

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
ATJAMMU**

TrP (Crl) No. 11/2022

CrIM No. 679/2022

Reserved on: 03.02.2023

Pronounced on:10.02.2023

Prof S K Bhalla

.....Petitioner(s)

Through :- Mr. Ankur Sharma, Advocate

v/s

Haq Nawaz Nehru

.....Respondent(s)

Through :- Mr. R D S Bandral, Advocate

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner through the medium of this Criminal Transfer Application, seeks transfer of the criminal complaint No. 68/complaint titled "*Haq Nawaz Nehru vs S K Bhalla*" U/S 500 IPC, pending before the Court of learned Chief Judicial Magistrate, Doda, to any other Court of competent jurisdiction at Jammu.
2. Petitioner has pleaded that he is a social activist and recognized public spirited person, who had always voiced against the injustice and evils in the society and filed various Public Interest Litigation before this Court for social cause; that he never implicates anyone without attaining the accurate documents as well as appropriate knowledge about information from reliable sources; that he on 26.07.2020 wrote a post on his Facebook handle heading thereby 'two Fake RTI Activists of Doda' to which the respondent got irked and anguished of the Facebook post uncovering his evil misdemeanors and in order to defend himself from the clutches of law moved a complaint against the petitioner before the trial Court which had

taken cognizance of the matter vide order dated 22.08.2020 and issued summons to the petitioner.

3. It has further been pleaded that the petitioner has his security and safety concerns as an apprehension of danger to his life in terms of litigation voiced against the land and liquor mafias, land encroachers, politicians as well as other corrupt bureaucrats who are involved in those cases/PILs. Moreso, the area is vulnerable where the action has been taken, as such, the petitioner has a risk to his safety. Petitioner further pleaded that he is enduring from several ailments due to his age and it is inconvenient for him to commute from Jammu to Doda and to have the trial conducted before the trial Court at Doda.
4. Pursuant to notice, respondent filed objections to the criminal transfer application asserting therein that the petitioner has suppressed a fact from the Court that his petition u/s 482 Cr.P.C seeking quashment of the complaint sought to be transferred had been dismissed by this Court vide order dated 25.03.2022; that he has also concealed the fact that pursuant to summons issued by the trial Court, the petitioner had appeared before the trial Court on 15.04.2022 where he had executed undertaking to appear on each and every date of hearing; the petitioner had appeared through his counsel Advocate Ajay Thakur, who is a practicing lawyer at District Court Doda; that the petitioner under the guise of Social Activist and a Public Spirited Person is in the habit of tarnishing the image of respectable members of the society by misusing the social media platforms; that the petitioner claiming to be the Chairman of an NGO 'Civil Vigilance Cell' on a daily basis, posts offensive/defamatory material against the important members of the civil society for drawing sadistic pleasure; it has also been pleaded that the petitioner had not only adopted black-mailing tactics but

also tried to malice respected members of the civil society including two journalists, Kamal Rohmetra and Raj Daluja; that transfer of the petition has been opposed on the ground that the petitioner had served as Principal, Government Degree College Doda, for almost two years and he has no security concern at Doda.

5. It has been further pleaded that the respondent is suffering from heart and diabetic ailments and it is very difficult for him to attend the proceedings at Jammu; that the petitioner who claims to be the Public Spirited Person takes everything for granted and the protection of law is not available to a person who approaches the Court with unclean hands, the petitioner is in the habit of misusing the social media platform by writing defamatory posts against the respectable members of the civil society and the petitioner cannot be given a premium of having courts of his choice and finally it was prayed that the application seeking transfer of the complaint be dismissed with exemplary costs.
6. Mr. Ankur Sharma learned counsel for the petitioner argued that the petitioner who is Public Spirited Person and Activists is engaged in highlighting various issues faced by the society like land and liquor mafias operating in the State, corrupt practices of the bureaucrats and those interventions have also borne-fruit. He has further argued that the petitioner is a senior citizen and it is difficult for him to commute from Jammu to Doda for attending proceedings of the complaint filed against him by the respondent at Doda especially when he has been facing criticism from all sides for raising genuine social issues against land and liquor mafias. Learned counsel for the petitioner has relied upon the law laid in case titled “Madhu Kishwar vs Syed Shujaat Bukhari” (2017)(4)JKJ 77 [HC], “Muhammad Sultan Wagay vs M. Ayub Choudhary” 2007 (2) JKJ

581[HC] and “Maneeka Sanjay Gandhi vs Rani Jethmalani, 1979 SC(Cri) 934 to buttress his arguments in support of the plea for transfer of the case.

7. Mr. Bandral learned counsel for the respondent, ex adverso, argued that petitioner who is claims to be a Public Spirited Person and has been filing cases against one and all in different Courts, cannot run away from facing trial in a case filed against him by the respondent who is the aged and ailing person at Doda. He has further argued that it will be inconvenient to the respondent to prosecute his case at Jammu in view of his ailing health, advance age and moreover all his witnesses also hail from Doda. He has further argued that the petitioner has already engaged Advocate of his choice at Doda while causing appearance in response to the notice and it cannot be said that he has any difficulty of facing trial at Doda on any count. He has relied upon the law laid down by Hon’ble the Apex Court of India in a case titled “Dinesh Mahajan vs Vishal Mahajan [Transfer Petition (Criminal) No. 442/2021] in support of his argument.
8. Heard, considered and perused the record.
9. The petition has been moved for transfer of a criminal complaint. It will be profitable to extract the relevant provisions of Section 407 of the CrPC as under:

407. Power of High Court to transfer cases and appeals.

(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 an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,*

it may order-

- (i) *that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (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 be committed for trial to a Court of Session; or*
- (iv) *that any particular case or appeal be transferred to and tried before itself.*

2) *The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:*

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

3) *Every application for an order under sub- section (1) shall be made by motion, which shall, except when the applicant is the Advocate- General of the State, be supported by affidavit or affirmation.*

4) *When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub- section (7).*

5) *Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with copy of the grounds on which it is made; and no order shall be made on of the merits of the application unless at least twenty- four hours have elapsed between the giving of such notice and the hearing of the application.*

6) *Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:*

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

7) *Where an application for an order under sub- section (1) is dismissed, the High Court may, if it is of opinion that the*

application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

8) *When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.*

9) *Nothing in this section shall be deemed to affect any order of Government under section 197.*

9. Clause (ii) of sub section (1) (c) of Section 407 CrPC provides 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 when it is expedient for the ends of justice and general convenience of the parties or witnesses.
10. In Madhu Kishwar's case (supra), this Court observing that the petitioner an old and sick who is resident of Delhi shall certainly feel inconvenience and difficulty in attending the trial at Srinagar involving lot of expenditure, also was exempted from personal appearance, whereas in Muhammad Sultan Wagay's case (supra), transfer of the case was sought on an apprehension of danger to life not in the court room but while travelling by bus from Sumbal to Baramulla, the plea for transfer of a case from Baramulla to Srinagar was rejected on bold assertions to achieve the objective strict adherence to law is called for. In Maneeka Sanjay Gandhi's case (supra), it had been held in para 2 by the Apex Court as under:-

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. We have to test the petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

11. The Apex Court in case Transfer Petition (Criminal) No. 442/2021 titled “Dinesh Mahajan vs Vishal Mahajan”, reported as LiveLaw 2021 SC 620, wherein the apprehension of threat to life had been raised, declined the transfer of a complaint from Jammu Court to Delhi Court holding that mere apprehension of threat to life is not a sufficient ground to transfer a case without lodging a complaint or substantiating the said ground.
12. Petitioner in this case has also raised issue of a security and safety to his life, while travelling to Doda to attend the court proceedings merely on his apprehension. It is not that his threat perception has been evaluated by any security agency or he had complained to any authority to seek security. So far as the convenience of the parties is to be considered, the petitioner is to only travel from Jammu to Doda as an individual, whereas complainant/respondent who is suffering from different ailments in his advance stage is Doda based and his witnesses are also from Doda. Therefore, respondent/complainant shall face more difficulty, physically as well as financially, to prosecute his complaint at Jammu, as compared to petitioner/accused to defend himself at Doda. The petitioner/accused, in the considered opinion of this court, cannot be allowed to have a place of his choice to be prosecuted in a case of defamation, taking refuge of unfounded personal security. The petitioner as accused before the trial court can have resort to seek exemption from personal appearance through his accused in

case of any personal difficulty during in affective hearings, however, no justifiable or reasonable ground is made out for transfer of the complaint.

13. All the citations relied upon by the petitioner's counsel are thus of no help to him as neither an assumed/apprehended threat perception a criminal case be transferred from a jurisdiction court, nor on the comparative convenience when the same is also not on the side of the petitioner.
14. Having said so, this Court is of the considered opinion that the transfer petition fails on both counts, the apprehension of security as well as on the question of comparative convenience of the parties.
15. The petition found to be without any merit and substance is, accordingly, dismissed, along with pending application(s). Interim direction, if any, shall stand vacated.

JAMMU
10.02.2023
Vijay



(M A Chowdhary)
Judge

Whether the order is speaking: Yes
Whether the order is reportable: Yes