

**(2018) 08 J&K CK 0033**

**In the Jammu And Kashmir High Court**

**Case No : Civil Transfer Application No.09 Of 2018**

**Abdul Rehman Nath @APPELLANT@Hash Jugal Kishore And Others**

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**Date of Decision : 10-08-2018**

**Acts Referred:**

Code of Civil Procedure, 1908 — Section 24  
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 323, 341, 506  
Code of Criminal Procedure 1973, — Section 156(3)

**Citation : (2018) 08 J&K CK 0033**

**Hon'ble Judges : Tashi Rabstan, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

1. This petition is under Section 24 of Code of Civil Procedure, beseeching transfer of Civil Suit titled Abdul Rehman Nath v. Jugal Kishore and

others, pending on the files of learned City Munsiff, Srinagar (for brevity â??Trial Courtâ?), to any other court of competent jurisdiction. Petitioner

states that he has lost faith in learned Trial Court because learned Trial Court is listing the case on daily basis and learned Trial Court has disclosed its

mind to dismiss his case before going through the proceedings.

2. Reply has been filed by respondents, resisting vehemently application on hand.

3. Heard and considered.

4. Learned counsel for petitioner, while reiterating what is averred in instant petition, has stated that petitioner has lost faith in the court of learned

Trial and does not expect real dispensation of justice qua his case. In support of his submissions, he has placed reliance on judgement dated 28th

December 2005, passed by the Andhra High Court in a case titled Yeleti Pedaveerraju and anr v. Vanka Jayalakshmir an dors, 2006 (1) ALD 642 :

2006 (1) ALT 472.Â

5. Per contra, learned counsels for respondents have strenuously submitted that instant petition, moved by petitioner under Section 24, CPC, requires to be dismissed because petitioner had already moved an application under Section 24, CPC, on same and similar grounds before the court of learned Principal District Judge, Srinagar, which was dismissed vide order dated 28th March 2018. Without putting the aforesaid order to challenge, which has attained finality, petitioner is precluded to come up with same grounds, submissions and averments before this Court, to seek transfer of the case from the files of learned Trial Court. They also aver that petitioner is doing forum shopping by filing transfer petitions as he knows very well that he does not have a strong case and, therefore, every time he files application for transfer and buy time for himself. It is also pleaded that instant application has been filed aiming at delaying the trial of the case so that petitioner takes benefit of interim order dated 28th May 2016, by misrepresenting the same as an order for delivery of possession. They also maintain that petitioner has preferred many litigations before different courts through the State vis-à-vis same subject matter. Whenever petitioner fails to avail the relief, he ends up in filing a fresh litigation inasmuch as two writ petitions before this Court have also been filed by petitioner; one of which has been dismissed. One suit before learned City Munsiff, Srinagar and one before learned Sub Judge, Baramulla, have been filed by petitioner. One complaint under Section 323, 341, 506 RPC was also filed by petitioner against respondent no.2 before the court of learned Judicial Magistrate, Pattan, which was later on dismissed. Petitioner is also stated to have filed one application under Section 156(3) Cr.P.C. before the learned Magistrate to pressurize respondents on the basis of ad interim order dated 28th May 2016, passed by learned Trial Court, which came to be dismissed vide order dated 7th April 2018 and that petitioner has quite recently filed one more complaint against respondent no.1.

6. Section 24 of the Code of Civil Procedure envisages that on the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard or of its own motion without such notice, the High Court or the District Court may at any stage: (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or (b)

withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and (i) try or dispose of the same; or (ii) transfer the same for

trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or (iii) re-transfer the same for trial or disposal to the Court

from which it was withdrawn.Â

7. It is well settled that presumptuous conclusions of a party based on unsubstantiated averments of general and bald nature, cannot become an edifice

or a ground in law to order transfer of a case. In order to seek transfer of a case, grounds, which would affect the integrity of a Judge, more than

routine averments, are required to be substantiated without any blur.Â Petitioner, in the present case, allege that he has lost faith in the learned Trial

Court for the reason that his case is being listed on daily basis. It is pertinent to mention here that such a plea makes no sense inasmuch as such

practice cannot be permitted to be made basis for transfer of case(s) from one court to other court. Such practice should always be discouraged and

arrested. The ultimate goal of the petitioner is one and the same. For that purpose, he had indulged in forum shopping. As regards forum shopping, the

Supreme Court in Chetak Construction Limited v. Om Prakash 1998 (4) SCC 577, has held that a litigant cannot be permitted choice of the forum and

every attempt at forum shopping must be crushed with a heavy hand.

8. In Tamil Nadu Mercantile Bank Shareholders Welfare Association (2) v. S. C. Sekar 2009(2) SCC 784, it has been held that the superior Courts of

this Country must discourage forum shopping. A person seeking equity must do equity. A party cannot take recourse to a machination which amounts

to abuse of process of Court.Â

9. Given the above discourse, apprehensions nursed by petitioner appear to be imaginary and baseless. Having said that, petition on hand is devoid of

any merit and is, accordingly, dismissed with connected MP(s). Interim direction, if any, shall stand vacated.

10. Copy of this order be sent down.