

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Jasjit Singh Bedi****Date of Decision: 7th May 2024**

CRM-M-26380-2023 (O & M)

SUMIT KUMAR BINDAL ...PETITIONER**VERSUS****WADKESANKARAN BALAKRISHNAN AND ANR. ...RESPONDENT(S)****Legislation:**

Sections 406, 418, 420, 466, 468, 471, 473, and 506 of the Indian Penal Code (IPC)

Section 407 of the Code of Criminal Procedure (Cr.P.C.)

Section 482 of the Code of Criminal Procedure (Cr.P.C.)

Subject: Petition under Section 407 read with Section 482 Cr.P.C. for transfer of the trial in FIR No. 228 of 2015 from the court of Shri Alok Anand, JMIC, Karnal to another court.

Headnotes:

Criminal Procedure – Transfer of Trial – Petitioner sought transfer of the trial citing doubts about the fairness of the current trial court’s proceedings – Trial court exhibited a document at the final stage of the trial, leading to

applications for forensic analysis and additional evidence – Court held that to ensure justice is seen to be done, the trial is transferred to another court without casting aspersions on the current trial court [Paras 1-17].

Judicial Fairness – Document Exhibition – Trial court exhibited a document at the end stage without prior indication – Petitioner’s applications for forensic analysis and additional evidence were questioned for maintainability and later dismissed on merits – Transfer ordered to alleviate petitioner’s doubts about trial fairness [Paras 3-10, 16-17].

Decision: Petition allowed – Trial in FIR No. 228 of 2015 transferred from the court of Shri Alok Anand, JMIC, Karnal to a court of competent jurisdiction in the Sessions Division, Sonipat [Paras 17-18].

Referred Cases:

- Satish Jaggi v. State of Chhattisgarh and Others, 2007(2) RCR (Criminal) 116

Representing Advocates:

Mr. Shreenath A. Khemka for petitioner

Mr. Parminder Singh for applicant-respondent No. 1

Mr. Kanwar Sanjiv Kumar, AAG, Haryana for respondent No. 2-State

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 407 read with Section 482 Cr.P.C. is for transfer of the Trial in FIR No.228 of 2015, under Sections 406, 418, 420, 466, 468, 471, 473 and 506 IPC, Police Station Taraori titled as ‘State of Haryana versus Badke Bhankaran Bala Krishnan’ pending before Shri Alok Anand, JMIC, Karnal to some other Court of competent jurisdiction at Karnal or elsewhere.

2. The brief facts of the case as emanating from the pleadings are that during the course of the Trial in the aforementioned FIR, the Trial Court permitted the exhibiting of an agreement dated 07.01.2014 as Ex.DA on 06.03.2023. The copy of the said document is attached as Annexure P-3 to the petition.
3. In order to controvert the aforementioned document, the complainant-petitioner moved two applications, one for sending the document for forensic analysis and the other under Section 311 Cr.P.C. to produce the Criminal Ahlmad, Record Room (Sessions Court), Karnal to produce the complete record of a case file bearing No.BA/123/2015 titled as 'V.S. Balakrishnan Sankaran versus State of Haryana' decided by the Court of the then Additional Sessions Judge, Karnal. The said applications had been moved in the context of exhibiting of the documents Ex. DA. The copies of the applications dated 22.03.2023 are attached as Annexures P-6 and P-7 to the petition.
4. The Court came to the conclusion that as the applications had been moved at the stage of pronouncement of the final judgment and therefore, there was a question of the very maintainability of the applications. The case was adjourned to 27.03.2023 for further proceedings. A copy of the order dated 23.03.2023 is attached as Annexure P-9 to the petition.
5. Meanwhile, a transfer application was moved on 21.04.2023 before the Sessions Judge, Karnal. Though, the application came to be dismissed vide order dated 15.05.2023 but as per the pleadings, the same was not uploaded on to the website. The copy of the TA dated 21.04.2023 is attached as Annexure P-10 to the petition.
6. The case was listed for hearing on 15.05.2023 as is evident from the cause list which is attached as Annexure P-11 and was adjourned to 19.05.2023. However, the matter was taken up on 17.05.2023 without it being reflected in the cause list of the said date. The copy of the list dated 17.05.2023 is attached as Annexure P-12 to the petition.
7. On 17.05.2023, the case was listed for arguments on the applications but adjourned to 18.05.2023. The copy of the order dated 17.05.2023 is attached as Annexure R-1/6.
8. On 18.05.2023, the case was adjourned to 19.05.2023 and thereafter, to 22.05.2023.
9. On 22.05.2023, both the applications which had earlier been questioned on the grounds of maintainability as the Trial was at its fag end came to be dismissed on merits vide order dated 22.05.2023. The copy of the said order is attached as Annexure R-1/9.

10. Meanwhile, the instant petition was filed seeking transfer of the case/Trial in FIR No.228 of 2015, under Sections 406, 418, 420, 466, 468, 471, 473 and 506 IPC, Police Station Taraori titled as 'State of Haryana versus Badke Bhankaran Bala Krishnan' without impugning the order passed on the transfer application dated 21.04.2023 (Annexure P- 10).
11. On 25.05.2023, this Court passed the following order:-
- “Learned counsel for the petitioner submits that his transfer application was dismissed by the Court of the Sessions Judge, Karnal on 15.05.2023 but the order has still not been uploaded. He further submits that the trial Court is adopting a procedure unknown to law. Notice of motion for 09.08.2023.*
- Till the next date of hearing, final order shall not be passed.”*
12. Pursuant to the above order, proceedings are stayed before the Trial Court.
13. The learned counsel for the petitioner while placing on record the order dated 15.05.2023 passed by the District Judge, Karnal in TA No.30 of 2023 contends that the manner in which the Trial Court has proceeded in the present case creates a doubt in the mind of the petitioner/complainant as to the fairness of the Trial. The document Ex.DA was wrongly exhibited at the fag end of the Trial without it ever being brought to light at any earlier stage pursuant to the registration of the FIR. Because the said document had been exhibited, the two applications had been moved to counter the said document. By no stretch of imagination could it have been said that the complainant had moved the said applications to delay the proceedings. In fact, it was the Trial Court which showed undue haste in proceeding with the case on a day-to-day basis. Interestingly, while dealing with the applications dated 22.03.2023, firstly, the Trial Court had questioned the very maintainability of the said application on the grounds that it had been moved at the fag end of the Trial and later had dismissed the same on merits. Further, as per the cause list for 15.05.2023, the case was adjourned to 19.05.2023 but for certain inexplicable reason, the case was taken on 17.05.2023 without it being shown in the cause list for the said date. All these factors collectively created a doubt in the mind of the petitioner/complainant and therefore, the Trial ought to have been transferred to another Court of competent jurisdiction. Reliance is placed on the judgment in '**Satish Jaggi versus State of Chhattisgarh and others 2007(2) RCR (Criminal) 116**'.
14. The learned counsel for the accused/respondent No.1 and the learned counsel for the State-respondent No.2, on the other hand, contend that as the

case was an action plan case, it was required to be decided expeditiously. The various zimni orders annexed as Annexures R-1/1 to R-1/9 would show that it was the complainant who was delaying the proceedings on one pretext or the other. Therefore, no ground for the transfer of the case was made out when the Trial was virtually over.

15. I have heard the learned counsel for the parties.
16. Though, the learned counsel for the petitioner has referred to various aspects of the conduct of the Court, I do not wish to delve in detail into the submissions made and the allegations raised. However, in the context of judicial proceedings, justice must not only be done but it must also be seen to have been done as has been set out in the judgment of **Satish Jaggi (supra)**.
17. Therefore, in order to allay the apprehension of the complainant-petitioner but without casting any aspersions whatsoever on the Trial Court, I deem it appropriate to transfer the Trial/proceedings emanating out of FIR No.228 of 2015, under Sections 406, 418, 420, 466, 468, 471, 473 and 506 IPC, Police Station Taraori titled as 'State of Haryana versus Badke Bhankaran Bala Krishnan' pending before Shri Alok Anand, JMIC, Karnal to the Court of competent jurisdiction in the Sessions Division, Sonipat forthwith.
18. The present petition stands disposed of in the above terms.

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