

CASE NO.:
Special Leave Petition (crl.) 6163 of 2004

PETITIONER:
Smt. Parminder Kaur

RESPONDENT:
State of U.P. & Anr

DATE OF JUDGMENT: 14/03/2007

BENCH:
C. K. Thakker & Lokeshwar Singh Pantia

JUDGMENT:
J U D G M E N T
SPECIAL LEAVE PETITION (CRL.) No.6163 of 2004
[With Transfer Petition (Crl.) No. 71 of 2005
and Transfer Petition (Crl.) No. 75 of 2005]

Lokeshwar Singh Pantia, J.

Transfer Petition (Crl.) No. 71 of 2005 and Transfer
Petition (Crl.) No. 75 of 2005:

These are unfortunate litigations amongst the most intimate family members who are intensely involved in inter se civil, criminal and revenue litigations in various courts in different States.

These two transfer petitions under Section 406 of the Code of Criminal Procedure [for short, "Cr.P.C."] have been filed by the petitioner seeking transfer of case No. 3045/2004 titled as State of U.P. v. Parminder Kaur under Sections 446, 467, 468, 471 and 420 of the Indian Penal Code [for short, "IPC"] and Case No. 1434/2004 under Sections 466, 468, 471 and 420 of IPC pending in the Court of Chief Judicial Magistrate, Rampur, Uttar Pradesh, to the Court of Chief Metropolitan Magistrate, Tis Hazari Court, Delhi or to the Court of Chief Judicial Magistrate, Chandigarh. The relevant facts giving rise to the filing of these petitions are set out as under:-

Smt. Parminder Kaur, petitioner herein, and her husband Lt. Col. Hargobind Singh (Retd.) are aged persons. They are not keeping good health and are suffering from various diseases. They have got four daughters but no son. The daughters are settled in the United States of America [USA]. The petitioner and her husband because of their old age and ill-health are almost dependent on their daughters and are residing with them in USA for getting medical treatment and care. Lt. Col. Hargobind Singh is a retired Army Officer. While in service, he purchased some agricultural land in village Behait, Tehsil Bilaspur, District Rampur, Uttar Pradesh. He appointed his younger brother Har Gur Saran Singh, respondent No. 2 herein, as his Attorney vide Power of Attorney dated 3rd April, 1970 authorising him to look after, maintain and deal with his property. Smt. Amrinder Kaur, daughter of the petitioner, got some land in the same village and she too appointed respondent No. 2 as her Attorney on 27th March, 1991. It is alleged in these petitions that after lapse of some time the husband of the petitioner found the conduct of respondent No.

2 unfair and dishonest therefore, on 29.07.1975 he revoked the Power of Attorney given to respondent No. 2. In spite of the revocation of Power of Attorney, respondent No. 2 transferred the land of the husband of the petitioner by registered sale deed in favour of his relatives on 07th January, 1996 and 10th January, 1996 respectively. On the basis of those sale deeds, names of the relatives of respondent No. 2 were recorded in the Revenue records by obtaining mutation orders dated 07th March, 1996 recorded by the Tehsildar, Bilaspur in Mutation Record Nos. 228-B of 1996 and 229-B of 1996. According to the petitioner, the mutation orders were obtained fraudulently and at the back of the petitioner's husband by respondent No. 2. Smt. Amrinder Kaur, daughter of the petitioner, also revoked her Power of Attorney and asked respondent No. 2 not to deal with her land any more in any manner. But irrespective of the revocation of the said Power of Attorney, respondent No. 2 transferred her land in the name of his daughter Namrata Chandi and other near relatives by registered sale deed dated 03rd July, 1991 and obtained mutation order dated 30th August, 1991 of the Tehsildar, Bilaspur, recorded in Mutation Case No. 8-M of 1991.

The husband of the petitioner then appointed the petitioner as his Attorney by executing Power of Attorney dated 25th September, 1997 in her favour authorizing her to deal with his land at village Behait. Similarly, Smt. Amrinder Kaur appointed the petitioner as her Power of Attorney executed on 4th February, 2000 with regard to her land.

The case of the petitioner is that when she came to know about the transactions made by respondent No. 2 and mutation orders recorded by the Tehsildar, the petitioner filed three suits bearing Original Case Nos. 266/2002, 267/2002 and 268/2002 for declaration and permanent injunction inter alia challenging the legality and validity of the sale deeds in the trial court at Rampur. Simultaneously, on 27th May, 2002 the petitioner filed three revision applications [being Revision Application Nos. 38/2001-2002, 39/2001-2002 and 40/2001-2002] on behalf of her husband and daughter before the Collector, Rampur, for setting aside the mutation order dated 07th March, 1996 and order dated 30th August, 1991. The Collector, Rampur, dismissed all the three revision applications by order dated 16th October, 2002 on the sole ground of delay of 6-11 years in challenging the impugned mutation orders of the Tehsildar.

Feeling aggrieved, the petitioner preferred three Civil Writ Petition Nos. 4470/2003, 4472/2003 and 4475/2003 before the High Court of Judicature at Allahabad. The writ petitions were dismissed by the High Court in view of the pendency of the civil suits in the civil court.

The petitioner alleges in these proceedings that after instituting the three civil suits in the trial court, she and her husband received serious threats to their lives from respondent No.2. She alleges that respondent No. 2 even hired some anti-social persons directing them to chase the petitioner when she had gone to Rampur and other places. The petitioner stated that respondent No. 2 has made her life and life of her husband miserable and he is bent upon to harm them physically and mentally. Therefore, on 25th August, 2003 the petitioner filed Transfer Petition Nos. 564, 565 and 568 of 2003 in this Court praying for transfer of civil suits from the Court of Civil Judge, Rampur, Uttar Pradesh, to Civil Judge, Tis Hazari, Delhi. In the meantime, as a counter blast, respondent No. 2 filed an application/complaint dated 25th September 1996 before the Superintendent of Police, Rampur, and obtained an order of registration of false and fabricated case FIR No. 160 dated 17th October, 2003 in Police Station,

Bilaspur, District Rampur, under Sections 463, 468, 420 of IPC on the allegations that during hearing of revision applications filed by the petitioner against the mutation orders before the Collector and an application for condonation of delay in filing the said revision petitions, the Collector had noticed that the dates of applications submitted for obtaining copies of orders of mutations recorded by Tehsildar, Bilaspur, were interpolated for 09 May, 2002 as 18 May, 2002. The Chief Judicial Magistrate, Rampur on 10th October, 2003 issued warrant of arrest against the petitioner. On 19th December, 2003, respondent No. 2 and some police personnel accompanying him forcibly dragged the petitioner from Chandigarh and she was brought to Rampur in a private vehicle. On 20th December, 2003, she was produced in the Court of the Chief Judicial Magistrate, Rampur. She filed bail application which came to be rejected by the Chief Judicial Magistrate on 23rd December, 2003. In the meantime, the police filed charge sheet in the court of the Chief Judicial Magistrate against the petitioner on 22nd December, 2003 under Sections 466, 468, 471 and 420 of IPC, the subject matter of Case No. 1434/2004. However, on 24th December, 2003 the petitioner was released on bail by the Additional Sessions Judge, Fast Track Court No. 2, Rampur.

Again, on 27th February, 2004 the respondent No. 2 filed one more complaint making similar allegations and the police under the influence of respondent No. 2 registered another FIR under Sections 466, 467, 468, 471 and 420 of IPC against the petitioner. On the basis of the said charge sheet, the Chief Judicial Magistrate, Rampur, on 13th July, 2004 took cognizance of Case No. 3045/2004 against the petitioner. On 25th May, 2004/3rd June, 2004, the petitioner filed Criminal Miscellaneous Application No. 4313 of 2004 under Section 482 Cr.P.C. for quashing Case No. 1434/2004 before the High Court of Judicature at Allahabad which, according to the petitioner, is still pending.

This Court vide order dated 9th August, 2004 transferred Original Case No. 268/2002 titled as Col. Hargobind Singh through Attorney Smt. Parminder Kaur v. Prabhjot Singh & Ors., Original Case No. 266/2002 titled as Col. Hargobind Singh through Attorney Smt. Parminder Kaur v. Har Gur Saran Singh & Ors. and Original Case No. 267/2002 titled as Smt. Amrinder Kaur through Attorney Smt. Parminder Kaur v. Har Gur Saran Singh & Ors. pending in the Court of Civil Judge (Junior Division), Rampur, Uttar Pradesh, to the District Judge, Tis Hazari Courts, Delhi, who was requested to either try the proceedings himself or to make over the same for trial to any other court of competent jurisdiction. The petitioner on the premises above-said filed these transfer petitions inter alia contending that she is an ailing old woman of 72 years of age and needs medical and physical care and in such conditions, it is very difficult for her to undertake tiring journey from Chandigarh or from Delhi to the Court of Chief Judicial Magistrate, Rampur to defend the cases pending against her. The petitioner's husband is also an old and ailing person of 76 years of age who is wholly dependent on his daughters and is residing with them in USA. There is no other male member in the family of the petitioner who would accompany her to Rampur. The police of Rampur is in collusion with respondent No. 2 who is a nefarious litigant and in such circumstances no fair trial is possible from the court at Rampur. The civil suits are pending in Delhi and therefore, the criminal cases lodged by respondent No. 2 against the petitioner at Rampur shall also be transferred to Delhi or Chandigarh in the interest of justice and as the petitioner's life would be in danger if she goes to Rampur to appear in the

court during the trial of the cases in view of an open threat extended to her life by respondent No. 2.

In reply to the transfer applications, respondent No. 2 has given a detailed background of the family history of the parties involved in these cases. In substance, his defence is that his elder brother Lt. Col. (Retd.) Hargobind Singh, husband of the petitioner, purchased 23 acres of land in Revenue Estate of village Behait, Tehsil Bilaspur, District Rampur, Uttar Pradesh. His brother executed General Power of Attorney dated 3rd April, 1970 duly registered in the Office of Sub-Registrar, Saugor (Madhya Pradesh), appointing and constituting respondent No. 2 as a General Attorney authorizing him to cultivate, look after and deal with his agricultural land. Out of 23 acres of land, the petitioner's husband had gifted 6 acres of land to his adopted daughter Smt. Amrinder Kaur in the year 1979. Smt. Amrinder Kaur also appointed respondent No.2 as her Attorney with effect from 27th March, 1991. He stated that as an obedient brother and as an affectionate uncle of Smt. Amrinder Kaur he cultivated, protected and supervised the landed property of his brother and niece to the best of his ability and from time to time he remitted the profits derived from their landed property to them. He submitted that he paid the land revenue of the lands and also protected the lands from being acquired by the State Government under the Provisions of U.P. Agricultural Land Ceiling Act. He averred that since the year 1987 the petitioner and her husband are citizens of USA and they are persons of means and status whereas, on the other hand, he is a marginal/poor farmer holding meagre agricultural land. He pleaded that in the year 1990, the petitioner's husband and his daughter asked him to get some portions of their lands sold and transferred, but at that point of time there were no buyers readily available in the market due to terrorist activities prevailing in the area. However, later on as per the instructions of Smt. Amrinder Kaur, he sold 06 acres of her land in favour of his daughter Smt. Namrata Chandi and Col. Sarabjit Singh vide registered sale deed dated 3rd July, 1991 and consequently, the land was mutated in their names in the revenue records. Similarly, on the instructions of petitioner's husband he sold 9 acres of land by a registered sale deed dated 7th January, 1996 in favour of Prabodh Singh and Balbir Singh and handed over the possession of the land bearing Khata No. 1/5 to them. Another piece of land measuring 5.36 acres owned by the husband of the petitioner was also sold by registered sale deed dated 10th January, 1996 to Manjit Singh and Balbir Singh. Thus, as an Attorney of petitioner's husband and daughter and on their express instructions he sold and transferred their agricultural land measuring 20.36 acres to the bona fide purchasers and the amounts of sale consideration were duly remitted by bank drafts to both the owners without any delay on his part.

It is his case that the petitioner came to India in the year 2002 and by that time the prices of land shot up in and around the village where the agricultural lands are situated. He stated that the petitioner is actuated with lust and greed for money and hence compelled him to get more money from the above named bona fide purchasers who are the common relatives of both of them. He stated that he tried his best to persuade the petitioner not to raise any demand for more money but she remained adamant and on his refusal to accede to her illegal demand, the petitioner unblemishably extended threat to teach him a lesson. She with a mala fide and dishonest intention filed civil suits for cancellation of the sale deeds in the Court of Civil Judge, (Junior Division), Rampur, which later were on transferred by this Court to the

court in Delhi. He stated that the petitioner interpolated the dates in the certified copies issued from the revenue records, Rampur, with a mala fide intention to get delay of more than eleven years condoned from the Collector against the order of Tehsildar, Rampur. She submitted forged and fabricated documents in the civil court. He has admitted having filed two criminal cases against the petitioner in the Court of Chief Judicial Magistrate, Rampur, in which she was granted bail by the Additional Sessions Judge, Fast Track Court, Rampur.

Further, he stated in his counter affidavit that he and his elder brother Lt. Col. (Retd.) Hargobind Singh are joint owners of House No. 1394, Sector 33-C at Chandigarh in equal shares as per family settlement dated 10th November, 1970. The petitioner with a mala fide intention to grab the share of respondent No. 2, clandestinely entered into an agreement of sale of that house with one Pritam Kaur Sekhon, resident of 3015, Sector 19-D, Chandigarh, and received Rs. 1,00,000/- from her as advance money. Subsequent to the first agreement, the petitioner again entered into second agreement with regard to the same property with Charan Jiv Singh and Mrs. Hariti Singh, resident of House No. 324, Sector 9-D, Chandigarh, and received Rs. 5,00,000/- from them as earnest money and obtained No Objection Certificate [NOC] in favour of the purchasers from the Estate Office, Chandigarh. The petitioner after receiving the earnest money again backed out from the terms of the agreement and also compelled Charan Jiv Singh and Mrs. Hariti Singh to file civil and criminal cases against her. They got a public notice published in a local daily advising the public at large not to enter into any agreement in regard to the said property as it was purchased by them from the petitioner. He stated that he came to know about the aforesaid illegal and nefarious acts of the petitioner regarding the disposal of House No. 1394, Sector-33 C at Chandigarh. He filed Civil Suit No.79/2004 against his elder brother for declaration claiming 50 per cent share in the joint property which is pending in the Court of Civil Judge, Junior Division, Chandigarh. He stated that both the petitioner as well as her husband Lt. Col. (Retd.) Hargobind Singh are contesting the said case. The petitioner has lodged several false complaints in the court at Chandigarh against him and his son who is serving as Major in the Indian Army. It is his version that he was granted anticipatory bail by the court in a case registered by the petitioner vide FIR No. 228 dated 20th July, 2005 of P.S. Sector 34, Chandigarh. The petitioner filed an application dated 24th October, 2005 for cancellation of his bail but the same was rejected by the District and Sessions Judge, Chandigarh.

He submitted that the petitioner is a lady of means and can very well afford to defend the case in the Court of Chief Judicial Magistrate, Rampur, whereas he is a poor farmer and would not be in a position to get the criminal cases prosecuted against the petitioner at Delhi or Chandigarh because of his inadequate financial position and being an old man of 65 years of age, he is unable to bear with the arduous journey of about 400-500 kms. by train from village Behait to Delhi or Chandigarh if the cases are transferred to either of these places.

In rejoinder affidavit, the petitioner has reiterated and reasserted the averments made by her in the transfer petitions and denied the counter allegations made by respondent No.2 in his counter affidavit.

Shri Avadhesh Kumar Vijeta working as C.O., Bilaspur, District Rampur, Uttar Pradesh, in his affidavit filed on behalf of the State of Uttar Pradesh, states that the FIR dated 17.10.2003 came to be registered against the petitioner at the

instance of respondent No.2 and after completion of the investigation charge sheet was laid before the trial court. He stated that the petitioner had attended the proceedings of the criminal cases before the Chief Judicial Magistrate, Rampur and she has not lodged any complaint with the police against respondent No.2 for extending threats to her life or causing any physical harm to her. He stated that if the criminal cases are transferred to the courts of other States, it would result in undue delay in the disposal of the cases and the State Government would also incur additional and unnecessary expenditure of the official witnesses, who will have to undertake their journey from Rampur to other places outside the State.

We have heard the learned counsel for the petitioner and learned counsel for the State of U.P. Respondent No.2, who was present, argued as a party in-person and canvassed all possible contentions in opposition to the transfer petitions.

The first ground urged by the learned counsel for the petitioner is that if the petitioner has to go to Rampur to attend the proceedings in the Court of Chief Judicial Magistrate, her safety would be in danger or she apprehends physical harm to her from respondent No.2 or anti-social elements. In our view, this is too nebulous a ground for transferring the cases from the Court of Chief Judicial Magistrate, Rampur, to the Court of competent jurisdiction at Delhi or Chandigarh. The petitioner has not substantiated her apprehension of threat or bodily harm or intimidation from respondent No. 2 or other anti-social elements as alleged by her. She has been going to Rampur in the past and attended the court proceedings before Magistrate and Collector but no untoward incident was ever brought to the notice of the police or the Chief Judicial Magistrate by her against respondent No.2. If the petitioner fears any sort of threat to her life, she can report the matter to the police or the Court who, in its turn, can after considering the needs of the situation, pass orders according to law including appropriate directions for police protection.

The next plea of illness of the petitioner is not supported by medical evidence. The petitioner has been travelling all the way from USA to India and going to Rampur to look after the landed property of her husband and daughter as their Attorney.

She has been going and attending the cases in the High Court of Judicature at Allahabad and in the civil court at Delhi pending inter se the petitioner and respondent No.2. The petitioner and respondent No.2, both practically seem to be of the same age group. The petitioner has also filed criminal case against respondent No.2 at Chandigarh and he has been attending the proceedings of the said case going all the way from Rampur and covering a distance of about 500 kms. as averred by him in his counter affidavit.

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 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. During the course of the hearing of these petitions, we are told that the distance between Rampur and Delhi is about 400-500

kms. We cannot loose sight of one more factor viz., that the criminal courts situated at Delhi or Chandigarh are already over-burdened with the pendency of the cases and it would not be in the interest of the litigating parties as well as in the interest of justice to add more cases to the dockets of the transferee courts to keep the trial of those cases pending for decades. In the circumstances, on the basis of vague and unfounded allegations made by the petitioner in the transfer applications against the respondent, we are not persuaded to accept the prayer of the petitioner for transferring the trial of Case Nos.3045/2004 and 1434/2004 pending in the Court of Chief Judicial Magistrate, Rampur, Uttar Pradesh, either to the Court of Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi, or to the Court of Chief Judicial Magistrate, Chandigarh.

In the result, for the above-said reasons, these transfer petitions are dismissed accordingly.

Special Leave Petition (Crl.) No.6163 of 2004:

This Special Leave Petition has been filed by the petitioner against the order dated 23rd November, 2004 recorded by the learned Single Judge of the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 4290/2004 whereby and whereunder the petitioner Smt. Parminder Kaur has been directed to deposit the passport in terms of the order dated 24th December, 2003 within a week from the date of the order in the trial court. The petitioner was granted bail by the Additional Sessions Judge, Fast Track Court No.2, Rampur, Uttar Pradesh vide order dated 24th December, 2003, on the conditions that she will not leave India till the conclusion of the proceedings in Case Crime No.390 of 2003 pending in the Court of Chief Judicial Magistrate, Rampur, Uttar Pradesh, under Sections 466, 468, 420 IPC pertaining to P.S. Bilaspur, District Rampur. The passport of the petitioner was also got deposited. The petitioner filed Criminal Miscellaneous Application No. 4290 of 2004 in the High Court of Judicature at Allahabad inter alia praying that the conditions so imposed by the court below may be removed so as to enable her to attend her old and ailing husband who is getting medical treatment in USA under the care of his daughters. The High Court vide order dated 03rd June, 2004, was pleased to suspend the operation of conditions so imposed for the period of two months and directed the release of passport of the petitioner. On 0th August, 2004, three weeks' further time was extended and the said period had expired on 27th August, 2004, when it was obligatory and mandatory for the petitioner to have deposited the passport as per the order of the Court. It appears that respondent No.2 herein moved the Criminal Miscellaneous Clarification Application No.204282 of 2004 in the High Court of Judicature at Allahabad with a prayer that as the petitioner has not complied with the order of the court, she be directed to deposit the passport and necessary consequential action shall be taken against her. The learned Single Judge of the High Court observed in the order dated 23rd November, 2004, impugned in this petition, as under:

"\005. Since the applicant is an old and ailing lady of 75 years age it appears that under some misunderstanding, she could not deposit the passport. So I am not inclined to pass any adverse order against her. She is directed to deposit the passport in the trial court within a week from today.

With these observations, the modification

application is disposed of."

It is this order which is under challenge before us. During the hearing of the Special Leave Petition, the learned counsel for the petitioner, on instructions, submitted before us that the petitioner has complied with the directions of the learned Single Judge dated 23rd November, 2004, and deposited her passport in the trial court within the stipulated period.

In view of the subsequent development, this Special Leave Petition does not survive and it stands disposed of having rendered infructuous.

JUDIS