

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
TRANSFER PETITION (CRIMINAL) NO. 452 OF 2019

Jatinderveer Arora & Ors.

Petitioners

Versus

State of Punjab

Respondent

WITH

TRANSFER PETITION (CRIMINAL) NO. 459 OF 2019

TRANSFER PETITION (CRIMINAL) NO. 458 OF 2019

TRANSFER PETITION (CRIMINAL) NO. 461 OF 2019

TRANSFER PETITION (CRIMINAL) NO. 460 OF 2019

TRANSFER PETITION (CRIMINAL) NO. 462 OF 2019

JUDGMENT

Hrishikesh Roy, J.

1. These petitions are filed under Section 406 of the Code of Criminal Procedure, 1973 (for short "the CrPC") read with Order XXXIX of the Supreme Court Rules seeking transfer of Trial of criminal cases pending before the Courts at Bhatinda, Moga and Faridkot districts to competent Court in Delhi or to any nearby State, out of Punjab.

2.1 Mr. Ranjit Kumar, the learned Senior Counsel for the petitioners submits that as the matters relate to alleged sacrilege of the holy book, Shri Guru Granth Sahibji in different places in Punjab, deep anguish and bitterness is generated amongst a particular religious group, who form majority of the population in the State of Punjab and therefore the accused who are members of the *Dera Sacha Sauda* sect, are facing bias and prejudice and are unlikely to get a fair trial in the face of strong presumption of culpability.

2.2 According to the petitioners, the situation in Bhatinda and other places is communally surcharged where, fair trial is a near impossibility. In support of such contention, the Senior Counsel refers to the murder of the accused Mohinder Pal Singh Bittoo on 22.06.2019 inside the Nabha Central jail, which according to Mr. Kumar, clearly shows the threat to the lives of other co-accused in the hands of the radical elements in the State.

2.3 Moreover, public appeals have been made to socially boycott the accused and also to those dealing with them, such as lawyers, doctors and taxi drivers and these developments would indicate the serious difficulties faced by the accused in conducting their defence.

2.4 The learned Senior Counsel submits that a forced statement under Section 164 CrPC was obtained from the petitioner Jatinderveer Arora and this would suggest that in Punjab, an unbiased prosecution cannot be ensured.

2.5 The mass gathering in the court premises where these cases are listed on the given dates, is highlighted by the Senior Counsel to emphasize the threat to the life of the accused since adequate arrangement and security has not been provided by the State.

3.1 Representing the State of Punjab, Mr. Harin P Raval, learned Senior Counsel on the other hand argues that no case for transfer is made out by the petitioners. The Senior Counsel submits that although

petitioners speak of surcharged atmosphere and threat to their life in Punjab, after getting bail, they continue to reside and conduct their affairs in their respective place without any threat or hindrance. The State Counsel then submits that petitioners have not suffered any prejudice in conducting their defence as the same two lead counsels continue to represent them since beginning. That apart, no specific instance, of denial of medical or transportation service or legal assistance is brought to the Court's notice, notwithstanding the so called public appeal made by few people.

3.2 According to the State's lawyer, the petitioners have suppressed material facts. Moreover, one solitary incident of Section 164 CrPC statement of one of the petitioners i.e. Jatinderveer Arora (CHI No.3/2019) is being relied upon by the other petitioners to project prejudice although they are involved in other cases. It is then pointed out that Jatinderveer Arora while in judicial custody, volunteered to record his statement for which he was produced on 22.11.2018 before the JMIC, Phul but on

that date, he developed cold feet and was taken back and the learned Magistrate directed the SSP, Bhatinda to ensure safety to the accused. Later, on 01.12.2018, the same person voluntarily recorded his statement before the Magistrate and this is now part of the court records. On that occasion, the concerned Magistrate administered caution and satisfied himself that the petitioner was not pressurized or threatened and made a voluntary disclosure.

3.3 On the security front, Mr. Raval submits, on instruction from State DGP, that fool proof arrangements will be made and security will be provided, to allay all apprehensions of the petitioners.

3.4 The difficulties for the witnesses and the prosecution, if the trial venue is to be shifted out of Punjab, is also highlighted from the respondents side.

4. The question to be answered here is whether the situation in Punjab is so communally surcharged that the petitioners will be deprived of fair trial, if

they are to be conducted within the State. According to the petitioners, the situation in the State is surcharged and non-conducive for them. Yet, as can be seen, the petitioners have not moved out and continue to reside in the usual place of residence in the State and doing their work/business in a routine manner. No specific instance of prejudice has been brought to this Court's notice on account of social boycott call or appeal to the Medical professionals or taxi operators, to deny co-operation. Most particularly, no complaint is lodged before the court or to the authorities about any threat or intimidation.

5. While there is a specific instance of one of the defence lawyer disassociating himself from the case on personal ground, the two regular lawyers Mr. K.S. Brar and Mr. R.K. Rana continue to defend the accused since January, 2019 without any break or difficulty. This would suggest that petitioners defence is not being compromised in Punjab and they are receiving adequate legal assistance.

6. The case materials reflect that one of the petitioners, Jatinderveer Arora on the first occasion, backed off from recording his Section 164 CrPC statement on 22.11.2018, but the same person voluntarily recorded his statement on 01.12.2018 and this is now part of the trial Court records. This solitary instance pertaining to the CHI No. 3/2019 (relating to one of the petitioners of the TP(Cr1.) No.452/2019), is however banked upon by all the other petitioners without any basis. The order sheet of the proceedings reflects clearly that the Magistrate administered caution and duly satisfied himself on both occasions to ensure that legal procedures were followed and statement was free and not under pressure. The recording of the statement on 01.12.2018 in the CHI No.3/2019 is found mentioned in the additional affidavit filed by the petitioner.

7. It would be appropriate at this stage to note the cases for which these transfer petitions are filed and the involvement of the petitioners in which of those. The following chart will reflect this and the earlier stage of those cases:

Sl. No	Details of TP (Crl.)	Case No.	FIR Details	Stage
1.	TP(Crl.) No. 452/2019 Jatinderveer Arora & Ors. Vs. State of Punjab	CHI No.3/2019	FIR No.161/2015 dt. 20.10.2015 PS Dayalpura, Dist.-Bathinda	Charge NDOH: 21.09.2019
2.	TP(Crl.) No. 458/2019 Baljit Singh & Ors. Vs. State of Punjab	CHI No.4/2019	FIR No.86/2016 dt. 21.06.2016 PS Dayalpura, Dist.-Bathinda	Charge NDOH: 21.09.2019
3.	TP(Crl.) No. 459/2019 Prithvi Singh & Ors. Vs. State of Punjab	CHI No.84/2019	FIR No.79/2015 dt. 04.11.2015 PS Samalsar, Dist.-Moga	Prosecution evidence NDOH: 23.09.2019
4.	TP(Crl.) No. 460/2019 Baljit Singh & Ors. Vs. State of Punjab	CHI No.6/2019	FIR No.98/2016 dt. 03.07.2016 PS Dayalpura, Dist.-Bathinda	Charge NDOH: 21.09.2019
5.	TP(Crl.) No. 461/2019 Bajit Singh & Ors. Vs. State of Punjab	CHI No.5/2019	FIR No.89/2016 dt. 29.06.2016 PS Dayalpura, Dist.-Bathinda	Charge NDOH: 21.09.2019
6.	TP(Crl.) No. 462/2019 Sukhwinder Singh @ Sunny & Ors. Vs. State of Punjab	SC No.67/2019	FIR No.89/2018 dt. 13.06.2018 PS City Kotkapura, Dist.-Faridkot	Evidence NDOH: 09.10.2019

8. This Court is conscious that the matter emanates from the State of Punjab and the accused, the witnesses and the prosecutors are all from the State. If the trial is shifted out, all of them will face difficulties. The State's pleading shows that those accused who have a threat implication have been provided personal security by the district police. The learned Senior Counsel for the State in the context submits that elaborate arrangements have been

made on orders of the State's DGP and on the trial date, additional force are deployed in the concerned Courts, to ensure safety of the petitioners and all other stakeholders. Moreover, as the sacrilege incidents occurred in 2015, with passage of time, the atmosphere is expected to have mellowed down considerably. This can also be gathered from the fact that the petitioners who reside in different districts in Punjab are doing their work or business in a routine manner, without any inhibition.

9. In such a scenario, it has to be evaluated whether fair trial is an impossibility, before the Courts in Punjab or is it a case of mere apprehension by the accused.

10. In support of their rival contentions, learned Senior Counsel Mr. Ranjit Kumar for the petitioners and Mr. Harin P Rawal, the learned Senior Advocate for the State of Punjab, have relied on *Maneka Sanjay Gandhi Vs. Rani Jethmalani*¹, *Abdul Nazar Madan Vs. State of T.N. & Anr.*², *R. Balakrishna Pillai Vs.*

1 (1979) 4 SCC 167

2 (2000) 6 SCC 204

*State of Kerala*³, *Zahira Habibullah H. Sheikh Vs. State of Gujarat*⁴, *Sri Jayendra Saraswathy Swamigal (II), T.N. Vs. State of T.N.*⁵, *Captain Amrinder Singh Vs. Prakash Singh Badal & Ors.*⁶ and *Nahar Singh Yadav & Others Vs. Union of India & Ors*⁷.

11. The proposition of law that emanates from the above judgments is that for transfer of trial from one Court to another, the Court must be fully satisfied about existence of such factors which would make it impossible to conduct a fair trial. General allegation of surcharged atmosphere is not however sufficient. The apprehension of not getting a fair and impartial trial cannot be founded on certain grievances or convenience of the accused but the reasons have to be more compelling than that. No universal Rules can however be laid down for deciding transfer petitions and each one has to be decided in the backdrop of that case alone. One must also be mindful of the fact that when trial is shifted out from one State to another, it would tantamount to

3 (2000) 7 SCC 129

4 (2004) 4 SCC 158

5 (2005) 8 SCC 771

6 (2009) 6 SCC 260

7 (2011) 1 SCC 307

casting aspersions on the Court, having lawful jurisdiction to try the case. Hence powers under Section 406 CrPC must be exercised sparingly and only in deserving cases when fair and impartial trial uninfluenced by external factors, is not at all possible. If the Courts are able to function uninfluenced by public sentiment, shifting of trial would not be warranted.

12. Analyzing the earlier precedents on the issue, this Court in *Umesh Kumar Sharma Vs. State of Uttarakhand*⁸, stated the legal position as under:-

"20. The above legal enunciations make it amply clear that transfer power under section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises."

13. Here the projection of surcharged atmosphere is not borne out by the corresponding reaction of the

8 2020 SCC OnLine SC 845

petitioners, who are out on bail. Being residents of Punjab, they continue to reside at their usual place and are going about their routine affairs. If their threat perceptions were genuine, they could not have gone about their normal ways. For this reason, the Court is inclined to believe that the atmosphere in the State does not justify shifting of the trial venue to another State.

14. We must also be mindful of the fact that the sacrilege incidents occurred in 2015 and it has been more than 2 years since the petitioners were arrayed as accused in the cases. During this long period, no complaint has been made by the petitioners of any threat to their security or to their associates. The zimni orders of the Trial Court does not reflect any bias faced, either by the accused or their family. Insofar as the death of the accused Bittoo in Nabha jail, the projection of the State is that he was murdered by jail inmates undergoing life imprisonment in some other cases and for this incident FIR under Section 302, 34, 120B IPC is registered in PS Sadar, Nabha, chargesheet has been filed and trial has

commenced. It is not possible at this stage to say if this incident has any link with the other cases or it is a standalone event. Barring this issue, none of the petitioners have raised any grievances before the court or before the police and inference must accordingly will have to be drawn against their transfer plea.

15. The learned State counsel informs the Court that out of the six cases mentioned in the chart (not uptodate), the trial in one case (FIR 79/2015- State Vs. Prithvi Singh) is at the stage of final arguments. The other five cases are at the stage of evidence or charge stage. It will therefore not be fair to the prosecution, the State and the witnesses who are yet to testify, to shift the proceeding without compelling reasons as it will inevitably delay the trial. One must also remember that convenience of all parties should be looked at and not just the party which is seeking transfer.

16. Another vital aspect, as has been pointed out by the state counsel, will bear consideration. The Complainant Iqbal Singh, in relation to the FIR

161/15 (Jatinderveer Arora Vs. State of Punjab) filed application with prayer to shift the case from JMJC, Phul to any other Court in Bhatinda. The said application came to be dismissed by the learned Chief Judicial Magistrate, Bhatinda by an order dated 04.02.2020, wherein it has been recorded that the accused opposed the transfer application. In such circumstances, the contrary plea for shifting of trial venue made before this Court would suggest that the Petitioners have taken conflicting stand on shifting of trial venue before different forums.

17. Mr. Ranjit Kumar, the learned Senior Counsel has heavily relied upon two judgments of this Court [*Sri Jayendra Saraswathy Swamigal (II)* (supra) and *Zahira Habibullah H. Sheikh* (supra)] where change of trial venue was allowed. In the present matter, although the case could generate strong feelings between the opposing groups, no such overwhelming factors as was visible in *Sri Jayendra Saraswathy Swamigal (II)* (supra) are brought to light by the learned counsel. In the second case i.e. *Zahira Habibullah H. Sheikh* (supra), the Court found that the State was

conducting the investigation in a partisan manner and likelihood of miscarriage of justice was visible. The subversion of justice delivery system in the concerned State was seen and congenial atmosphere was found missing. For such compelling factors, the Court directed that re-trial shall be done by a Court under the jurisdiction of the Bombay High Court and public prosecutor be changed. However, the circumstances in the present matters cannot be equated with those noticed in *Zahira Habibullah H. Sheikh* (supra) or in *Sri Jayendra Saraswathy Swamigal (II)* (supra). Therefore, I am of the considered opinion that similar relief cannot be granted in the present proceedings.

18. From the available material, this Court cannot reasonably conclude that the situation in Punjab is not conducive for a fair trial for the petitioners. The few instances mentioned by the petitioners' counsel may suggest heightened feelings amongst different groups but they do not in my estimation, call for transfer of proceedings to another State.

19. Moreover, it cannot just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution. The larger issue of trial normally being conducted by the jurisdictional Court must also weigh on the issue. When relative convenience and difficulties of all the parties involved in the process are taken into account, the conclusion is inevitable that no credible case for transfer of trial to alternative venues outside the State of Punjab is made out, in the present matters.

20. The final submission of Petitioners' counsel was that, if the Trials cannot be shifted to Delhi, they should be shifted to Chandigarh. This was not the pleaded case of the Petitioners. The suggested alternate venue is Punjab's capital and even though Chandigarh is an Union Territory, the population pattern in the city is like the rest of Punjab. Such alternative plea on the grounds pleaded in these matters cannot therefore be countenanced.

21. The transfer of trial from one state to another would inevitably reflect on the credibility of the State's judiciary. Except for compelling factors and

clear situation of deprivation of fair justice, the transfer power should not be invoked. The present bunch of cases are not perceived to be amongst such exceptional categories.

22. For the above reasons, these cases are found devoid of merit. Nonetheless, the State as assured to this Court, must make all arrangement to ensure safe conduct of proceedings at the trial courts and also provide adequate security to the petitioners and their associates as might be warranted from the security perspective. It is however made clear that the observations in this judgment are only for disposal of these petitions and should have no bearing for any other purpose.

23. Subject to the aforesaid cautionary observation, the cases are dismissed.

.....J.
[HRISHIKESH ROY]

NEW DELHI
NOVEMBER 25, 2020