
(2002) 01 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17381 of 2001

Sushma Bawa @ Gurinder Kaur Bawa

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Citation : (2002) 2 CCC 404 : (2002) 3 RCR(Criminal) 445

Hon'ble Judges : M.L.Singhal, J

Advocate : Shri Padam Jain, Advocate.Shri P.S. Tiwana, DAG, Punjab. Shri Balwinder Singh and Shri Navjot Singh, Advocates.For the Respondents No. 3 & 4, Shri G.S. Sandhawalia, Advocate., Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. Through this Criminal Misc. Petition, Smt. Sushma Bawa @ Gurinder Kaur Bawapetitioner has prayed for the transfer of FIR No. 155 dated 7.6.2000 registered under Sections 420/412/216/467/468/471/506/120B of the Indian Penal Code and Section 8 of the Prevention of Corruption Act, 1988 at Police Station, Kotwali, Kapurthala from the Court of Special Judge, Kapurthala. It is stated that there is a case under Sections 420/412/216/467/468/471/506/120B and Section 8 of Prevention of Corruption Act, 1988 registered at P.S. Kotwali, Kapurthala which it pending trial before the special Judge, Kapurthala. Petitioner has nothing to do with that (sic). She was framed up in that case falsely for allegedly having harboured Ashok Kumar Sabarwal for about three months in house knowing or having reasons to believe that Ashok Sabarwal and his daughter Pooja are wanted in that case accused. it is stated that the allegations against the accused are that in or about the month of March, 1999, all the accuse Ashok Kumar Sabarwal, Pooja Sabarwal, Sushma Bawa alias Gurinder Kaur alongwith Deepak Kumar and Jiwan Asha agreed to do illegal act wit to forge the signatures of Surjit Kaur and Baljit Singh etc. allegedly to execute an agreement to sell the property of Surjit Kaur, Baljit Singh and Lakhwant Singh purchased stamp paper of Rs. 315/ by forging the signatures of Surjit Kaur on

the register of stamp vendor and also agreed to do an illegal act to harbour Surjit Kaur named in the case FIR No. 39 dated 12.4.1999 under Section 302 IPC at Police Station Kotwali, Kapurthala. They all conspired and cheated Surjit Kaur by dishonestly inducing her to deliver about Rs. 14 lacs to the accused by misrepresenting that the accused will deliver the said amount to the police and the judicial officers for hushing up case FIR No. 39 dated 12.3.99 registered under Section 302 IPC as PS Kotwali, Kapurthala. They all conspired and forged certain documents purporting to be a valuable security to wit an agreement to sell the property by forgoing the signatures of Surjit Kaur and Baljit Singh etc. which they knew or had reasons to believe that agreement to sell to be forged document. In or about the month of March, 1999, accused harboured said Surjit Kaur knowing or having reasons to believe at the time of said harbouring that said Surjit Kaur had committed the said murder. All the accused conspired together knowing the accusation against Surjit Kaur and harboured/concealed Surjit Kaur a proclaimed offender with the intention of preventing her from being entrusted by Surjit Kaur PW with certain property to wit an amount of Rs. 14 lacs committed criminal breach of trust and he obtained of Rs. 14 lacs from Surjit Kaur as illegal gratification for inducing the public officers and judges by using an illegal means, who are public servants in exercise of their official function as those public servants to show favour to Surjit Kaur in the said murder case. It is stated that no lawyer is coming forward to take up her brief in this case.

2. State of Punjab opposed this criminal misc. petition. It was stated that the petitioner is represented by Sukhjit Lal Puri who is a senior advocate at Kapurthala. It is stated that this case was registered on the complaint of Surjit Kaur respondent No. 2 in which she made clear allegations against the petitioner that she had harboured Ashok Kumar Sabarwal for three months though she knew or had reasons to believe that he was an accused in case FIR No. 155 dated 7.6.2000 *ibid*. It is stated that this criminal misc. petition has been filed with a view to prolong the trial of the case. Sh. Sukhjit Lal Puri has been working on the criminal side for the last more than 30 years. At the time of framing charge, the petitioner was represented by him. After hearing the counsel, charge was framed.

3. Respondents No. 3 and 5 supported the prayer of the petitioner for the transfer of the case. It is stated by respondent No. 3 Ashok Kumar Sabarwal that he is a practising advocate at Kapurthala for the last more than 20 years. He had been appearing in cases against the police and thus incurred the wrath of the police. It is stated that this case was registered against him due to the collusion of Sh. Sat Pal, Additional Public Prosecutor. He had earlier filed a criminal complaint as counsel against said Sh. Sat Pal, Additional Public Prosecutor before the Magistrate at Kapurthala in which the Magistrate had directed that FIR be registered against Sh. Sat Pal and another named in that complaint. Sh. Sat Pal made an application that he (Ashok Kumar Sabarwal) be produced in handcuffs. That application was rejected by the Magistrate. It is stated that due to local politics of the Bar at Kapurthala and since respondent No. 3 is an active

practising advocate, the atmosphere has become gravely surcharged against him. In the face of this surcharged atmosphere, there cannot be expectation of fair trial by him, his wife, daughter and son. It is stated that the Presiding Officer is biased against him, his wife, son and daughter because of the allegations in the FIR that he (Ashok Kumar Sabarwal) had received money for getting the accused acquitted by bribing the police and judicial officers in case FIR No. 39 dated 12.3.1999 registered under Sections 302, 382, 323, 324/34 IPC at Police Station, Kotwali, Kapurthala. The said case was being tried at that point of time by Sh. Jagroop Singh, Additional Sessions Judge, Kapurthala who is Special Judge trying cases under the Prevention of Corruption Act also.

4. Surjit Kaur respondent opposed this criminal misc. petition and stated that there is no ground for transfer of the case from the Court of Special Judge, Kapurthala to any other Court outside District Kapurthala. The case was registered against Ashok Kumar Sabarwal and others through the intervention of Hon"ble Inspecting Judge who was on inspection visit to District Kapurthala. It is stated that Ashok Kumar Sabarwal was her and her family's counsel in various cases for 10/12 years before this incident. He got his elder son Lakhwant Singh murdered on 12.3.1999. He had predicted his murder 3 days in advance. He was also predicting that she (Surjit Kaur) and her family shall be falsely implicated in the murder. His prediction became true when she and her younger son Baljit Singh were falsely implicated in the case of her son Lakhwant Singh's murder. He got Baljit Singh immediately arrested but kept her (Surjit Kaur) hidden in his house at Kapurthala for 4 days. She was put in fear of being killed by the police if seen moving openly by the public. He, his wife, son and daughter alongwith Gurinder Kaur Bawa alias Sushma Bawa made her to believe that all her family bank account shall be frozen and bank lockers shall be freezed. She withdrew the entire money and handed over to him (Ashok Kumar Sabarwal) so that he could arrange the hushing up of the case against her and her son by bribing the police and judicial officers with whom he was on good terms being an advocate of 24 years standing. Since his prediction had become true, she believed him and paid him Rs. 3 lacs after withdrawing it from her bank account. When she was told that Rs. 3 lacs was not sufficient, she got Rs. one lacs from her daughter who is residing in Italy and paid it to him. He still did not feel satisfied. He by putting her in the fear of being arrested demanded still more money and after manouvring an agreement for the sale of their kothi with a party received Rs. 10 lacs as earnest money and pocketed the entire money. He thus made her to part with Rs. 14 lacs. He also misappropriated the Maruti car of her deceased elder son Lakhwant Singh. Subsequently, he created documents in back date showing an agreement to sell the property of his son for Rs. 13 lacs i.e. a kothi spread over on 29 marlas for Rs. 9 lacs and a video parlour measuring over 7 marlas for Rs. 4 lacs whereas total cost of the said property was about Rs. 50 lacs. During the period, she was hiding herself, he his, wife, daughter and son took her to the residence of Sushma Bawa alias Gurinder Kaur Bawa who harboured her at his instance. He got her declared as proclaimed offender

deliberately so that she was not in a position to expose his misdeeds in public. Finding that no progress in her case had been made, she suspected his bona fides and sent a message to her daughter that she wanted to meet her. On this she became infuriated, abused her, Lakhwinder Kaur on 14.3.2000 and even slapped her. He had got her son murdered and implicated her and her younger son in the murder case with intent to grab the property of the family in collusion with Gurinder Kaur Bawa alias Sushma Bawa.

5. In this case, I do not think any case is made out for the transfer of this case from the Court of Special Judge, Kapurthala to some Court of competent jurisdiction outside District Kapurthala as no bias is proved so far as Special Judge, Kapurthala is concerned in the conduct of the trial of the case. Transfer of a case from one Court which has jurisdiction to try the case to another Court is a serious matter inasmuch as the Court having jurisdiction to try the case is deprived of its jurisdiction and that jurisdiction is vested in another Court which had otherwise no jurisdiction to try the case. The Court which has jurisdiction to try the case, should not normally be deprived of that jurisdiction. It should be deprived of that jurisdiction only if there is reasonable apprehension that no fair trial is expected from that Court. The apprehension which is illusory and imaginary cannot be a ground for transfer.

For the reasons given above, this criminal misc. petition fails and is dismissed.