

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Cr. TA No.18/2015
MP No.01/2015

Date of Decision: 26.04.2016

Imtiaz Ahmad & anr.

Vs.

State of J&K & ors.

Coram:

HON'BLE MR. JUSTICE MOHAMMAD YAQOOB MIR,
JUDGE

APPEARING COUNSEL:-

For the Petitioner/Appellant(s): Mr. Sunil Sethi, Sr. Adv. with Mr.
Waheed Choudhary.

For the Respondent(s): M/S: Ajay Sharma, AAG & B. L. Chatta.

i) *Whether approved for reporting*
*in **Media/Press** :* **YES**

ii) *Whether approved for reporting*
*in **Journal/Digest** :* **OPTIONAL**

1. In the name of free, fair and reasonable trial, petitioners (accused) have prayed for withdrawal of the case pending before the trial court (Sessions Court, Rajouri) for its transfer to any court of competent jurisdiction at Jammu.

2. Petitioners claim to have requested various imminent lawyers of Rajouri to defend them but the Bar Association, Rajouri has resolved that no advocate will appear on behalf of the petitioners, as a result whereof petitioners had engaged Mr. Nitin Parihar, Advocate and Mr. Waheed Choudhary,

Advocate, who agreed to appear and as such appeared many a times before the trial court but during that period were confronted with a hostile atmosphere in the court premises as the complainant party along 50 to 70 persons had gathered outside the court. Mr. Nitin Parihar, a practicing Advocate in Jammu, when attended the proceedings before the trial court on 29.05.2015 and 30.05.2015, while coming out of the court premises, was threatened by some unknown persons. The he conveyed to the accused that he may not be able to properly conduct their case before the trial court. Further it has been projected that the media hype given to the case on the influence of vested interests has surcharged the atmosphere warranting transfer of the case.

3. Parawise reply submitted by the trial court is suggestive of the fact that the petitioners(accused) are husband and wife against whom case FIR No.525/2013 under Sections 302, 364, 363 and 120-B RPC is pending. The allegation against them is that they had hatched a conspiracy, in pursuance whereof had kidnapped a minor boy, namely, Saliq Mansoor, and later on killed him. Mr. Nitin Parhihar and Mr. Waheed Choudhary, Advocates, filed a joint Vakalatnama on behalf of the petitioners on 12.08.2014. Charge against the petitioners stand

framed on 14.06.2014 and trial, as such, has commenced and three prosecution witnesses were examined.

4. In the parawise reply it is made clear that Mr. Waheed Choudhary filed vakalatnama on 12.08.2014 whereas on 29.08.2014 accused were not produced due to law and order problem and as a consequence of suspension of work by the advocates. On 30th August, 2014, one prosecution witness, namely, Parvaiz Ahmad, was produced and his statement was recorded. On 26.09.2014, PW Tahir Amin was present but due to absence of the counsel for the accused his statement could not be recorded. On 27.09.2014, again the said witness was produced but due to absence of the counsel for the accused. On 21st October, 2014, the accused were not produced from the jail. On 27.11.2014, Mr. Rajesh Kumar Sharma, Advocate, filed a Vakalatnama on behalf of the accused. Then statement of PW Tahir Amin was recorded. On 09.12.2014 and 10.12.2014, the accused were not produced from the jail due to law and order problem. On 08.01.2015, the statement of PW Yasmeen was recorded. On 02.02.2015, the accused were not produced before the trial court. Then adjournment was sought for bringing an Advocate from Jammu, on 06.03.2015, PWs Dr. Vidoshi Badyal, PW Dr. M. K. Koul and PW Rubeena Kousar were present but due to the absence of counsel for the accused

their statements could not be recorded. Then finally in the parawise report, it is submitted that on maximum dates the accused could not produce their counsel due to which the prosecution witnesses who were present in the court could not be examined.

5. Parawise reply as submitted by the trial court does not suggest any situation or any surcharged atmosphere which could hamper the progress of the trial but, in fact, it is the counsel for the accused who have not been appearing. Whenever they have appeared, witnesses have been examined. On the own showing of the petitioners, 81 witnesses have been cited as prosecution witnesses who all belong to Rajouri. How could such a large number of witnesses be asked to appear before some other Court on transfer of the case. Though learned counsel for the petitioners offered that their expenses will be borne by the petitioners but such a submission is not tenable. To transfer the case on such count will be sheer abuse of process of the Court and will also be to the disadvantage of the smooth progress of the trial.

6. Mr. Chatta, learned counsel for the complainant, in the open court stated that all grounds have been projected simply to prolong the trial so as to create a situation to prevail upon

the prosecution witnesses. He made a clear submission that there is no such situation or atmosphere which would prevent the advocates from causing appearance before the trial court. In fact, the petitioners have engaged the advocates who are practicing at Jammu, they for their own convenience want the case to be transferred to Jammu. Mr. Chatta further stated that one of the Advocates engaged by the petitioners in the trial court is Mr. Waheed who is resident of Rajouri but practicing in Jammu, at least he cannot claim any hostile atmosphere in Rajouri against him.

7. According to learned AAG, so far out of witnesses produced, three have been examined, other witnesses are being produced but the counsel for the accused are not appearing. Had there been any hostile atmosphere, then statements of three witnesses would not have been recorded and in case counsel at any point of time feel any type of hostile atmosphere, they have every right to seek appropriate direction from the trial court. The transfer of the case is sought simply to hamper the progress of the trial with some oblique motive of winning over the witnesses. If the case is transferred to Jammu, that, in effect, would mean failure of the case because a larger number of witnesses may not afford to come all along

from Rajouri to Jammu for recording their statements for various reasons including inconvenience.

8. For fair trial reasonable opportunity to the accused for defending themselves cannot be denied but in the name of claiming fair trial they cannot be allowed to devise a mode and method for defeating the very object of the trial. The accused are in custody, witnesses are residents of Rajouri, advocates are available as they have been appearing before the trial court, charge has been framed only after the counsel for the accused has been heard, three witnesses have been examined and thereafter witnesses have been appearing but the counsel for the accused have not been appearing as they being practicing at Jammu had to appear in Rajouri, there could be no reason to project that the atmosphere in the court premises is not congenial. Had there been any such situation, then learned trial court would have made it clear in the parawise reply. Instead learned trial court has mentioned in the parawise reply that the position so projected about the hostile atmosphere is beyond his knowledge. If anything would have happened in the court or around the court, then it would have been within the knowledge of the Presiding Officer of the trial court. Parawise reply clearly negates the contentions as raised by the counsel for the petitioners.

9. No case is made out which would arrant withdrawal and transfer of the case from the trial court at Rajouri to any court at Jammu, application, as such, is dismissed. Interim direction dated 14.07.2915 shall cease to be in operation.

10. Trial court shall fix the schedule for examination of the witnesses so as to ensure expeditious trial.

11. Disposed of as above along with connected MP.

12. Copy of the order be sent to the trial court for information.

(Mohammad Yaqoob Mir)
Judge

Jammu
26.04.2016
"Mohammad Altaf"