

(1999) 05 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal M.M.O. No. 449 of 1998

Hari Singh Mann and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 120B, 182, 323, 34, 341

Citation : (1999) 3 ShimLC 311

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Ramakant Sharma, for the Appellant; Vivek Thakur, Assistant A.G. for Respondent Nos. 1 to 3, H.S. Bajwa and B.K. Sood, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The Petitioners, who are facing prosecution for the offences under Sections 341, 323, 356, 506 and 427, read with Section 34, Indian Penal Code, before the learned Additional Chief Judicial Magistrate, Dalhousie, have approached this Court u/s 407, Code of Criminal Procedure, for the transfer of the case against them, that is, State v. H.S. Mann and Ors. to a Court of competent jurisdiction, either at Solan or at Nalagarh in District Solan.

2. The following grounds have been put forward by the Petitioners in seeking the transfer of the case against them from Dalhousie in District Chamba:

(a) That the Petitioners do not expect a fair trial by the Hon'ble Court at Dalhousie inasmuch as it would not be possible for the Petitioners to put up their defence and it is clear from the threats given by the Respondent No. 4, a reasonable apprehension is there in the mind of the Petitioner that the moment they cross District Ropar, they are not safe. Therefore, the case deserves to be transferred.

(b) That the Respondent No. 4, who is the complainant has filed the FIR as a

counter-blast and the Petitioners have been falsely implicated with the help of his maternal uncle who is permanent resident of Dalhousie. It is further submitted that the Respondent No. 4 who is an accused alongwith his father-in-law Sh. Kuldip Singh in FIR No. 59 dated 12.5.1996 under Sections 420/468/471/120B of the Indian Penal Code pending trial before the learned Court of J.M.I.C. Kharar and in order to put pressure to withdraw the criminal litigation, the present FIR has been lodged, apart from the aforesaid case, there are a number of cases as has been detailed in the paras supra of the petition. Thus, the present FIR is the result of mala fides and vengeance. Therefore, the case deserves to be transferred as prayed above.

(c) That the case is liable to be transferred keeping in view the fact that it is expedient for the ends of justice, especially when the FIR which has been got registered by the Respondent No. 4 and almost similar incident as alleged by the Respondent No. 4 at Kharar, has already been found to be false and the Respondent No. 4 is facing proceedings u/s 182 of the Indian Penal Code in the Court of J.M.I.C. Kharar. Thereafter, the case deserves to be transferred on this ground too.

(d) That the case is liable to be transferred on the ground that the complainant-Respondent No. 4 and his associates gave an open threat on 7th March, 1998, at Kharar after attending the hearing in the case registered against the complainant u/s 182 of the Indian Penal Code that the Respondent No. 4 would get the Petitioners convicted from J.M.I.C. Dalhousie, as he has not only social influence but also money and muscle power with him which he would utilise to his best capacity and a complaint has already been lodged by the Petitioner No. 1 with the Director General of Police in this behalf but no action has been taken. Therefore, keeping in view this aspect of the matter too, there is a reasonable apprehension of failure of justice in the mind of the Petitioners which is a paramount consideration for transfer of the case. Therefore, the present is a fit case wherein the case may be transferred keeping in view the entire facts and circumstances of the case. That the Petitioners are unable to find out any Advocate from Dalhousie being foreigners to the place who could defend their case during the trial. It is further submitted on behalf of the Petitioners that it would not be possible for them to arrange for surety at that place. Therefore, keeping in view this aspect of the matter too, the case deserves to be transferred by this Hon'ble Court in the interest of justice.

(e) That keeping in view the health condition of Petitioner No. 1, who is a chronic patient of diabeties etc., as detailed in paras supra, is unable to go to such an height and a long distance and in such circumstances for attending the case and in case he is forced to face the trial in a false case, it would not only be harsh but oppressive to him and during such a long journey, there are chances of his collapsing. Therefore, keeping in view this aspect of the matter too, the case deserves to be transferred by this Hon'ble Court.

(f) That the case is liable to be transferred on the ground that the complainant

Ravneet Singh, Respondent No. 4 is a permanent resident of Chandigarh and his son is studying in Guru Nanak Public School, Sector 36, Chandigarh and he is not a permanent resident of Dalhousie. He had only gone to Dalhousie to see his maternal uncle and there he devised the pressure tactics and got this case registered out of mala fide and vengeance and the trial before the learned Court of Additional Chief Judicial Magistrate, Dalhousie would amount to abuse of the process of law. It will not be in the interest of justice. Therefore also the case deserves to be transferred as submitted above.

(g) That the Petitioners are respectable persons and the Petitioner No. 1 is working as an Advocate in the Hon''ble High Court of Punjab and Haryana for the last 23 years and Petitioner No. 2 who is a son of Petitioner No. 1 is also working as such for the last five years with him. The present FIR has been lodged as an instrument of legal terrorism to put pressure for withdrawing the criminal cases, civil cases and forgery cases pending against them.

3. The petition for transfer is being resisted and contested by the Respondents. Respondent No. 4 is the complainant at whose instance the Petitioners are facing prosecution on the basis of FIR No. 126 of 1997 of Police Station Dalhousie.

4. It is well settled that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services of like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the Petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the Court may weigh the circumstances.

5. While dealing with the grounds of transfer of a case from one Court to another, the Hon''ble Supreme Court in Gurcharan Das Chadha Vs. State of Rajasthan, , has held that 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. A 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 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 such apprehension is reasonable or not.

6. In *Raj Kishore Bhag Rai Vs. State*, it has been held that what is reasonable apprehension, has to be decided in each case with reference to its own peculiar incidents and the surrounding circumstances. In determining whether an applicant has a reasonable apprehension, it is the duty of the Court, by placing itself in the position of the accused, to consider the attending facts and circumstances. Abstract reasonableness cannot, normally speaking, be the standard in such cases.

7. It was further held that though the importance of the highly desirable object to clear away everything which might endanger suspicion and distrust of a Court trying a Criminal Case and to promote the feeling of confidence in the administration of justice which has been recognised to be essential to social order and security cannot be minimised, at the same time the High Court is bound in the interest of justice to see that cases are not transferred lightly.

8. To the similar effect it has been held by this Court in *Kewal Ram Chauhan v. State of Himachal Pradesh* 1992 (1) Shim. L.C. 234 and *Smt. Kamlesh Tyagi and Anr. v. State of Himachal Pradesh* and Ors. 1992 (2) Shim. L.C. 17.

9. In *Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani*, editor of a monthly and daughter-in-law of the former Prime Minister of India was being prosecuted at Bombay of defamation by the daughter of a leading Advocate and member of Parliament. During the course of the trial, she made a petition for the transfer of the case from Bombay to Delhi and a string of grounds, such as substantial prejudice, non-availability of competent legal service and absence of congenial atmosphere for a fair and impartial trial, had been set out. The Hon'ble Supreme Court, while declining the prayer for the transfer of the case, held that the case could not be transferred on the grounds alleged.

10. Recently, in *Mahabir Prasad Singh Vs. M/s. Jacks Aviation Private Ltd.*, the Supreme Court has held that a change of Court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both the parties combine together, they can avoid a Court and get a Court of their own choice.

11. Examining the grounds put forth by the Petitioners (detailed above) for seeking the transfer of the case from Dalhousie in the light of the above principles, it can be said that they have not been able to make out a case justifying the transfer of the case at Dalhousie.

12. Petitioners No. 1 and 2 as well as Respondent No. 4 (complainant) are practising Advocates of Chandigarh. Some occurrence is alleged to have taken place at Dalhousie, resulting into the prosecution of the Petitioners on the basis of FIR lodged by Respondent No. 4. There is nothing on the record to show that Respondent No. 4 holds influence in Dalhousie and is in any way in a position to prejudice the trial of the Petitioners. The apprehension, if any, of the Petitioners, is not a reasonable one on the facts and circumstances of the present case.

Resultantly, there being no merit in the present petition, the same is dismissed.
Cr.M.Ps 133 and 357 of 1998.
Infructuous in view of the orders passed in the main matter.