

SUNIL SAINI & ORS.

V.

THE STATE OF HARYANA & ORS.

(Transfer Petition (Criminal) No.125 of 2019)

JANUARY 30, 2023

[K. M. JOSEPH AND B. V. NAGARATHNA]

Transfer Petition: Transfer of the case sought from the Court of Additional Sessions Judge, Jhajjar to the Competent Court in New Delhi – Jat Community agitation in the State of Haryana seeking reservation led to the act of vandalism and arson which allegedly caused huge irreparable damage to the petitioners by setting their houses, godowns and their every belonging on fire – Complete breakdown of the law and order resulting in gross damage – Prosecuting team not acting in a fair and fearless manner – Petitioners who are witnesses have been under threats by the other-side – Held: Due to the passage of time and the fact that nearly 42 witnesses have already been examined, the case is not to be transferred – Special Public Prosecutor has been appointed only recently and not being unmindful also of his credentials which have been brought to the notice, at this stage another person cannot be appointed in his place – In view thereof, the petition disposed of, holding that it would be open to the petitioners to approach the Director of Prosecution in case they believe that even the Special Public Prosecutor appointed is not discharging his duties in a fair and impartial manner – Director (Prosecution) to look into the matter and take appropriate steps – As far as protection to the witness is concerned, it would be open to the petitioners to move the presiding Judge or Special Public Prosecutor or the Superintendent of Police of the concerned District seeking protection.

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Criminal) No.125 of 2019.

Transfer Petition under Article 139A(2) of the Constitution read with Section 406 of the Code of Criminal Procedure, 1973 praying for the transfer of the Case bearing S.C. No.285 of 2016 arising out of FIR No.116 dated 22.02.2016 under Sections 148, 149, 186, 302, 307, 435, 436, 449, 395, 323, 326 of IPC and Section 25 of the Arms Act, 1959, registered at the Police Station-Jhajjar in the matter titled “STATE OF HARYANA versus SANDEEP @ KALAAND ANR”, pending before the Court of Addl. Sessions Judge, Jhajjar to the Competent Court in New Delhi]

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Abhimanyu Tewari, Neiketou Rio, Ms. Eliza Bar, Advs. for the Petitioners.

Nikhil Goel, AAG, Dr. Joseph Aristotle, Aditya Singh, Shubham Singh, Rajiv Dalal, Pankaj Yadav, Aniruddha Deshmukh, Adithya K. Roy, Naveen Goel, Ms. Monika Gusain, Advs. for the Respondents.

The following Judgment was delivered by the Court:

JUDGMENT

(1) The relief sought for in the transfer petition is as follows:

“(a) Transfer the case bearing S.C. No.285 of 2016 arising out of FIR No.116 dated 22.02.2016 u/S 148, 149, 186, 302, 307, 435, 436, 449, 395, 323, 326 IPC and Section 25 of the Arms Act, 1959, Police Station-Jhajjar, titled “State of Haryana versus Sandeep @ Kala & Anr.”, pending before the Court of Additional Sessions Judge, Jhajjar to the Competent Court in New Delhi.”

(2) The case of the petitioners in a nutshell is that an agitation was carried out by members of the Jat community in the State of Haryana in 2016. They sought reservation in Government jobs and educational institutions. During this agitation, the members of Jat community vandalized and committed acts of arson which allegedly caused huge irreparable damage to the petitioners by setting their houses, godowns and their every belonging on fire.

(3) An allegation is made against an advocate who is alleged to be very influential and who had remained President of the Bar. It is alleged that because of this connivance, 2-3 material witnesses have been forced to turn hostile as well as material documentary evidence has not been placed on record.

(4) It is their further case that an application was filed under Section 319 of the Code of Criminal Procedure, 1973 to summon the advocate and his son but their application was not countersigned by the Public Prosecutor. The petitioners, therefore, knocked at the door of this Court by filing this petition to get their case transferred to another state so that interest of justice is sub-served.

(5) Counter Affidavit as well as an application to file additional documents have been filed by respondent Nos. 2 & 3. In the application for

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additional documents, it is sought to be established that, in fact, the first petitioner before this Court was examined as PW-2 and he has deposed in his deposition that he could not identify who the accused are. PW-15 purported to identify one of the accused. At the instance of PW-15, an application was filed under Section 319 of the Cr.P.C. to summon certain persons (advocate in question), which has been rejected.

- (6) Learned counsel for the petitioners, in fact, would submit that the order rejecting the application under Section 319 has been upheld by the High Court. The learned counsel for the petitioners would point out that it is a gross case where there is a complete break down of the law and order resulting in gross damage having been caused. It is also pointed out that two persons lost their lives.
- (7) It is their case that there is no chance for the petitioners getting justice in the Courts in the State of Haryana, having regard to the pervasive influence of the community in question. What is more, even the prosecuting team is not acting in a fair and fearless manner.
- (8) As of today, it is brought to our notice that 42 witnesses have been examined. Learned counsel for the petitioners would point out that at this stage, atleast this Court may consider directing that an independent and upright Special Prosecutor be appointed so that the needful is done and there is no sabotage of the proceedings. He would submit that a case may exist for recalling witnesses who have already been examined.
- (9) Learned counsel appearing on behalf of the first respondent-State, on the other hand, would point out that the Public Prosecutor has been appointed on 13.05.2022. He is the person who has been a Public Prosecutor since 29.03.2003 and conducted nearly 500 cases under Section 302 IPC, two cases arising out of the agitation and also two other cases of honour killings. What is more important, it is pointed out that there are no allegations levelled against the Public Prosecutor who has been appointed as aforesaid.
- (10) Learned counsel for the petitioners have raised another complaint as well. It is pointed out that on a regular basis, the petitioners who are witnesses have been under threats by the other-side. He would

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submit that despite a request being made, protection has not been accorded.

- (11) Learned counsel for the first respondent-State, on the other hand, points out that there is a Witness Protection Scheme, 2018. A witness who is intimidated will always have a right to write to the presiding Judge or Public Prosecutor or the Superintendent of Police of concerned District. Only one request has been received on the last date of hearing, it is submitted.
- (12) As far as transferring the case out of the State is concerned, we would think that due to the passage of time and the fact that nearly 42 witnesses have already been examined, we do not think that, as things stand, the case is to be transferred.
- (13) We must pause here for a moment and however make these observations:

The State exists on the basis of implied consent of the Governed. The principal reason for people to come together under the organization of the state is the fundamental principle that the State will be in a position to always protect the lives and properties of the citizens. This is the fundamental unalterable premise for the creation, existence and preservation of any civilized State. It is all the more so, when the State is functioning under a written constitution which guarantees fundamental rights such as ours. It is accordingly that rule of law is rightfully treated as part of the basic structure of the Constitution. It is the bounden duty of any State to ensure that the lives of its citizens and other persons are at all times protected. The same goes for their properties. This is the elementary function of the State. We are not at this stage called upon to deal with the duties of the State with the mantle of a welfare State falling upon it. Even if this indispensable function to constitute a State is not performed, it would be a lamentable state of affairs.

- (14) The principal mechanism for vindicating the rule of law and upholding the rights of the citizens is the judicial branch of the State. One of the fundamental methods by which Rule of law is preserved consists of sanctions of which the criminal law is the principal branch. The criminal courts must be allowed to function in a manner by which at the end of the day the guilty are punished and innocent are exonerated.

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(15) The role of the Public Prosecutor in all of this is paramount. He is duty bound to always act in a fair manner; not of course, to secure conviction by hook or crook but at the same time, it is his duty to fearlessly adduce evidence so that those who are guilty do not get away scot free. Unless this is done, it is very likely that the common man will cease to have faith in the very functioning of the State itself. It is therefore, integral to the upholding of the integrity of the State itself that the access to justice which is also comprehended in the principle that an offence is committed against the State and the State therefore prosecutes the offender is always borne in mind.

(16) Every attempt which succeeds at the hands of anyone whereby the efficacy of criminal law is diluted, will remove the very edifice of the rule of law fatally.

(17) It is, therefore, of the utmost importance that in the case in hand, the Special Public Prosecutor who has been appointed will hopefully uphold the highest principles and play the difficult role so that while the innocent are not convicted, the guilty do not escape due punishment.

(18) In the facts of this case, noticing that the Special Public Prosecutor has been appointed only recently and not being unmindful also of his credentials which have been brought to our notice, at this stage we are not persuaded to direct that another person be appointed in his place. However, this is not to be the end of the destiny of this case. Accordingly, we dispose of the petition as follows:

- (i) It will be open to the petitioners to approach the Director of Prosecution in case they believe that even the Special Public Prosecutor appointed is not discharging his duties in a fair and impartial manner.
- (ii) It is thereupon for the Director(Prosecution) to look into the matter and take appropriate steps. As far as protection to the witness is concerned, it will be open to the petitioners to move the presiding Judge or Special Public Prosecutor or the Superintendent of Police of the concerned District seeking protection in which case needful shall be done in accordance with law.

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(iii) Needless to say that any observation which we have made in this judgment shall not stand in the way of the Court taking a decision on the basis of the evidence and on the basis of law applicable.

The transfer petition is disposed of accordingly.

Headnote prepared by: Nidhi Jain
(Assisted by: Shashwat Jain, LCRA)

Result of the case: Transfer petition disposed of.