

THE SUPREME COURT REPORTS

HAZARA SINGH GILL

v.

THE STATE OF PUNJAB

(A. K. SARKAR, M. HIDAYATULLAH AND J. C. SHAH, JJ.)

Criminal Trial—Transfer petition—serious allegations—No affidavit in reply—Duty of the Court—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 527.

Where in a petition for transfer of criminal case, very serious allegations are made by the petitioner on affidavit which are not denied specifically by the other side this court must go by the affidavit filed by the petitioner. In proceedings of this kind, the court does not examine witnesses in support of allegations of fact made by either side. Ordinarily, the court acts upon the affidavit of one side or other, but if one side omits to make an affidavit in reply, the affidavit of the other side remains uncontroverted.

Held, that where the petitioner, as in the present case, has by his affidavit made out a sufficient case from which it is possible for the court to infer that he reasonably entertains apprehension that he would not get justice in his case, the interests of justice demand that the case should be transferred outside the State.

ORIGINAL JURISDICTION : Transfer Petition No. 9 of 1963.

Petition under s. 527 Criminal Procedure Code for Transfer of cases Nos. 33/3 and 33/4 of 1963, under s. 52 of the Prisons Act, pending in the Court of Magistrate 1st Class, Amritsar, to a competent Court outside the State of Punjab.

G. S. Vohra and Harbans Singh, for the petitioner.

L. D. Kaushal, Deputy Advocate-General for the State of Punjab and *P. D. Menon*, for the respondent.

May 10, 1963. The Judgment of the court was delivered by

HIDAYATULLAH J.—This is a petition by one Hazara Singh Gill for the transfer of two criminal cases (Nos. 33/3 and 33/4 of 1963) under s. 52 of the Prisons Act, pending for trial in the court of Mr. Sant Singh, Magistrate, First Class, Amritsar. The petitioner requests that these cases be transferred outside the State of Punjab for disposal. The facts, in so far as they have been admitted by the State of Punjab, are as follows:

The petitioner is a resident of village Rattoke in the

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Amritsar District. He was elected as member of the Punjab Vidhan Sabha in the last General Elections after defeating S. Hardip Singh, the brother-in-law of the Chief Minister of the State. S. Surrinder Singh Kairon, son of the Chief Minister, and S. Ranjit Singh Grewal, who was posted as Senior Superintendent of Police at Amritsar, have married sisters. S. Mukund Singh, the father-in-law of S. Surrinder Singh, owned vast lands. S. Mukund Singh died without leaving any male issue and the estate came under the Court of Wards, and the petitioner obtained some of the lands from the Court of Wards. In May, 1960, the agitation for what is described as the 'Punjabi Suba' was started and the petitioner was arrested under ss. 411/414, Indian Penal Code, and a report was sent against him under s. 107/151, Cr. P. C., and a warrant was also issued. The petitioner was held for interrogation on a remand by the court. The petitioner was also arrested in a case under the Arms Act, and another, under the Indian Opium Act. His father and six others were arrested on 26-1-1961 under s. 107/151, Cr. P. C., but were discharged as a result of compromise in court. The petitioner was convicted and sentenced to two years' rigorous imprisonment in the case under the Arms Act and that sentence has been upheld by the High Court. He was also convicted in a case under the Prisons Act and sentenced to six months' rigorous imprisonment, which sentence was also confirmed by the High Court. These sentences are to run consecutively. The two cases in which the transfer is asked for are now pending and they have been referred to the Magistrate by the Superintendent, Jail, Amritsar. The petitioner points out that another petition of S. Mohan Singh Tur was transferred from the Punjab to Saharanpur by this Court.

What is not admitted or evasively denied in the affidavit of the State Government are the following facts stated by the petitioner on affidavit : After his election to the Vidhan Sabha, he has not been able to attend any meeting because he has been arrested and continuously kept in jail, that the petitioner is a protagonist of the Punjabi Suba, and supported the Akali candidates as against the Sadh Sangat Board which is supported by the Chief Minister; and that in the criminal cases in which the peti-

tioner was arrested, a bail of rupees one lakh was demanded from him as also from his father and six others. Since such a heavy bail could not be furnished, his father and the other persons languished in jail for four months till they were discharged on compromise in court, while he continued in jail. Further, a suit has been filed against the petitioner by the widow of S. Mukund Singh for Rs. 12,500 for arrears of rent and for eviction, and in the written statement made by the petitioner in that suit, he has alleged that the Court of Wards is being specially continued to save the application of the ceilings on land to the property left by S. Mukund Singh. The petitioner has also claimed in that suit that if the arrears of rent have to be paid, they are payable only by S. Surrinder Singh and S. Ranjit Singh Grewal. This has annoyed them. Further, while he was in jail, S. Surrinder Singh with police force took possession of the lands in September, 1960, and though a criminal complaint was filed against S. Surrinder Singh for threatening the petitioner's wife with a gun, the complaint was dismissed by the court for default of appearance of the petitioner as he was in jail and could not attend it. He alleged that the Superintendent, Jail, has purposely referred these cases to the Magistrate instead of dealing with them himself, so that a severe punishment might be imposed upon the petitioner, and the intention is to keep him in jail, so that he may be kept away from his lands, his property and his other amenities.

These further allegations, which have not been either admitted or denied, are of a very serious character, and one would have expected that an affidavit in reply would have been filed at least in respect of some of them, as for example, that the Magistrate had asked for excessive bail, or that the criminal complaint stood dismissed because the petitioner could not attend his case. These allegations could have been either admitted or stated to be false after looking into the records of the case. Further, the personal aspersions against the Chief Minister and the Senior Superintendent of Police, Amritsar, who have been charged with improper conduct by taking advantage of their official position, should have been denied by them on affidavit, if they were untrue.

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In the absence of any specific denial on the part of the State, the Chief Minister and the Superintendent of Police concerned, we must reluctantly go by the affidavit filed by the petitioner. In proceedings of this kind, it should be known that the Court does not examine witnesses in support of allegations of fact made by either side. Ordinarily, the Court acts upon the affidavit of one side or that of the other. But if one side omits to make an affidavit in reply the affidavit of the other side remains uncontroverted.

In the present case, the petitioner has asked for the transfer of the cases from the State of Punjab, and his allegation is that as there is no separation of the Judiciary from the Executive, the magistracy is under the control of the Executive and he would not get justice at the hands of any magistrate in the State. No doubt, an allegation of this type cannot be accepted, because it is impossible to think that there is no magistrate in the whole State who can rise above pressure, if any, brought by the Executive. However, the question is not one of finding such a magistrate and entrusting the cases to him. The question really is whether the petitioner can be said to entertain reasonably an apprehension that he would not get justice. One of the highest principles in the administration of law is that justice should not only be done but should be seen to be done. In the present case, there is enough allegation to show that certain strong parties are opposed to the petitioner in various ways. Whether they would exercise any influence upon the magistracy and whether magistracy would be able to withstand such a pressure, if made, is not germane to the present petition. We are of opinion that the petitioner has, by his affidavit, made out sufficient circumstances from which it can be inferred that he does entertain, and entertain reasonably, an apprehension that he would not get justice in these cases. In similar circumstances, this Court has not hesitated on an earlier occasion to transfer certain cases outside the State of Punjab. In our opinion, the present case is also one in which the interests of justice demand that the cases should be transferred outside the State of Punjab. We direct that the two cases shall be transferred to Sharanpur District and shall be tried there by a Magis-

trate who shall be chosen by the District Magistrate of Saharanpur for their disposal according to law.

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Petition allowed.

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(K. SUBBA RAO, RAGHUBAR DAYAL AND J. R. MUDHOLKAR, JJ.)

Criminal Trial—Acquittal order set aside by High Court—Appeal preferred to this Court—Procedure to be followed by this Court in hearing the appeal—Constitution of India, Art. 136.

The appellants formed themselves into an unlawful assembly and in pursuance of their common object caused the death of two persons. They were tried under ss. 148 and 302/149 of Indian Penal Code. The trial Court acquitted them of all the charges. On appeal, the High Court, on a review of the entire evidence, set aside the order of acquittal and sentenced each of them to undergo rigorous imprisonment for life and one year respectively under the aforesaid charges. Hence this appeal.

Held, (per Subba Rao and Mudholkar JJ.) This Court has full discretion to hear an appeal under Art. 136 of the Constitution on facts and law. But this wide jurisdiction has to be regulated by the practice of this Court. There are two ways of approach to the hearing of such an appeal by this Court: one is to go through the entire evidence and then come to a conclusion whether the High Court has infringed the principles laid down in *Sanwat Singh's* case or whether the appeal is an exceptional one which calls for the interference of this Court in the interest of justice. The other and more convenient method is to allow the counsel to state the case broadly and, after going through the judgments of the lower courts, to come to a conclusion whether the appeal falls under one or other of the two categories mentioned above and then, if the court is satisfied that it is a fit case to review the entire evidence, to do so.

The second method is a more convenient one as it also prevents the unnecessary waste of time involved in adopting the alternative procedure of treating practically such an appeal as a regular appeal. Obviously this Court cannot lay down an inflexible rule of practice in this regard and it must be left to the division benches to follow the procedure that appears suitable to them.