

Court No. - 28

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Case :- U/S 407 CR.P.C. No. - 54 of 2020

Applicant :- Mohammad Ahmad Khan

Opposite Party :- State Of U.P. & Another

Counsel for Applicant :- Sushil Kumar Singh, Versha Rani Srivastava

Counsel for Opposite Party :- G.A., A. Z. Siddiqui

Hon'ble Mohd. Faiz Alam Khan, J.

Heard Sri Sushil Kumar Singh, learned counsel for applicant, Sri A.Z.Khan, learned counsel for opposite party no.2 and Sri Yatindra Kumar Agnihotri, learned Additional Government Advocate for State.

The instant application has been moved by the applicant Mohammad Ahmad Khan with a prayer to transfer the proceedings of Misc. Case No. 126 of 2019, pending in the court of Civil Judge (J.D.)/Judicial Magistrate, Utraula, District Balrampur to the Sessions Division District Bahraich or Sessions Division District Ambedkar Nagar or Sessions Division Ayodhya on the ground that three brothers of opposite party no.2, namely, Abid Rabbani Khan, Aqib Rabbani Khan and Amir Rabbani Khan as well as their father Ghulam Rabbani Khan are Advocates and are practising in outlying court Utraula and Balrampur judgship.

Sri S.K.Singh, learned counsel for applicant vehemently submits that earlier the Advocates of Bar Association Utraula had passed two resolutions dated 6.4.2016 and 11.9.2018 wherein it was resolved that no Advocate shall appear or will file any proceedings of the criminal nature against the member of that bar or their families and, therefore, having regard to the fact that three brothers and father of opposite party no.2 are practising Advocates at the court of Civil Judge (J.D.)/Judicial Magistrate, Utraula, the instant case be transferred to the other districts mentioned herein before.

It is also submitted by Sri S.K.Singh, learned counsel appearing for applicant that on many occasions the Advocates having good relations with the opposite party no.2 had beaten counsel of the applicant and, therefore, there is no hope that a fair trial may be conducted at the court of Civil Judge (J.D.)/Judicial Magistrate, Utraula. It is further submitted that the applicant is now residing at Pune and is coming on each and every date to attend the date fixed by the Civil Judge (J.D.) Utraula.

Sri A.Z.Siddiqui, learned counsel appearing for opposite party no.2 submits that the grounds taken by the applicant in his

application are frivolous and could not be believed as of now there is no such resolution passed by the Utraula Bar Association is existing and the application has been moved only on the ground of apprehension, while no such apprehension is existing. The application is devoid of any merits and is liable to be dismissed. It is also submitted by Sri Siddiqui that the proceedings of the subordinate court has been halted due to the interim order granted by this Court and the allegations of '*marpeet*' by the Advocates of opposite party no.2 to the Advocate of applicant is patently false and could not be believed.

Having heard learned counsel for parties and having perused the record it is evident that by passing an order dated 29.6.2021, this Court had directed the District and Sessions Judge, Balrampur to submit a report with regard to the two resolutions mentioned herein before allegedly passed by the Bar Association, Utraula whereby it was allegedly resolved that no Advocate of that Bar Association would do '*pairvi*' in a case instituted against any Advocate or his family members.

In compliance of the order of this Court, District Judge, Balrampur has sent a report by his communication dated 14.7.2021 wherein after procuring the information from the Administrative Officer of the Judgeship, Balrampur as well as from the then President of Utraula Bar, namely, Sri Vijay Kumar Srivastava as well as on the basis of information provided by Civil Judge (J.D.)/Judicial Magistrate, Utraula, he concluded that such resolutions were passed earlier by the Bar Association, Utraula on 6.4.2016 and 11.9.2018, however subsequently in the general body meeting of the Bar Association held on 2.11.2018, both these resolutions were cancelled. It is also stated in the communication that the then President, Bar Association has also tendered his apology for passing such resolutions.

Having gone through the report of the District Judge and having perused the material brought on record by the parties, it is evident that the two resolutions of the Bar Association, Utraula relied on by the learned counsel for applicant are not existing now, as the same appears to have been recalled by the same Bar Association in its general body meeting held on 2.11.2018. Since the two resolutions, namely of dated 6.4.2016 and 11.9.2018 are not in operation today, therefore, this Court refrains itself for making comments on that, however suffice is to say that such resolutions are not only un-constitutional, against the ethics of professional advocacy as well as against the concept of Article 14, 21 and 22(1) of the Constitution of India. In the considered opinion of this Court equal opportunity

to secure justice could not be denied to any citizen of this country.

Now as it is apparent from the report of the District Judge that no such resolutions which have been made the basis of filing this application are existing today, it could not be said that the applicant may not have a fair trial by prosecuting his case by a good lawyer or counsel at Utraula but this Court could not lose sight of the fact that earlier two resolutions mentioned herein before were passed by the Bar Association, Utraula, whereby it was resolved that no member of the Bar Association Utraula will do *pairvi* in any criminal case against a member Advocate or his family members. Justice should not only be done but must also be seen to be done.

In the considered opinion of this Court no harm would be done to either party if the case pending before the Civil Judge (J.D.)/Judicial Magistrate, Utraula in the facts and circumstances of the case be transferred to the court of Chief Judicial Magistrate, Balrampur, who naturally is the senior most Magistrate in the District Judgeship and no harm in this process would be caused to either party as both the parties to the lis are residing at Utraula, which is hardly 50 Kms. away from Balrampur.

Having regard to the above mentioned facts and reasons, the application is **disposed of** with a direction that Misc. Case No. 126 of 2019, Asif Rabbani Khan v. Mohd. Ahmad Khan and others u/s. 406, 420, 506 I.P.C. P.S. Utraula, pending in the court of Civil Judge (J.D.)/Judicial Magistrate, Utraula, District Balrampur is hereby transferred to the court of Chief Judicial Magistrate, Balrampur, who shall proceed and dispose of the case expeditiously, without granting soft adjournment to the either parties in accordance with law.

A copy of this order be immediately sent to the Sessions Judge, Balrampur for compliance.

Order Date :- 26.7.2021

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