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HARITA SUNIL PARAB

v.

STATE OF NCT OF DELHI AND OTHERS

(Transfer Petition (Crl.) Nos. 254-255 of 2017)

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MARCH 28, 2018

**[ADARSH KUMAR GOEL, R. F. NARIMAN AND
NAVIN SINHA, JJ.]**

C *Transfer Petitions – Petitioner, a resident of Mumbai and a practicing Advocate before Mumbai High Court, seeks transfer of two FIRs registered by her against respondents nos. 2 to 4 in Delhi and Ghaziabad to Mumbai – Plea of petitioner that she fears that investigation may not be done fairly as she has been receiving threats from accused persons – Held: Investigation is complete in both the*
D *FIRs which are the subject matter of transfer – Charge sheet in one of the FIR reveals that of the 40 witnesses, petitioner alone is from Mumbai, two are from Ghaziabad and one is from NOIDA – Charge sheet of the other FIR is not on record but a presumption can be drawn that the position would be similar in that case also –*
E *Apprehension of not getting a fair and impartial enquiry or trial has to be reasonable and not imaginary, based upon conjectures and surmises – If the petitioner has any grievance with regard to the investigation, the remedy lies in filing an appropriate application under Cr.P.C, before the court concerned – At this stage, the apprehensions voiced by petitioner of possible harm to her at Delhi*
F *is too nebulous a ground for transfer – As far as inconvenience is concerned, it is her own pleadings, that she has been travelling from Mumbai to Delhi since long for professional reasons – Cases in question are not required to be transferred to Mumbai – Penal Code, 1860 – ss. 323, 354, 354A, 376, 379, 420, 506 and 509 – Code of Criminal Procedure, 1973 – Railways Act – ss.145(B), 146,*
G *137.*

Transfer Petitions – Relevant considerations for – Discussed.

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Rejecting the transfer petitions, the Court

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HELD: TRANSFER PETITION (CRL.) Nos. 254-255 OF 2017

1.1 The records reveal that investigation has been completed in both the present FIRs which are the subject matter of transfer, and separate charge sheets have been filed before the court of competent jurisdiction. If the petitioner has any grievance with regard to the investigation, the remedy lies in filing an appropriate application under the Code of Criminal Procedure before the court concerned, and any such application, if filed, has to be considered on its own merits by the concerned court in accordance with law. Likewise, if the petitioner faces or is apprehensive for her safety in pursuing her complaints at Delhi, sufficient remedies are available to her under the law. Any such application, if filed, before the concerned court or the police, has to be dealt with on its own merits in accordance with law. [Paras 4, 5] [736-B-D]

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1.2 The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard and fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. The charge sheet in one of the FIR reveals that of the 40 witnesses, the petitioner alone is from Mumbai, two are from Ghaziabad, and one is from NOIDA. The charge sheet of the other FIR is not on record. A reasonable presumption can be drawn that the position would be similar in the same also. Early

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- A conclusion of the trial becomes much more difficult involving more expenses for the prosecution by it having to bear travelling expenses of official and non-official witnesses and all of which ultimately causes the trial to linger on for years. At this stage, the apprehensions voiced by the petitioner of possible harm to her at Delhi is too nebulous a ground for transfer. On her own pleadings, the petitioner has been travelling from Mumbai to Delhi since long for professional reasons. The two cases are not required to be transferred to the court of competent jurisdiction at Mumbai. [Paras 8-11] [737-A-F; 738-B]

C **TRANSFER PETITION (CRL.) No. 253 of 2017**

- D 1.3 The petitioner seeks transfer of RTM-CR-641/2017, registered against her under Sections 145(B), 146, 137 of the Railways Act pending before the Special Railway Magistrate, Ratlam, to the Court of competent jurisdiction at Mumbai. In view of the discussion hereinbefore, the present Transfer Petition is also rejected. [Paras 12, 13] [738-C-D]

- E *Gurcharan Das Chadha v. State of Rajasthan* [1966] 2 SCR 678 ; *Mrudul M. Damle & Anr. v. Central Bureau of Investigation, New Delhi* (2012) 5 SCC 706 : [2012] 5 SCR 919 ; *Parminder Kaur v. State of U.P.* (2007) 15 SCC 307 : [2007] 3 SCR 1021 – relied on.

Case Law Reference

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| | [1966] 2 SCR 678 | relied on | Para 7 |
| F | [2012] 5 SCR 919 | relied on | Para 9 |
| | [2007] 3 SCR 1021 | relied on | Para 10 |

- G CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Criminal) Nos. 254-255 of 2017.

Under Section 406 of the Criminal Procedure Code, 1973

WITH

Transfer Petition (Crl.) No. 253 of 2017.

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HARITA SUNIL PARAB v. STATE OF NCT OF DELHI 735
AND OTHERS

Ms. Harita Sunil Parab (Petitioner-in-Person). A

Rana Mukherjee, Sr. Adv, Ms. Ranjan Narayan, T. A. Khan,
B. V. Balaram Das, Sanjay Kumar Tyagi, Ms. Priyanka, V. Nath Mishra,
Anantha Narayana M.G., Advs for the Respondents.

R. D. Upadhyay (Respondent No.2 -in-Person). B

The Judgment of the Court was delivered by

NAVIN SINHA, J.

TRANSFER PETITION (CRL.) NOs.254-255 OF 2017

1. The present application seeks transfer of F.I.R. No.351 of 2016 under Sections 354, 354A, 323, 506, 509 of the Indian Penal Code (IPC) registered at the Tilak Marg Police Station, New Delhi, and F.I.R. No.1742 of 2016 under Sections 379, 323, 376, 354, 506, 420, IPC before the Indirapuram Police Station, District Ghaziabad (Uttar Pradesh), registered on complaints lodged by the petitioner against respondents nos. 2 to 4, to the court of competent jurisdiction at Mumbai, Maharashtra. C D

2. The petitioner, who appears in person, submits that she is a permanent resident of Mumbai and is a practicing Advocate before the Mumbai High Court. Her case was not being investigated by any police officer of New Delhi despite her written complaint to the Joint Commissioner of Police dated 15.07.2017 and meeting with the Commissioner of Police, Deputy Commissioner of Police and the Assistant Commissioner of Police. She fears that investigation may not be done fairly. She has been receiving threats from the accused persons and was finding it difficult to pursue matters in Delhi as her professional engagements in Mumbai were also suffering because of the same. The investigation in the FIRs is thus sought to be transferred to the court of competent jurisdiction at Mumbai. E F

3. Respondent no.2 has filed a counter affidavit that the petitioner has also lodged F.I.R. No.331 of 2016 under section 354-B, IPC, against one Shri Ram Chander, Auto Rickshaw Driver at Delhi, and F.I.R. No.CD-PG-000260 of 2016 under Section 380 IPC, against the staff of Hotel Prince, Pahar Ganj, New Delhi. Opposing the transfer petitions, it is submitted that the accused and the prosecution witnesses are all situated in Delhi. The respondent who is also an advocate practicing at Delhi would likewise be hindered in his professional engagements for like reasons, if the cases are transferred to Mumbai. G H

- A 4. We shall notice the facts of the case only to the extent necessary for purposes of the present order so as not to prejudice the case of either party. The rejoinder by the petitioner does not dispute the institution of other FIRs by her at Delhi. The records reveal that investigation has been completed in both the present FIRs which are the subject matter of transfer, and separate charge sheets have been filed before the court of competent jurisdiction. If the petitioner has any grievance with regard to the investigation, the remedy lies in filing an appropriate application under the Code of Criminal Procedure before the court concerned, and any such application, if filed, has to be considered on its own merits by the concerned court in accordance with law.
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- C 5. Likewise, if the petitioner faces or is apprehensive for her safety in pursuing her complaints at Delhi, sufficient remedies are available to her under the law. Any such application, if filed, before the concerned court or the police, has to be dealt with on its own merits in accordance with law.
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6. The only surviving issue left is with regard to the inconvenience, as alleged, that may be caused to the petitioner in pursuing her cases before the competent court at Delhi affecting her professional engagements at Mumbai and requiring her to travel to Delhi.
- E 7. In *Gurcharan Das Chadha vs. State of Rajasthan*, (1966) 2 SCR 678, dealing with the issue for transfer of a case, it was observed:
- F “13....The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of 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 not only be entertained but must appear to the Court to be a reasonable apprehension.”
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8. The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard and fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. The charge sheet in FIR No.351 of 2016 reveals that of the 40 witnesses, the petitioner alone is from Mumbai, two are from Ghaziabad, and one is from NOIDA. The charge sheet of FIR No.1742 of 2016 is not on record. A reasonable presumption can be drawn that the position would be similar in the same also.

9. In *Mrudul M. Damle & Anr. vs. Central Bureau of Investigation, New Delhi*, 2012 (5) SCC 706, it was noticed that early conclusion of the trial becomes much more difficult involving more expenses for the prosecution by it having to bear travelling expenses of official and non-official witnesses and all of which ultimately causes the trial to linger on for years.

10. In our view, at this stage, the apprehensions voiced by the petitioner of possible harm to her at Delhi is too nebulous a ground for transfer. On her own pleadings, the petitioner has been travelling from Mumbai to Delhi since long for professional reasons. In *Parminder Kaur vs. State of U.P.*, (2007) 15 SCC 307, it was observed:

“20. The petitioner is a person of means and it will not be difficult for her to attend the hearing of the criminal cases pending in the Court of Chief Judicial Magistrate, Rampur. The comparative inconvenience of the litigant parties are not the only criterion for transferring the cases from one State to another State, but the Court has to visualize the comparative inconvenience and hardships likely to be caused to the witnesses besides the burden to be borne by the State Exchequer in making payment of travelling

A and other expenses of the official and non-official witnesses who will have to travel by train from Rampur to Delhi or Chandigarh, as the case may be, for attending the court proceedings if the cases are ordered to be transferred to transferee court....”

11. We are, therefore, not satisfied that the two cases are required to be transferred to the court of competent jurisdiction at Mumbai. The Transfer petitions are, therefore, rejected.

TRANSFER PETITION (CRL.) NOS.253 OF 2017

12. The petitioner seeks transfer of RTM-CR-641/2017, registered against her under Sections 145(B), 146, 137 of the Railways Act pending before the Special Railway Magistrate, Ratlam, to the Court of competent jurisdiction at Mumbai. Similar grounds have been urged of her convenience to attend the proceedings at Mumbai and the inconvenience that would be caused to her by having to travel to Ratlam. She is also stated to have lodged a complaint on 16.02.2017 before the Government Railway Police at Ratlam with regard to the same occurrence.

13. In view of the discussion hereinbefore, the present Transfer Petition is also rejected.