

(1998) 09 J&K CK 0026
In the Jammu And Kashmir High Court
Case No : Rev. Petition No. 53 of 1998

Mushtaq Ahmad Dar

APPELLANT

Vs

Mohmmad Ishaq Zaroo and Others

RESPONDENT

Date of Decision : 03-09-1998

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Section 24

Citation : AIR 1999 J&K 125

Hon'ble Judges : Syed Bashir-ud-Din, J

Bench : Single Bench

Advocate : G.A. Lone, for the Appellant; Zaffar Ahmad Shah, for the Respondent

Final Decision : Dismissed

Judgement

Syed Bashir-Ud-Din, J.—The suit of Mohmmad Ishaq Zaroo, respondent No. 1 before this Court, for declaration and injunction was

pending adjudication before 3rd Additional District Judge Srinagar. The matter was referred for arbitration in terms of agreement entered by the

Parties. While report and award of, arbitral reference was awaited, plaintiff/respondent No. 1, moved Court of reference for ad-interim relief

including attachment of shops in the ground floor of the building subject of arbitral reference.

2. The Court of reference took certain steps including directions to the concerned police to implement Court order passed in December 1994.

While this matter was being heard on a due date, the petitioner/defendant MushtaqAhmad Darfiled an application for transfer of the case on the

ground that the said defendant saw one Hassan Zaroo, brother of plaintiff, with the Presiding Officer in his chambers, leading to apprehension in

the mind of defendant/petitioner, that he may not get the justice from the Court.

The District Judge Srinagar, after hearing the parties withdrew the suit from the file of 3rd Additional District Judge Srinagar and transferred it to the Court of Additional District Judge Srinagar by order dated 11-7-1998.

3. While ordering the above transfer of the suit, the District Judge after examining the report of Presiding Officer of 3rd Additional District Judge Srinagar, expressing his "deep antics" while reporting on grounds of transfer, intended to take this matter to its logical end and to find out if the insinuation against the Presiding Officer has been made vexatiously or not and in the words of learned District Judge, "only to defeat the speedy trial or infact the petitioner had genuine apprehension that fair trial will not be possible for the said Court." Before proceedings further in the matter, the District Judge entrusted the enquiry to Mr. Mansoor Ahmad Mir, Presiding Officer MACT Srinagar for holding enquiry in the genu-ineness of the application and to send report to the District Judge Srinagar and the next date for this limited purpose was fixed as 22-8-1998.

4. This part of the order of the District Judge is challenged in this revision on the ground that District Judge had no power to assign another District Judge an enquiry in a transfer matter, after the suit stood transferred to the Additional District Judge Srinagar. The appointment of such enquiry commission is unknown to law and the District Judge had no powers to do so while exercising judicial powers u/s 24 of C.P.C. for transfer of case from one Court to another Court.

5. Mr. Zaffar Ahmad Shah, advocate entered appearance and took notice on behalf of respondents and on submissions of the parties the matter was heard.

6. u/s 24 of C.P.C. the District Judge has the powers to withdraw any suit from any Court and try it himself or transfer it for trial to some other Court. The part of order, transferring the civil suit from 3rd Additional District Judge Srinagar to Additional District Judge Srinagar is not questioned by either side.

7. From the order of transfer passed by the District Judge it appears that on giving consideration to deep anguish expressed by 3rd Additional District Judge Srinagar, while examining the grounds of transfer, the District Judge after hear-ing the parties thought it proper in his wisdom to find

out whether the allegations levelled against the Presiding Officer were vexatious or with the desire to defeat the speedy proceedings in the case or

whether the apprehensions expressed by the petitioner while seeking transfer, were genuine or not. As District Judge it cannot be disputed that the

District Judge has power to find for himself if the allegations had some basis or were levelled calculatedly for tardy trial of the case or were brought

with the purpose to pressurize the Presiding Officer to secure softie sort of favourable order. If a subordinate judicial Officer is pressurized for

ulterior motives in a judicial proceeding, such act amounts to an offence for which the concerned Court shall definitely take action in accordance

with law. The District Judge has been cautious to see whether allegations have been levelled vexatiously with a view to impinge on speedy trial of

the case or whether the petitioner did have the genuine apprehension that it may not be possible for him to get fair trial before the 3rd Additional

District Judge Srinagar. In otherwords to determine the factual and circumstantial premises of the allegation(s) levelled, and made basis for sought transfer of the suit, the District Judge is justified to hold enquiry into the matter.

8. Mr. Lone submits that 3rd Additional District Judge Srinagar should have rescued himself, notwithstanding whether the allegations. could have

made any difference to him in the ultimate order to be passed in the case. He also submits that contempt jurisdiction should be sparingly exercised.

He has referred to M/s. Chetak Construction Ltd. Vs. Om Prakash and Others, . At the outset as already observed the suit has been already

transferred and the 3rd Additional District Judge has been spared from hearing the matter on the principle that justice should not only be done, but

must also seen to be done. In the authority cited by Mr. Lone, the appeal against the order of learned single Judge of High Court of Madhya

Pradesh (Indore Bench), came up before Apex Court. The Hon'ble single Judge in the peculiar facts of the case passed an order that the appeal

which was pending before him, be decided by the Supreme Court and the Supreme Court should not remand the appeal to any Judge of any High

Court. Supreme Court while disapproving the direction found it subversive of judicial discipline in so far as no authority or power existed in the

single Judge of the High Court to pass such an order of remand of the case to Supreme Court. It may be of some interest to note that there was

allegation that respondent No. 3 was residing in flat purchased by the said Hon'ble Judge, which allegation was almost made out on record.

9. In the case in hand the District Judge has only ordered an enquiry to find out if the allegations of plaintiffs brother being seen in the chamber with

the trial Judge, was correct or incorrect in the face of claim of petitioner alleging that he viewed the plaintiff's brother in the chamber and assertion

of the Presiding Officer describing this allegation as vexatious and false. With a view to find out the health and correctness of allegation levelled and

its stout denial by the 3rd Additional District Judge, the District Judge decided to hold inquiry.

10. In the above cited authority of M/s. Chetak Construction Ltd. Vs. Om Prakash and Others, , the following observations of the Apex Court are

reproduced for benefit of all concerned :-

No lawyer or litigant can be permitted to browbeat the Court or malign the presiding Officer with a view to get a favourable order. Judges shall

not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a

casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers

and litigants cannot, be allowed to terrorize or intimidate Judges with a view to secure orders which they want. This is basic and fundamental and

no civilised system of administration of justice can permit it. A litigant cannot be permitted 'choice' of the 'forum' and every attempt at ""forum

shopping"" must be crushed with a heavy hand. At the same time, it is of utmost importance to remember that Judges must act as impartial referees

and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at

any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the

fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial

powers must be exercised impartially and within the bounds of law. It must always be remembered that justice must not only be done but it must

also be seen to be done.

11. In the premises the action of the District Judge to hold an enquiry to find out

the correctness or otherwise of the serious allegations which formed the basis for transfer of proceedings to the Court of Additional District Judge Srinagar, cannot be found fault with. The District Judge does not become non-est on transfer of the suit so as to become de hors or denuded of his powers and authority to find out the facts and circumstances with a view to determine if any legal action is required to be taken against a person levelling serious allegation in the face of the denial of the Presiding Officer of the concerned Court. The order and exercise of power by the learned District Judge to the extent is fully within the confines of law.

12. However, the appointment of "Senior District Judge Mr. Mansoor Ahmad Mir, Presiding Officer MACT Srinagar" to hold inquiry in the genuineness of the allegations made in the transfer application, is not proper. The District Judge seized of the proceedings may be u/s 24 of C.P.C. should hold enquiry himself rather than to assign a District Judge with the job. The entrustment of enquiry to another District Judge in such matters in the facts and circumstances of this case, is not visualised by law. If the District Judge thought it expedient to hold the enquiry as he has done, then the District Judge should have himself conducted the enquiry and arrived at the truth. It is not as if the Principal District Judge Srinagar could not have inquired into the matter itself and the enquiry could have been held by a co-District Judge presently on deputation as Presiding Officer MACT Srinagar. The order of enquiry by the Principal District Judge to another District Judge, who is on deputation, in my view, is not in tune with the judicial discipline and sound improper and illogical. To this extent the order cannot be upheld,

13. Whether the concerned Court(s) should take action against the petitioner in the facts and circumstances of the case, is a matter for concerned Court(s). After all the necessary facts and circumstances are/may be available to the Subordinate Court(s) on enquiry. Therefore, at this stage a comment by this Court whether the action should be taken or not, is not warranted. It is a matter which is left to the concerned Court. Con-

textually, it is apt to quote, His Lordship Dr. A. S. Anand-J, while speaking for the Court in M/s. Chetak Construction Ltd. Vs. Om Prakash and

Others, as follows: -

Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection. Recourse to this jurisdiction,

must be had whenever it is found that something has been done which tends to effect the administration of justice or which tends to impede its

course or tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the Court and the like situations. The

respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction.

14. With the result the revision petition is dismissed except to the extent that enquiry in the matter shall be held by the Principal District Judge

Srinagar himself. Inform the Court below of the decision.