belong to Delhi; but the meat of the matter, in a case of defamation, is something different. The main witnesses are those who speak to having read the offending matter and other relevant circumstances flowing therefrom. They belong to Bombay in this case and the suggestion of the petitioner's counsel that Delhi readers may be substitute witness and the complainant may content herself with examining such persons is too presumptuous for serious consideration.*

4. *Now to the next ground. The sophisticated processes of a criminal trial certainly require competent legal service to present a party's case. If an accused person, for any particular reason, is virtually deprived of this facility, an essential aid to fair trial fails. If in a certain court the whole Bar, for reasons of hostility or otherwise, refuses to defend an accused person an extraordinary situation difficult to imagine, having regard to the ethics of the profession-it may well be put forward as a ground which merits this Court's attention. Popular frenzy or official wrath shall not deter a member of the Bar from offering his services to those who wear*



unpopular names or unpalatable causes and the Indian advocate may not fail this standard. Counsel has narrated some equivocal episodes which seem to suggest that the services of an efficient advocate may not be easy to procure to defend Mrs. Maneka Gandhi. Such glib allegations which involve a reflection on the members of the Bar in Bombay may not be easily accepted without incontestible testimony in that behalf, apart from the ipse dixit of the party. That is absent here. It is difficult to believe that a person of the position of the petitioner who is the daughter-in-law of the former Prime Minister, wife of a consequential person and, in her own right, an editor of a popular magazine, is unable to engage a lawyer to defend her, while, as a fact, she is apparently represented in many legal proceedings quite competently.

5. *A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of court is obstructive of the course of justice and must surely be stamped out. Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquillity at the trial. 'Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer.'*



CRM-M-19068-2024

10

(ii) In a judgment titled as ***Abdul NazarMadani vs. State of Tamil Nadu and another, 2000 AIR Supreme Court, 2293***, the Hon'ble Supreme Court has held as under:-

“7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Cr. P.C. 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. 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 petitioners 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.”

(iii) A three Judge Bench of the Hon'ble Supreme Court in a judgment titled as ***Capt. Amarinder Singh vs. Prakash Singh Badal &Ors. 2009(6) SCC 260*** has held as under:

“13) 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 Cr.P.C. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and



fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the Court to be a reasonable one.”

(iv) A three Judge Bench of the Hon'ble Supreme Court in a judgment titled as ***Nahar Singh Yadav and another vs. Union of India and others, 2011 (1) RCR (Criminal) 120***, has held as under:

“24. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 of the Cr.P.C. 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 (2000) 7 SCC 129 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 the some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.”*

(v) A three Judge Bench of the Hon'ble Supreme Court in a judgment titled as ***Sujatha Ravi Kiran @ Sujatasahu vs. State of Kerala & Ors., 2016(3) RCR (Criminal) 465***, has held as under:

“6. xxxxxxxxxxxxxxxxxxxxxxxx. The Supreme Court will transfer a case from one State to another State only if there is a reasonable apprehension on the part of a party to a case that justice will not be done. The petitioner has pleaded that “the atmosphere in Kerala is not conducive for the case to progress and reach its judicious end”. The petitioner has only alleged that the accused are naval officers and are influential. Mere apprehension that the accused are influential may not be sufficient to transfer the case. xxxxxxxxxxxxxxxxxxxxxxxx”

(vi) In a judgment titled as ***Umesh Kumar Sharma vs. State of Uttarakhand & Ors., 2021(12) SCC 517***, the Hon'ble Supreme Court has held as under:-

“20. The above legal enunciations make it amply clear that transfer power under section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises.

21. While assurance of a fair trial needs to be respected, the plea for transfer of case should not be entertained on mere apprehension of a hyper sensitive person. In his pleadings and arguments, the petitioner in my assessment has failed to demonstrate that because of what he endured in 2018, it is not possible for the courts in the state to dispense justice objectively and without any bias. It can't also be overlooked that the petitioner is involved in several cases and this year itself has generated few on his own in the state of Uttarakhand. Therefore, it is difficult to



accept that justice for the petitioner can only be ensured by transfer of three cases mentioned in these petitions.

22. *While considering a plea for transfer, the convenience of parties would be a relevant consideration. It can't just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution besides the larger issue of trial being conducted under the jurisdictional Court. When relative convenience and difficulties of all the parties involved in the process are taken into account, it is clear that the petitioner has failed to make out a credible case for transfer of trial to alternative venues outside the State."*

Analysis (re law)

10. Section 407 of Cr.P.C., 1973 encapsulates the statutory provision regarding the power of the High Court to transfer cases and appeals from one Court to another within its jurisdiction. At this juncture, it would be germane to reiterate that the equivalent provision contained in Section 447 of BNSS, 2023 is, in essence, on similar lines insofar as the parameters for transferring of criminal cases/appeals is concerned.

11. An elementary reading of the above provision(s) reflects that the parameters for consideration for exercise of power under this provision are *viz.* fair and impartial enquiry or trial; a question of law of unusual difficulty arising; the general convenience of parties to the *lis*; the general convenience of the witnesses; the law (Cr.P.C. or BNSS) requiring such an order to be passed & expediency for the ends of justice.

12. It goes without saying that assurance of a fair trial; to all parties to the *lis*, witnesses, as also public at large; is the paramount feature of the criminal justice dispensation system. A fair trial is the heart of our criminal jurisprudence and denial of fair trial, to all concerned, is crucifixion of human rights. Fairness of the trial is a virtue that is sacrosanct in our



CRM-M-19068-2024

14

jurisprudential set up and no price is too heavy to protect this virtue. It has to be unmistakably understood that a criminal trial, which is primarily aimed at ascertaining truth, has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial & it may have to be determined in seemingly infinite variety of actual situations with the ultimate objective in mind viz., whether something that was done or said either before or at the trial deprived the quality of fairness, to a degree, where miscarriage of justice has resulted. It would be apposite to say that it is not only the accused who must be fairly dealt with as it would amount to turning Nelson's eye to the societal interest(s) at large but even the victim/complainant and witnesses must be included in the ambit. Each one of these have an indefeasible right endowed upon them to be treated with fairness in a criminal trial. The Hon'ble Supreme Court in the three Judge Bench judgment in case of **Rani JethMalani** (supra), **Abdul NazarMadani**(supra) as also the three Judge Bench judgment in case of **Parkash Singh Badal** (supra) has clearly enunciated that if the criminal proceedings are not free as also fair & if they are biased then the judicial fairness and the criminal justice system would be at stake which would shake the confidence of public in the justice dispensation system. Therefore, the necessity to accord credibility to the criminal proceedings is an acute imperative.

12.1 Congenial atmosphere for conducting criminal proceedings is an equally essential feature of trial/appeal proceedings. In a case where it is reflected that the Court proceedings are sought to be disturbed by



CRM-M-19068-2024

15

rude/unruly crowds, commotions is caused by jeering or cheering outside the Court premises, it may well cause disquiet and concern to a person related to the trial/appeal and the same may call for transfer of case. A trial/appeal etc. may be transferred if there is surcharged atmosphere, indicating some degree of compromising or perplexing in the holding of fair/impartial proceedings or where there is even some material to show that witnesses may be influenced or any harm may be caused to either the complainant, the victim or the prosecution witness(s).

12.2 In a given situation; if it emerges that safety of the complainant/victim, witnesses or even the accused is likely to be put to peril; such plea(s) for transfer ought to be considered, keeping in view, the salutary objective of a fair trial. If this vice is peculiar to a particular place, the High Court ought to transfer the trial etc. to a place where such vice ceases to have effect. However, any exigent situation, which could be otherwise managed or resolved, must not sweep the High Court off its feet into granting easy *nay* perfunctory transfer of trial, but only uncontrollable or perilous deterioration may cause to order for shifting of trial etc.

12.3. There is yet another aspect *nay* disturbing aspect which craves 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 account 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



CRM-M-19068-2024

16

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, *ipso facto* lead to an inference that such Presiding Officer/trial Judge is biased or influenced or the prospect of fair trial has been compromised. A Presiding Officer/trial Judge has to perform 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. Judicial Officers often function and discharge their duties in environment which is overloaded with 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 think



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 detested. 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.



CRM-M-19068-2024

18

12.4 A common circumstance raised in plea(s) seeking transfer of trial etc. is the apprehension of lack of competent legal service in the form of assistance of a counsel. If a party to the trial, for any particular reason, is virtually deprived of assistance of a counsel, this can well be taken as a valid cause for lack of fair trial. However, the applicant (seeking transfer of trial etc.) would be required to show tangible circumstance/material so as to substantiate such a plea. For instance; if in a certain Court, the Bar, for any reason, refuses to represent a person, it may well call for intervention by transferring the trial proceedings. Refusal by the Bar, in general, to represent a person can well be deciphered from any resolution passed by the bar to this effect.

12.5. Another common circumstance, pleaded by an applicant in plea(s) for transfer of trial etc., is that the non-applicant is himself a lawyer or is closely related to a lawyer practicing in the Courts where the matter is pending adjudication. This cause, by itself, cannot be construed as sufficient cause to infer that fair trial would be compromised, until and unless, relevant material is shown that the fair trial is being prejudiced on this account. Such ground, if accepted in general, would have pernicious and deleterious effect on the administration of justice. If such an argument were to be, generally, accepted; in all such cases concerning, directly or indirectly, members of legal fraternity then these cases will have to be transferred to a place other than the one where such members of the Bar are practicing. *Ergo*, such a general principle is impermissible.



CRM-M-19068-2024

19

12.6. This Court must hasten to add a word of caution herein. The apprehension expressed by a party to the *lis*, witnesses etc. must be reasonable and not imaginary, based on conjectures and surmises. A person making a plea for transfer is not required to demonstrate that justice will inevitably fail if trial/proceedings etc. are not transferred. Such applicant is to only show the circumstances from which it can be inferred that the apprehension is reasonable one, in the facts/circumstances of a given case. An order of transfer ought not be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of trial even on account of accused being influential person(s) as has been held by Hon'ble Supreme Court in case of *Sujatha Ravi Kiran @ Sujatasahu* (supra). This power has to be exercised where it becomes necessary and imperative to instill credibility to the trial proceedings. The Hon'ble Supreme Court in the case of *Umesh Kumar Sharma* (supra) has held that the plea for transfer of a case should not be entertained on mere apprehension of a hyper sensitive person but discernible material in this regard ought to be produced. The High Court, while exercising its transfer jurisdiction, must act with caution and only in exceptional circumstances.

13. More often than not, a plea for transfer of trial is primarily based upon the convenience of parties to trial and/or witnesses. The statutory mandate; as contained in Section 407 of Cr.P.C, 1973/Section 477 of BNSS, 2023; does prescribe for transfer of trial etc., on account of general convenience of parties or witnesses. This transfer jurisdiction of the High Court ought to be exercised sparingly. Ordinarily, the trial proceedings



CRM-M-19068-2024

20

ought to be undertaken at its jurisdictional place as prescribed by law. The convenience of a party/witness ought not to be given a very liberal meaning lest it causes easy shifting of trial. The High Court must exercise caution to ensure that, the threshold for such transfers is not set too low, thereby preventing the justice system from being manipulated by baseless requests that could hinder the fair and efficient administration of justice.

13.1 Further; the convenience has to be adjudged on the touchstone of relative convenience and difficulties of all the parties concerned in the process i.e. the accused, victim/complainant, witnesses and State (prosecution). In other words; the concept of convenience herein entails triangulation of comparative convenience of accused, victim/complainant and the Society at large (represented by State/prosecuting agency). The Hon'ble Supreme Court in the judgment of *Nahar Singh Yadav* (supra) has enunciated that comparative inconvenience and hardships likely to be caused to all concerned is a factor which should be borne in mind while considering a plea for transfer of trial. Indubitably, in FIR cases, the expenses and difficulties likely to be undertaken by the Investigating Officer, prosecution witnesses (which may include government doctors etc.) would also be a ground for consideration.

14. Of late, this Court has been receiving unremitting spate of plea(s) seeking transfer of trial proceedings in an FIR case under Section 498-A of the IPC (now Section 85 of BNS, 2023) relating to dowry harassment etc., primarily on account of convenience of the complainant/victim-wife. Indubitably, the convenience of the



complainant/victim-wife is a key aspect to be considered but concurrently the relative convenience and likely hardship of the other stakeholders in the trial proceedings cannot be overlooked. The complainant/victim-wife, in a matrimonial related offence FIR, has a right to participate in the trial, in accordance with law, yet the State is the prime prosecuting agency in a FIR case. The Investigating Officer/Pairavi official of the FIR usually remains present in the Court on each and every date of hearing to assist the Public Prosecutor of the case. Further; there are Police officials, Government Doctors etc. cited as prosecution witnesses. Convenience *may* comparative convenience of all the concerned is required to be taken into consideration while adjudicating a transfer plea. In matrimonial matters; such as petition for grant of divorce, petition for maintenance filed under Section 125 of Cr.P.C./Section 144 of BNSS, 2023; given the background of general socioeconomic paradigm in our society, wife's convenience in a transfer petition is required to be accorded pre-eminence and be considered at a higher pedestal. However, this principle cannot be said to be applicable with same vigour to FIR cases involving offence of Section 498-A IPC/Section 85 of BNS, 2023 etc. for the reason, *firstly*, matrimonial litigation such as a divorce petition is primarily between two individuals, namely husband and wife wherein the wife is required to independently and solely pursue her case; whereas in the FIR case it is the State/Police, which is the main prosecuting agency; *secondly*, the FIR case involves several of the official witnesses such as Police personnel, Government Doctors etc.



CRM-M-19068-2024

22

15. As per Cr.P.C., 1973/BNSS, 2023; the trial/appeal etc. can be transferred by High Court if it is “*expedient for ends of justice*” to so direct. The phrase namely “*expedient for ends of justice*” is inherently incapable of being exhaustively defined. It has to be interpreted in a manner so that it serves justice, even handedly, to all concerned parties. It, indubitably, unequivocally reflects that repertoire nature of power(s) vested in High Court when exercising its transfer jurisdiction & hence is requested to be exercised accordingly as per facts/circumstances of a particular case.

16. It goes without saying that it is neither pragmatic nor feasible to lay any universal exhaustive yardstick or inexorable set of guidelines for adjudication of plea seeking transfer of trial/appeal etc. or as every case has its own unique factual conspectus, which has to be taken into account by the Court which is seisin of the mater in question. It was said by Lord Denning, an observation which met with approval by the Hon’ble Supreme Court, that:

“...Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such case, one should avoid the temptation to decide case (As said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not all decisive.”

17. As a sequitur to the above ruminations, the following principles postulates:

I. (i) Transfer of trial/appeal etc.; exercising powers under Section 407 of Cr.P.C., 1973/Section 447 of BNSS, 2023; can be



ordered for by the High Court in case it appears fair trial is not possible at the place where the trial/proceedings is pending.

(ii) The apprehension, of the fair trial being in peril, has to be based on tangible basis/material and not on any conjecture/surmise.

(iii) Before ordering for transfer of trial etc. the High Court ought to consider whether the situation (causing fair trial to be prejudiced) can be managed or resolved by taking any remedial step(s).

II. If an order passed by a Presiding Officer/trial Judge is found to be erroneous by a superior Court, this by itself cannot be presumed as such Presiding Officer/trial Judge being biased. Very strong/cogent material is pertinently required for ordering for transfer of trial etc on account of a Presiding Officer/trial Judge being biased.

III. The factum of non-applicant (in a transfer petition) being a lawyer himself or being in close relationship with a lawyer practicing in the Court where the trial is pending adjudication cannot be a ground, sufficient by itself, for shifting of trial. For such a transfer petition to succeed, the applicant (seeking transfer) is required to show discernible prejudice being caused or likely to be caused to such applicant (seeking transfer).

IV. General convenience of parties to trial or witnesses is a factor which may be considered for transfer of trial etc. However, it is not the convenience of one party alone but it is the comparative convenience of all concerned i.e. the accused, victim/complainant, witnesses and the State (Prosecution/Police) which is to be taken into account.

V. In FIR cases pertaining to matrimonial related offence(s); the convenience parameter of the wife, as applicable in divorce/maintenance case etc., shall not apply with same vigour since the convenience of all concerned especially the State/Prosecution is also to be accounted for.



VI. No universal guidelines or parameters can possibly be enumerated for exercise of power of the High Court under Section 407 of Cr.P.C., 1973/Section 447 of BNSS, 2023 as every case has its own unique factual conspectus.

Analysis (re facts of the present case)

18. Now this Court reverts to the facts of the present case to delve thereupon.

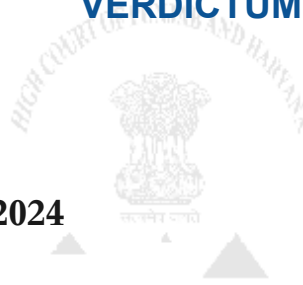
18.1 The transfer of the trial emanating from the FIR in question has been sought for by pleading the cause of convenience of the petitioner (herein)-wife by stating that her parents are old, her father is suffering from a knee ailment and there is no other adult male member in the family who can accompany her to appear before the Budhlada Court (District Mansa, Punjab). It is not in dispute that the trial in question emanates from a FIR which is being primarily prosecuted by the State. The petitioner, who has a right to participate in the trial in accordance with law, can well be represented by a Counsel at Budhlada Court. She is not mandatorily required to attend each and every date of hearing in Court since she is the complainant. Her interest, in the trial, can well be taken care of by a Counsel. It is neither pleaded nor is decipherable from the factual matrix of the case that she is facing any difficulty in engaging a Counsel. Nevertheless, if the need so arises, she may seek the assistance of a Legal Aid Counsel by making requisite plea before concerned quarters. Further, out of total 15 cited prosecution witnesses, there are 08 Police officials/Government doctor who would be required to travel to Bathinda, in case this Court grants the instant transfer petition. Further the distance



between Budhlada and Bathinda is about 80 kilometers only. Therefore, from the totality of the facts of the case in hand, it cannot be said that it would be pragmatic to transfer the trial from Budhlada (District Mansa, Punjab) to Bathinda (Punjab) in view of the convenience of the petitioner.

18.2. The argument raised on behalf of the petitioner that the fair trial before the concerned Presiding Officer/trial Judge at Budhlada (District Mansa, Punjab is prejudiced, in view of order dated 02.08.2024 passed by the trial Court, is mis-conceived. A perusal of the order dated 02.08.2024 reflects that theailable warrants of the petitioner (herein) as also two other prosecution witnesses were issued by the trial Court since they were not coming forward to have their testimony recorded as prosecution witness. This Court does not find any infirmity muchless perversity in the order dated 02.08.2024. Further, by no stretch of legal imagination, the order dated 02.08.2024 can be said to be reflecting any cause of apprehension of absence of fair trial to any prudent person. *Ergo*, the instant petition deserves rejection on this count as well.

18.3. The unscrupulous attempt, by the petitioner, in casting aspersions on the learned trial Court by reliance upon the order dated 02.08.2024 deserves to be deprecated and responded with abhorrence. This Court, however, refrains from imposing exemplary costs upon the petitioner keeping in view, inter alia, the factum of the petitioner being a lady aged 28 years with no antecedents regarding raising such scandalous issue(s) earlier & the matter in hand arising out of matrimonial related dispute.



CRM-M-19068-2024

26

Decision

19. It is thus, directed that:

(i) The petition; seeking transfer of trial emanating from FIR No.125 dated 16.08.2023 registered at Police Station City Budhlada, District Mansa, Punjab under Sections 498-A/323/34 of IPC from the Court of SDJM, Budhlada, District Mansa, Punjab to a Court of competent jurisdiction at Bathinda (Punjab); is dismissed for the nonce.

(ii) 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.

(iii) Pending applications), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

October 01, 2024

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No