

(2020) 05 SHI CK 0054
High Court Of Himachal Pradesh
Case No: CMPMO No. 282 Of 2020

Amar Nath		APPELLANT
	Vs	
Nanak Chand		RESPONDENT

Date of Decision: May 26, 2020

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 24, 25

Hon'ble Judges: Jyotsna Rewal Dua, J

Bench: Single Bench

Advocate: Banbhushan Singh

Final Decision: Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Petitioner's application seeking transfer of his case, pending consideration before learned trial Court to another Court, has been dismissed by

learned District Judge, Hamirpur, on 29.01.2020, hence instant petition has been preferred.

2(i). A Civil Suit No.929/2015, titled as Amar Nath versus Nanak Chand, is pending adjudication before learned Civil Judge, Court No.3, Hamirpur

(H.P.). Petitioner is being represented in the said case by a learned Legal-aid-Counsel appointed for him.

2(ii). During a hearing of the above mentioned case held on 31.12.2019, learned counsel for the petitioner was absent before learned trial Court,

however, the petitioner remained present in person on the date. The matter was adjourned by learned Presiding Officer to 20.01.2020 on the request

made by petitioner in person.

2(iii). The petitioner moved an application to learned District Judge, Hamirpur, seeking transfer of his case, pending before learned trial Court, to any other Court. The transfer was sought on the allegation that on 31.12.2019, learned Presiding Officer had declined to adjourn the matter and ordered the petitioner to argue the case in person. Therefore, it was apprehended that he will not get justice from the Court concerned and accordingly, prayer was made for transfer of his pending case to any other Court.

2(iv). Learned District Judge called for the comments of the Presiding Officer, who in her response, submitted that:-there was no occasion to get annoyed with the petitioner; no comments on merit of the case were made on 31.12.2019 and the petitioner's request for adjourning the matter on account of absence of his counsel was accepted by adjourning the matter to 20.01.2020. The petitioner as well as his counsel both appeared before learned Presiding Officer on the date fixed. Learned District Judge on receipt of the above comments, held that the petitioner had failed to establish his apprehension of not getting justice from learned trial Court and accordingly dismissed the application vide order dated 29.01.2020. Feeling aggrieved, the instant petition has been preferred against the impugned order.

3. I have heard learned counsel for the petitioner, through video conference and gone through appended record. Taking into consideration the facts, circumstances of the case and the order impugned herein, no notice is required to be issued to the respondent.

3(i). The factual allegation leveled in the application seeking transfer of the case is in respect of hearing held on 31.12.2019 before learned Presiding Officer. The allegation is to the effect that request for adjournment of case on 31.12.2019 was not accepted by learned Presiding Officer; petitioner was asked to argue his case himself by the Presiding Officer in absence of his counsel and further that learned Presiding Officer threatened of delivering an adverse decision in case the matter was not argued by the petitioner. Learned District Judge in his order dated 29.01.2020 (impugned herein) has taken note of the actual order passed on 31.12.2019 by learned Presiding Officer, whereby the matter was only adjourned to 20.01.2020 on the request of petitioner. This factual position has not been disputed before me.

Therefore, the factual allegation levelled against the Presiding Officer by the petitioner is incorrect.

3(ii). Section 24 of Code of Civil Procedure prescribes general power of transfer and withdrawal of cases in the following manner:-

“24. General power of transfer and withdrawal. -

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion

without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of

the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit

or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was

transferred or withdrawn.

[(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed

to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.] “.”

The above extracted Section does not specifically illustrate the circumstances for exercise of the power to transfer the case. Honâ€™ble Apex Court

in (2008) 3 SCC 659, titled Kulwinder Kaur alias Kulwinder versus Kandi Friends Education Trust and others, held that though discretionary power to

transfer cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, however, power to transfer a

case must be exercised with due care, caution and circumspection. It is apt to extract Paras 23 & 24 of judgment hereinafter:-

â€œ23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what

may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or

witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues

raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important

questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other

proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding.

They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels

that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the

duty of the Court to make such order.

24. In Maneka Sanjay Gandhi v. Rani Jethmalani this Court stated: (SCC p. 169, para 2)

â€œ2. 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 or like mini grievances. Something

more substantial, more compelling, more imperiling, 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.â€

The judicial biasness has been considered as one of the grounds for seeking transfer of the case. In (2011) 14 SCC 770, titled State of Punjab versus

Davinder Pal Singh Bhullar and others, Honâ€™ble Apex Court held following on scope of judicial bias:-

â€24. There may be a case where allegations may be made against a Judge of having bias/prejudice at any stage of the proceedings or after the

proceedings are over. There may be some substance in it or it may be made for ulterior purpose or in a pending case to avoid the Bench if a party

apprehends that judgment may be delivered against him. Suspicion or bias disables an official from acting as an adjudicator. Further, if such allegation

is made without any substance, it would be disastrous to the system as a whole, for the reason, that it casts doubt upon a Judge who has no personal

interest in the outcome of the controversy.â€

Therefore, when transfer of a case is sought on account of allegations of biasness of a Presiding Officer or on ground of fear of not getting the justice,

it becomes bounden duty of the Court to ascertain as to whether the ground has been substantiated by the litigant or not. A transfer of a case on such

ground casts aspersion upon integrity and competence of the Presiding officer.

Order dated 31.12.2019, passed by the Presiding Officer, only adjourned the case to 20.01.2020. The order was so passed on the request of the

petitioner made by him in person on account of absence of his counsel. Mere apprehension of a litigant that he will not get justice from a Court, will

not justify transfer of a case, as requirement of Section 24 of the Code of Civil Procedure will not be met in such a case. The Court has to be very

careful in transferring a matter on such grounds. In the facts and circumstances of the case. There was no occasion for the petitioner even to

presume that he will not get justice from the Court concerned. Learned District Judge was correct in observing that the petitioner has not been able to

substantiate his apprehension. A baseless apprehension is not a ground for transfer of the case. Therefore, no interference is called for in the

impugned order dated 29.01.2020, passed by learned District Judge, Hamirpur. Accordingly, the present petition is dismissed.

Registry is directed to send copy of this order through email to learned District Judge as well as learned Civil Judge, Court No.3, Hamirpur, District

Hamirpur (H.P.), for record, forthwith.

The petition stands disposed of accordingly.