

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 21ST JULY 2005 / 30TH ASHADHA 1927

Crl.MC.No. 10327 of 2002()

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CRMP.657/2002 of SESSIONS COURT, PALAKKAD  
CC.842/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD  
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PETITIONER:

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SRI.K.RAGHU, KRISHNA NIVAS,  
COIMBATORE ROAD, PALAKKAD.

BY ADV. SRI.VARGHESE C.KURIAKOSE  
SRI.JACOB SEBASTIAN

RESPONDENTS:

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SHRI. NARAYNAN S/O. UNNI MOOTHAN, AGED 39  
YEARS, NELLISSERY VILLAGE, VADAKKANTHARA,  
PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.  
SRI.JEBY JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 21.7.2005, THE COURT ON 21/07/2005 PASSED THE  
FOLLOWING:

**K. HEMA, J.**

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**CRL.M.C.No.10327 of 2002**  
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**Dated this the 21<sup>st</sup> day of July, 2005**

**O R D E R**

Petitioner seeks to quash an order passed in an application for transfer under section 408 of the Code of Criminal Procedure ('the Code' for short).

2. The respondent herein filed a private complaint before the Judicial Magistrate of First Class under Sections 294(b) and 506(ii) IPC. The respondent filed complaint against the petitioner for the above offences. When the case was pending before the Magistrate's Court, the petitioner/accused filed an application for transfer before the Sessions Court alleging that the complainant and the witnesses in the case are all practicing lawyers in the Palakkad Bar and they are actively practicing before the same Magistrate Court and therefore, the petitioner apprehends that he may not get proper justice. He also contended that he finds it difficult to defend his case and examine witnesses. The petitioner sought for a transfer of the case from the Magistrate Court, Palakkad to any other court outside Palakkad district headquarters, on the above ground. The learned Sessions Judge allowed the application and transferred the case to another Magistrate out of the district headquarters. The petitioner/accused is aggrieved by the said transfer order which is challenged in this proceedings under Section 482 Cr.P.C.

3. Learned counsel appearing for the respondent vehemently

contended that an application under Section 482 Cr.P.C. is not maintainable to quash the order passed in the petition for transfer. According to him, the powers under Section 482 Cr.P.C. can be only used sparingly for three purposes stated in Section 482 Cr.P.C. First is to prevent abuse of the process of court, second is to secure the ends of justice and third is to give effect to an order passed under the Code. In this case, none of these circumstances arise and hence no interference can be made under Section 482 Cr.P.C., is the argument. He has cited a decision reported in ***Zanu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005)1 SCC 122** in support of his argument.

4. On going through the dictum laid down in the said decision it is clear that this Court is not totally barred from interfering in a petition for transfer under Section 408 Cr.P.C. If the court finds that to secure ends of justice, this Court can certainly interfere. It is the three requirements under Section 482 Cr.P.C. are satisfied, this Court to interfere under Section 482 Cr.P.C. invoking inherent powers.

5. So my endeavour in this petition will be to find out whether an interference is necessary for the purpose of securing ends of justice, since the other two clauses may not apply to the facts of this case. On going through the allegations in the transfer petition, it appears that the respondent apprehends that he will not get justice from the Magistrate Court because the complainant and the witnesses in a criminal case happen to be practising lawyers in the same court. This apprehension,

in a way, indirectly hit on the integrity of the officer who presides over the court. No specific allegation is made about and bias. The accused himself has no case that any of the witnesses or the complainant is in any way connected to the Magistrate who is presiding over the court or that such acquaintance is likely to prejudice the mind of the court etc. General allegations and aspirations made against a court will definitely lower the confidence of the public in administration of justice. Any attempt made in these lines has to be put down to secure ends of justice.

6. For the smooth administration of justice it is necessary that public confidence is retained in functioning of the courts. By a mere allegation that the complainant and the witnesses are practicing lawyers in the court, no court can said to be prejudiced or biased against the accused. The complainant and the accused can be seen alike by the court. Only because witnesses or the complainant practice before the court, it cannot be said that the court will take their side. On this mere ground alone, no bias can be alleged against the court.

7. However, the trial court itself finds that it is likely that the trial by the same court would prejudice or will give an impression to any of the parties that the court is biased, it will be open to the court itself to move the superior court for a transfer. This has not been done in this case and it indicates that the judicial officer was confident to carry on with the trial. In such circumstance, no interference is called for under Section 482 of Cr.P.C. It is held in the decision reported in **Balakrishna Pillai v. State of**

**Kerala (2000(3) KLT 425)** that a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient to transfer a case. The court has to find out before transferring the case whether the apprehension is reasonable. The apprehension must appear to the court to be a reasonable, genuine and justifiable one. In this case, so long as there is no specific personal allegation made against the court, the general allegations are insufficient to raise an apprehension in the mind of the complainant that he will not get justice from the court. If transfer petitions of the nature are entertained, it will affect the administration of justice adversely. It is held in the above decision as follows:

"It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. Before transferring the case, the Court has to find out whether the apprehension appears to be reasonable. To judge the reasonableness of the apprehension, the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must appear to the Court to be a reasonable, genuine and justifiable. In the present day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons. The petitioner is not convicted on the basis of the said inquiry report. The charges against him are altogether for a different case not connected with the rectification work of Edamalayar Project. Secondly, a Judge while practising as an advocate might have appeared in a number of cases, but that would not mean that he would have any personal interest or connection with the said matters or with persons involved therein and would be biased towards them. Therefore, it would be difficult to

presume or to draw an inference that the learned Judge, because of assisting the Commission of Inquiry as an advocate in different matter, would have bias or prejudice against the petitioner and would not render justice in accordance with law. Acceptance of such contention would seriously undermine the independence and stern stuff of the Judges."

8. This Court in ***Berely v. Xavier and another* (1986 KLT 1078)**

held that even personal allegations made against a presiding officer of the court in an application and transfer of a case will have a demoralising effect on the criminal judiciary and it will adversely affect the administration of criminal justice. No person, not a litigant, nor a counsel, nor a prosecutor, nor a court should contribute anything to the demoralisation of the criminal judiciary. Keeping this dictum laid down in the case cited above, I find that in the interest of justice nothing shall be done to the criminal judiciary and the transfer order has to be struck down.

9. Learned counsel for the petitioner also contended that the respondent had taken up one more ground to get a transfer. He had put forward a case that it was difficult to defend his case and examine the witnesses if the trial is continued in the same court in the district headquarters. The learned Sessions Judge has not considered this aspect at all. That apart, learned counsel for the petitioner pointed out that the transfer petition itself was filed by a counsel which indicates that legal advice or legal aid is made available to the accused. So the mere reason that the respondent will have difficulty to examine witnesses is not sufficient reason for transferring the case.

10. The apprehension expressed by the respondent is not reasonable. It is true that justice must not only be done, but it should appear to be done. But for the mere reason that the complainant/lawyer happened to be appear before the same court and practises before the same court a case cannot be transferred.

In my view, the transfer of the case from the Magistrate Court to any other station will affect the public confidence in the system of administration of justice and hence to secure ends of justice, I find that the order has to be set aside and I do so.

The petition is allowed.

**K.HEMA, JUDGE**

vgs.

K.HEMA, J.

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CRL.M.C.NO.10327 OF 2002  
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O R D E R

21.7.2005