
(2011) 09 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-24214 of 2011

Ram Simran Singh Makkar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 1 RCR(Criminal) 19

Hon'ble Judges : Rajan Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajan Gupta, J.—This is a petition u/s 407 of the Code of Criminal Procedure seeking transfer of a trial pursuant to FIR No. 53 dated

21.4.2011 registered under sections 302, 34 IPC and sections 25 and 27 of the Arms Act at police station Division No. 8, Jalandhar outside the

State of Punjab.

2. Brief factual matrix of the case is that an FIR was lodged by Rajbir Singh stating that he was owner of Sekhon Grand Hotel near Namdev

Chowk, Jalandhar. He usually went to place of work along with his son Gurkirat Singh @ Gikki aged about 31 years. On the fateful night, Gurkirat

Singh did not come back from hotel till late in the night. The complainant thus decided to go to hotel to look for him. At about 12.45 A.M. he

reached a place known as Baba Rasoi Dhaba and saw his son standing in the street near the main road along with accused. Some kind of

argument was going on between them. As the complainant stepped forward,

Amardeep Singh took out a revolver and started fighting with Gurkirat Singh. As the things heated up Ram Simran Singh Makkar fired a shot in the back of Gurkirat Singh who fell down. The accused persons thereafter fled from the spot. The injured was taken to Satyam Hospital for treatment, but he died on the way. According to complainant, the entire occurrence was seen by Sukhdev Singh. The grudge is stated to be that an excise raid was earlier conducted at Hotel Sekhon Grand and deceased suspected that alleged assailant Ram Simran Singh Makkar had a hand in same. For this reason, they were not on good terms. After complaint was lodged, an investigation ensued. The investigating agency recorded statements of various witnesses and submitted its final report before the competent court. Charge was framed u/s 302/34 IPC read with sections 25 and 27 of the Arms Act. Recording of evidence is yet to commence in the case. Instant petition for transfer of trial outside Jalandhar has been moved by accused Ram Simran Singh Makkar, inter alia, on the grounds that heavy security has to be deployed in the court complex at the time of court proceedings. A vilification campaign has been unleashed and certain demonstrations are organized from time to time which lead to a disturbed atmosphere in the court.

3. Mr. Cheema, learned senior counsel appearing for the petitioner has drawn the attention of the court to certain media reports showing that at the time of trial number of persons gather in the court complex and heavy police deployment has to be made. As several local residents assemble in the court complex, police has to make elaborate security arrangements to avoid any untoward incident. Learned counsel has referred to various annexures to show that protest marches are taken out in Jalandhar city in support of the accused and tight security arrangements have to be made in the court complex. While referring to reply filed by State he submits that this fact has not been denied therein. He has, however, limited his prayer to transfer of the case outside Jalandhar city.

4. Learned State counsel submits that a fair investigation was conducted in the case and there is nothing on record to show that a fair trial is not possible at Jalandhar. He, however, on instructions from SI-Manmohan Singh, who is present in court, does not dispute the fact that due to assembly of persons in the court complex heavy police deployment had to be

made on the dates of hearing and possibility of such a situation arising in future cannot be ruled out.

4-A. Mr. Vikram Chaudhari, learned counsel appearing for the complainant submits that assembly of local residents in the court complex is not at

the behest of complainant. According to him, it is equally the right of the complainant to expect a fair trial as that of the accused. This apart,

atmosphere in Jalandhar city may not be surcharged now as occurrence took place almost 5 months back. He, however, submits that in case

transfer application is accepted by this court, trial of the case may be transferred either to Amritsar or Gurdaspur on consent basis.

I have heard learned counsel for the parties.

5. Learned counsel for the petitioner as well as for the complainant have referred to the same judgment reported as Maneka Sanjay Gandhi and

Another Vs. Rani Jethmalani, . In the said case, though the apex court did not accept the prayer for transfer, it observed (para-5) that it was

becoming a frequent phenomenon in our country that court proceedings were being disturbed by rude hoodlums and unruly crowds, jostling,

jeering and disrupting the judicial hearing. Safety of accused and complainant is an essential condition for participation in a trial and where that is

put in peril by commotion, tumult or threat, it is the duty of the court to assure propitious conditions and tranquil atmosphere for the conduct of

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. In a later case reported as Himanshu Singh

Sabharwal Vs. State of M.P. and Others, Recent Apex Judgment (RAJ) 368: (2008) 3 SCC 602, the apex court while accepting the prayer for

transfer of trial observed as under :-

35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties,

crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to

the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the

community that acts through the State and prosecuting agencies. Interests of

society are not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it.

If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a 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, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object 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 a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is

eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

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39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in

the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere

farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-

managed, tailored and partisan trial.

6. In the aforesaid judgment, the court also referred to judgment in Maneka Gandhi's case supra and the dictum laid down therein to ensure a fair

trial. It was further observed that a criminal trial is a judicial examination of issues with the objective to mete out justice so as to punish the guilty

and protect the innocent. The court was considering transfer of the trial pertaining to death of a professor in Government College, Ujjain, who was

brutally beaten up in front of police officials and media persons. The trial at Ujjain did not proceed properly as certain witnesses resiled. The apex

court thus transferred the same from the court of sessions at Ujjain to that at Nagpur. In the instant case, certain media reports have been annexed

to refer to the protest marches taken out in Jalandhar city on the dates the case was fixed for hearing (Annexures P-17, 18 & 19). Certain

posters/pamphlets also appear to have been pasted on the walls at various places demanding justice for deceased's family. It is also stated in the

petition that respondent No. 3 is a member of Jalandhar Bar Association. Thus atmosphere becomes tense in the court complex at Jalandhar. It

has been averred that due to extensive coverage by local television and cable channels mind of the public gets prejudiced leading to surcharged

atmosphere at the time of court proceedings. Admittedly, petitioner is a local municipal councillor of Municipal Corporation, Jalandhar. The matter

thus also gets a political colour. Police has to make elaborate security arrangements in view of huge crowd that gathers in the court complex on the

date the case is listed. On 27th April, 2011 when the case came up for hearing, several local residents assembled in the court complex seeking

justice for victim's family (Annexure P-19). In order to prevent any untoward incident three Additional Deputy Commissioners of Police and four

Assistant Commissioners of Police were asked to supervise security arrangements. The court had to wait for more than 30 minutes for the accused

to appear as additional security ring had to be formed around them as they alighted from the police van. The stand of the State also is that heavy

police deployment is required on the dates when the case is fixed for hearing. Such a situation, apart from creating difficulties for the presiding

judge may lead to avoidable delay in conduct of trial. It thus appears that it will be conducive to fair trial if same is transferred to a place outside

Jalandhar city. Needless to observe that it has to be ensured that trial goes on in a congenial atmosphere without unruly crowds disturbing the same

so as to achieve the objective of unraveling the truth to protect the innocent and punish the guilty.

7. In view of the fact that learned counsel for the petitioner has confined his prayer to transfer of case outside Jalandhar city, counsel for

complainant has given his consent to transfer of same to either Amritsar or Gurdaspur and State has no serious objection to this, this court deems it

fit to transfer the trial from the court of sessions at Jalandhar to that at Gurdaspur. The record of the case be forwarded to the concerned court

accordingly. It is, however, directed that the court at Gurdaspur shall endeavour to conclude the trial expeditiously.

8. Allowed in the above terms.