

(2019) 03 J&K CK 0089

In the Jammu And Kashmir High Court

Case No : Criminal Transfer Application (CRTA) No. 04 Of 2014, IA No. 05 Of 2014

Sunny Mahajan And Ors

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 352, 452
Code Of Criminal Procedure, 1973 — Section 526
Constitution Of India, 1950 — Article 20, 21

Citation : (2019) 03 J&K CK 0089

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : B.S. Salathia, Ashish Sharma, Amit Gupta

Final Decision : Allowed

Judgement

1. Through the instant petition filed under Section 526 of Cr.P.C., petitioners seek transfer of criminal case titled State Vs. Munish Khajuria and others, arising out of FIR No. 82/2012 under Section 352/452RPC, from the court of learned JMIC, Small Causes Court, Srinagar to any other court of competent jurisdiction at Jammu.

2. The case of the petitioners is that they have been implicated in a false and frivolous case by the police of Police Station Shaheed Gunj, Srinagar in case FIR No.82/2012 dated 10.10.2012 for commission of offences under Sections 352/452 RPC, which culminated into filing of challan on 22.12.2012, which is pending disposal in the court of learned JMIC, Small Causes Court, Srinagar. It is stated that as and when the petitioners went to attend the court at Srinagar, the atmosphere in the Court, because of the hostile conditions, became surcharged and the petitioners face great difficulty while attending the proceedings of the above said case, as such, the petitioners have every reasonable threat to their lives.

3. Learned counsel for the petitioners states that on 10.10.2012, a complaint was forwarded by the Addl. Secretary, Jammu and Kashmir Legislative Assembly Secretariat to the SHO Police Station Shaheed Gunj wherein complainant alleged that he was directed to forward the details of charges/accusations against the petitioners, who allegedly committed Contempt of House on 08.10.2012, to the respondent for further necessary action under law. It was further alleged in the said complaint that the petitioners managed their entry into the public gallery of the Jammu Kashmir Assembly (hereinafter referred to as House) on 08.10.2012 with valid passes. It was also alleged in the complaint that during the question hour, all the petitioners stood up from their seats and started sloganeering besides waving the flag of a newly established political party JKDF, and two of the petitioners jumped into the House from the height of approximately 7 ft in an open view, one of the petitioners reached near the seats of Mr. M.Y.Tarigarni and Hakim Mohammad Yasin in the front row at a distance of about 22 fts from the public gallery and shouted at the height of his voice in an aggressive manner addressing the Hon'ble Speaker to listen to them in an unprecedented manner. The complainant further alleged that having brought the flag with them clearly indicates the intention of the petitioners was not only to disrupt the proceedings of the House but had come there to undermine the sanctity of the House. Thereafter, orders were passed by the Hon'ble Speaker for handing over the petitioners to the SP Security, Civil Secretariat, pending decision into the contempt committed by them in an actual view of the house and they were ordered to be kept in police custody till 10.10.2012.

4. It is further contended that the complainant has forwarded a false and frivolous complaint to the Police Station, Shaheed Gunj, Srinagar, as the complainant was not empowered to forward complaint for allegedly committing "CONTEMPT OF HOUSE" and as per settled position of law, the same is punishable by the House itself. Moreover, as per contents of the allegations made in the complaint, the Police Station, Shaheed Gunj, Srinagar without having any jurisdiction under law, registered an FIR No.82/2012 dated 10.10.2012 for commission of offences under Sections 352/452 RPC, which fact clearly shows that the above mentioned FIR was lodged only under political influence so as to implicate the petitioners in a false and frivolous case, only to curtail the social and political activities of the petitioners and to suppress the issues which are time and again being raised by the petitioners for the general welfare of the society. It is stated herein that due to hostile atmosphere and in view of the political fallout of the case, it has become extremely difficult for the petitioners to attend the proceedings of the case at Srinagar.

5. The contention of learned counsel for the petitioners is that as and when the petitioners appeared before the court, the Government agencies who are following the case, are hostile towards them and thereby creating surcharged atmosphere in the Court premises, therefore, it is not possible for the petitioners to attend the proceedings of their case at Srinagar without fear to their lives, as all the petitioners are the residents of Jammu. It is further stated that all the

witnesses named in the charge sheet are also the residents of Jammu. Further, it is submitted that it is very difficult for the petitioners to attend the proceedings of the case in such a hostile and surcharged atmosphere at Srinagar, therefore the petitioners pray for transferring the above said case from the court of learned Munsiff (Judge Small Causes) Srinagar to any other competent Court at Jammu.

6. Learned counsel for the petitioners further contends that fair trial is a part of Constitutional rights guaranteed under Article 20 and 21 of the Constitution of India. The Hon'ble Apex Court has held that a concept of fair investigation and fair trial is concomitant to preservation of the fundamental rights of the accused under Article 21 of the Constitution of India. The atmosphere should be conducive to a fair trial and it will not at all be safe for the petitioners to attend the Court at Srinagar. In the given facts and circumstances of the case, it is expedient for the ends of justice and also safety of the petitioners that the said case is ordered to be transferred to any other competent court of jurisdiction at Jammu. In the instant case, the petitioners cannot have a fair and impartial trial in the court where the proceedings are pending because of the surcharged atmosphere.

7. Respondent has filed objections. After narrating contents of FIR, the detail of which has already been given above, the further stand of respondent is that there are five PW's including I.O. in the calendar of witnesses, but till date none of them have been examined.

8. I have heard learned counsel for the parties and considered the matter. I have gone through relevant provisions of law on the subject.

9. Section 526 of Cr.P.C. reads as under

"526. High Court may transfer case or itself try it.- (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 a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

(d) that an order under this Section will tend to the general convenience of the parties or witness ; or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code, it may order-

(i) that any offence be inquired into or tried by any Court not empowered under Sections 177 to 184 (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 or appeal be transferred to and tried before itself; or"

10. From bare perusal of this section, it is evident that High Court has power to transfer criminal case from one sessions division to another sessions division on the grounds that a fair and impartial inquiry or trial cannot be held in any subordinate criminal court; that it is for the general convenience of the parties or witnesses; that Criminal case can be transferred when it appears that an order about such transfer can be expedient for ends of justice and for promotion of ends of justice. These are some of valid grounds for transfer. There are also other grounds which the High Court can think proper in the facts & circumstances of particular case.

11. In present case, accused are facing trial before Judge, Small Causes Court, Srinagar; it is specific case of petitioners that due to hostile atmosphere at Srinagar, they cannot attend the case regularly and they have reasonable threat to their lives also. This fact of matter has not been denied by respondent.

12. Taking into consideration all aspects of matter and as the petitioners belongs to Jammu and at present situation in Kashmir valley is not cordial and atmosphere is hostile, so present petition is allowed in the interest of justice and fair trial.

13. Hence criminal case titled State Vs Munish Khajuria and others, arising out of FIR No. 82/2012 under Section 352/452RPC, pending before JMIC, Small Causes Court, Srinagar is withdrawn and transferred to the court of CJM, Jammu, who may try himself or may transfer it to any other court of jurisdiction. Copy of this order be sent to both courts below for compliance. Petitioners to appear before CJM, Jammu on 20.04.2019; JMIC, Small Causes Court, Srinagar is directed