

PETITIONER:
VIJAY PAL & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA & ANR.

DATE OF JUDGMENT: 03/11/1998

BENCH:
G.T.NANAVATI, S.P.KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

NANAVATI. J.

Leave granted.

Heard learned counsel for the parties.

What is called in question in this appeal is the propriety and legality of the judgment and order passed by the Punjab & Haryana High Court in Criminal miscellaneous No. 11034 of 1998, whereby the Sessions Case arising out of Case FIR No. 53 dated 28.1.1997, pending in the Court of Sessions Judge Sonapat is transferred to the Court of the Sessions Judge Chandigarh.

On 28.1.1997, Mukesh daughter of Karam Singh and wife of appellant No. 1 Vijay Pal died. It was an unnatural death. On the basis of the information lodged by Karam Singh an offence was registered by the Police. After investigation the police chargesheeted Vijay Pal, his elder brother Ved Pal and his mother Ankaur Devi for having committed offences punishable under Sections 498 A and 304 B IPC. On the case being committed the Sessions Court at Sonapat framed the charge on 26.9.97. It appears from the impugned interim order that the case was fixed for recording evidence on 19.11.97, 15.1.98 and 21.4.98. On 21.4.98 Karam Singh, his daughter Sunila and other prosecution witnesses approached Mr. Justice Singhal, who was on an inspection tour and happened to be at Gohana on that day, with an application for getting the said case transferred from the Sessions Court, Sonapat. It was alleged in the application that as party of the accused was terrorising prosecution witnesses they will not be able to depose freely before the Sessions Court at Sonapat. It was alleged that on 19.11.97, 5.1.98 and 21.4.98 also the accused had brought with them their musclemen for terrorising the prosecution witnesses. Singhal, J. received that application and a notice was issued to the accused/appellants. They were directed to appear before Singhal, J. on 23.4.98. The appellants did not appear before him on 23.4.1998. On 27.4.1998, Singhal, J. while camping at Sonapat passed the impugned order. The relevant part of it reads as under :

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH
CR.M.NO.11034 OF 1998

State Vs. vajay Pal and Others
Present: Lal Singh. grandfather of Smt. Mukesh- deceased,
wife of Vijay Pal in person.

Vijay Pal, Ved Pal and Ankur Devi-
Accused with Shri Raj Kumar, Advocate.
Shri Shatrughan, Public Prosecutor for
the State at Sonapat

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On 21.4.1998, while I was camping at Gohana in
connection with the annual inspection of the Courts there,
Karam Singh, his daughter Sunila and several others appeared
before me at PWD Rest House, Gohana and produced an
application before me praying that this case should be
transferred to Chandigarh as P.Ws will not be able to depose
in the case with full freedom. They are being terrorised by
accused party who hails from village Rattangarh, P.S.Sadar
Sonipat. Karam Singh has alleged that the accused party
brings with them armed musclemen death. On 19.11.97 and
15.1.98 on which dates evidence was to be recorded they had
brought witnesses, accused party began threatening P.Ws with
death. On those dates, they had brought a number of
musclemen with them. They repeated the same exercise on
21.4.98, when they had brought P.Ws with them.

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Without going into the merits of the transfer
application, suffice it to say that the accused and the P.Ws
should have an atmosphere where there can be a fair trial.
Fair trial is possible when there is no such apprehension of
danger to either party at the hands of other party.
Interests of justice and fair play demand that the trial
should not be held either in Sonipat Sessions Division or in
Karnal Sessions Division. Son that both the parties are away
from tension. It is desirable that this Sessions
case/Session trial be withdrawn from the file of the learned
Sessions Judge, Sonipat and transferred to the file of
learned Sessions Judge, Chandigarh. It is ordered
accordingly....."

Mr. Dahiya, learned counsel for the appellant has
challenged this order on the ground that it is improper,
unjust and illegal as the learned Judge while at Sonapat had
no jurisdiction to deal with an application made under
Section 407 Cr.P.C. It was also submitted that the order
was passed without giving proper opportunity of hearing to
the appellants. Learned counsel for the State also
contended that the procedure adopted by the learned Judge
was irregular and unjust and, therefore, the order under
challenge is illegal. Learned counsel appearing for the
contesting respondent was not able to justify the manner in
which the order was passed by the learned Judge.

On 21.4.98 Singhal.J. was camping at Gohana while
on an annual inspection of the Courts there. While he was
at the PWD Rest House, Karam Singh, his daughter Sunila and
other witnesses had approached him and given an application
for transferring the said sessions case. The learned Judge
should have either directed them to file that application in
the registry of the High Court at Chandigarh or if the
learned Judge was of the opinion that it was required to be
dealt with by the High Court in exercise of its suo motu
revisional power, he should have himself forward it to the
Registry of the High Court with a direction to place it
before a Bench competent to deal with it. There was no
valid reason for the learned Judge to entertain that
application at Gohana and pass the final order at Sonapat,
even if he was otherwise entitled to entertain such an
application under the Rules framed by the High Court and

allocation of work by the Chief Justice of the High Court. The learned Judge should not have entertained it as an application made under Section 407 Cr.P.C. when it was not presented in the prescribed manner and was not supported by an affidavit.

The procedure followed in deciding that application was strange. Notice was issued to the appellants by the Sessions Court, probably under direction of Singhal. J. Notice issued to Ankur Devi reads as under :-

IN THE COURT OF SHRI V.P. CHAUDHARY

SESSIONS JUDGE : SONIPATH.

State Vs. Vajay Pal and Others.

FIR No. 53 dated 28.2.97

P.S.Sadar, Sonapat

Under Section - 304-B IPC

498-A IPC

To,

Smt. Ankur Devi, wife of
Shri Mahabir Singh, Caste Jat,
Resident of Rattangarh, P.S., Sadar,
Sonipat.

In the above noted case you are directed to appear before His Lordship Hon'ble Mr. Justice M.L.Singhal, Punjab and Haryana at Camp Officer Sonapat on 23.4.98 at PWD Rest House, Sonapat, positively in connection with a Transfer Application.

Sd/- Superintendent

District and Sessions Judge

Sonipat

21.4.98

It called upon the appellants to appear before Hon'ble Mr. Justice M.L.Singhal, in the Sessions Case arising out of FIR No. 53 dated 28.2.97 of PS Sadar, Sonapat in connection with a Transfer Application. The appellants were directed to appear at Camp Office at PWD Rest House Sonapat. The notice did not refer to any other judicial proceeding except the proceedings pending in the Sessions Court. It did not state who had filed the Transfer Application. No copy of the application was sent along with it. It was not stated therein that the High Court has initiated a judicial proceeding on the basis of that application and hearing of that judicial proceeding is fixed before Hon. Singhal, J. With such a vague and confusing notice, it is not possible to say that sufficient opportunity of hearing was given to the appellants before deciding the Transfer Application which was subsequently numbered as Crl. Miscellaneous No. 11034 of 1998.

The learned Judge did not pass any order on it on 23.4.98. No other date was fixed for its hearing. On 27.4.98 he passed the order mentioning therein that the following persons were present :

"Lal Singh, grandfather of Smt. Mukesh
Deceased, wife of Vijal Pal in person
Vijay, Pal, Ved Pal and Ankur Devi accused
with Shri Raj Kumar, Advocate.
Shri Shatrughan, Public Prosecutor
for the State at Sonapat."

It is categorically stated by the appellants in their special leave petition that neither on 23.4.98 nor on 27.4.98 they had appeared before the learned Judge. It was submitted that they could not have known, in absence of any intimation in that behalf that the next hearing of the Transfer Application was to take place at Sonipat on 27.4.98 then they would have made submissions opposing the application. The judgment does not refer to any submission

made on behalf of the appellants. It is also doubtful if the public prosecutor Shri Shatrughan had also appeared before the learned Judge and was heard before that order came to be passed. It he was heard then at least it would have been stated in the judgment that he had supported or opposed the application. Learned counsel for the contesting respondent was not able to say that the appellants were heard on 27.4.98 before the Transfer Application came to be decided.

What is more disturbing is the fact that the learned Judge disposed of that application without considering the merits of the application. We have quoted earlier that part of the judgment which states so. It was not consent order. No finding was recorded to the effect that the prosecution witnesses were terrorised or were likely to be terrorised or influenced in any other manner. The learned Judge failed to appreciate that in absence of any justifiable reason it was not proper and legal to exercise the power under Section 407 Cr. P.C. and transfer the sessions case.

For the aforesaid reasons, we allow this appeal and set aside the order passed by the High Court in Criminal Miscellaneous No. 11034 of 1998.

JUDIS