

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

CRTA no. 03/2010  
CrMA no. 02/2010  
Cr.M.A no. 31/2013

Date of order: 14.11.2013

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Bansi Lal Charagi

Vs.

State of J&K

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**Coram:**

***Hon'ble Mr. Justice M. M. Kumar, Chief Justice***

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**Appearing counsel:**

For the Petitioner(s) : Mr. M. K. Raina, Advocate.  
For the Respondent(s) : Mr. Gagan Basotra, Sr. AAG.

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1. This is an application filed by the accused in case FIR no. 153/1985 registered at Police Station Nagin Hazratbal Srinagar on 18.10.1985 for transfer of criminal challan from the Court of learned Judge Small Causes Court Srinagar to any court of competent jurisdiction at Jammu.

2 It is appropriate to mention that the petitioner was working as Senior Assistant (Cashier) in Kashmir University. The FIR was registered in the year 1985 containing the allegation of misappropriation of University funds. After investigation, challan was presented against the petitioner in the Court of Judge Small Causes Court, Srinagar. However, he was discharged by the trial Court on 29.09.1988. Feeling aggrieved the State filed a revision petition before the Court of learned 3<sup>rd</sup> Additional Sessions Judge, Srinagar which was allowed on 11.08.1989, setting aside the order of discharge passed by the trial Court with a direction to hear the case afresh and then pass orders.

The order of the learned Sessions Judge was challenged by the petitioner by filing a petition under Section 561-A Cr.P.C which was disposed of on 19.05.2000 with a direction to learned Additional Sessions Judge, Srinagar to take into consideration all the facts and circumstances of the case and decide the same afresh. However, a transfer application was filed by the petitioner which was allowed on 09.10.2000 and the matter was directed to be heard by the learned Additional Sessions Judge, Jammu (Annexure A). In turn the learned Additional Sessions Judge Jammu dismissed the revision petition on 20.09.2007. The petitioner again challenged the order of learned Additional Sessions Judge Jammu by filing a petition under Section 561-A Cr.P.C being Petition no. 139/2007 which was dismissed on 23.12.2009 (annexure B).

3. The claim of the petitioner is that he had migrated from the Valley in the year 1990 and it is not possible for him to pursue his case at Srinagar. He claims that it was on the basis of the same reason that this Court had earlier ordered transfer of the revision petition to Jammu on 09.10.2000. It has been stated that petitioner has no arrangement for his stay in Srinagar and he is likely to face hardships. The transfer of the case to Jammu would not in any case cause any prejudice to the prosecution because the State is aided by prosecution counsels whereas he would suffer prejudice. He has also pleaded old age and sickness.

4. I have heard the learned counsel for the parties.

5. The petitioner has been successful in avoiding his prosecution for the last more than 25 years by engaging the prosecution in litigation on the one pretext or the other. The evidence with regard to misappropriation of funds of Kashmir University is available at Srinagar. The excuse put forth for transfer that the petitioner is a migrant has failed to impress me for the reason that there is sea change in Kashmir Division and Srinagar so far as law and order situation is concerned. This excuse alone cannot constitute a basis for transfer of a criminal case particularly when the petitioner himself has been adopting delaying tactics to avoid his prosecution. It has been done with an oblique motive in order to earn the defence of delay which cannot be permitted. Accordingly, I find that the petition is devoid of merit and is thus liable to be dismissed.

5. For the reasons aforesaid this petition fails and the same is dismissed.

**(M. M. Kumar)**  
**Chief Justice**

**Jammu,**  
**14.11.2013**  
Anil Raina, Secy.

