

that the impugned order of the High Court interfering with the order of transfer was in excess of jurisdiction and an improper exercise of judicial power. We are constrained to observe that the impugned order has been passed in breach of the settled principles and precedents which have consistently been enunciated and followed by this Court. The manner in which judicial power has been exercised by the High Court to stall a lawful order of transfer is disquieting.

We express our disapproval.”

18. In the present case, though, the petitioner was given an option for posting at three Schools, where the NCC Unit is available in the promoted cadre of Elementary School Head Master but the petitioner declined to accept the said offer and remained adamant that he is entitled to continue at Government Senior Secondary School Behlba, District Rohtak (2647), where the petitioner is serving for the last about 15 years. This shows the conduct as well as true intention, which cannot be accepted.

19. This Court, keeping in view the facts and circumstances noticed above, hold that no interference is called for in respect of the order dated 26.04.2021 (Annexure P-7) by which the petitioner has been posted to Govt. Girls Middle School, Manethi, District Rewari (2583) and also the order dated 07.05.2021 (Annexure P-10) rejecting the representation as well as order dated 08.05.2021 relieving him to join at Govt. Girls Middle School, Manethi, District Rewari (2583).

Consequently, the writ petition is dismissed with no order as to costs.

RMS

Dismissed.

(2021-3)203 PLR 418

Punjab and Haryana High Court
Before : Justice Arun Kumar Tyagi.
 SUMEDH SINGH SAINI - petitioner.

Versus

STATE OF PUNJAB and Another - Respondent.
 CRM-25749-2021, CRM-25750-2021 in CRM-M-45242-2018

Practice and procedure - Covid-19 - Adjournment of cases under general orders issued by the Chief Justice - When a case is adjourned under orders of Hon'ble the Chief Justice on the ground of spread of pandemic of Covid-19 it is expected that parties will maintain status quo and will not disturb the same whether the case be on criminal side or civil side without approaching the Court for appropriate directions - If a party to any such case approaches the Court for early hearing generally there can be no valid objection to the same, but for some malafides, as the adjournment was not that by the Court hearing the matter. [Para 8]

Mr. A.P.S. Deol, Sr. Advocate with Mr. Jasdev Singh Mehndiratta, for the applicant/petitioner. Mr. Sidharth Luthra, Sr. Advocate assisted by Mr. S.S. Narula, Mr. Anmol Kheta, Advocate, Mr. Sheezan Hasmi, with Ms Anusha Nagraja, DAG, Punjab and Ms Diya Sodhi, Asstt. A.G., Punjab for respondent No.1-State. None for respondent No.2-CBI.

Arun Kumar Tyagi, J. - (19.08.2021) -

(The case has been taken up for hearing through video conferencing.)

CRM-25749-2021

1. The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for pre-ponement of the date i.e. 24.11.2021 fixed in case CRM-M-45242-2018 under the orders of Hon'ble the Chief Justice.

2. The application has been filed on the averments that the petitioner had filed the petition expressing his apprehension of false implication in criminal cases on account of malice, malafides and ulterior motives attributed to the political party in power in the State of Punjab. Despite directions having been given on 23.09.2020 the officials of the respondent-State are making attempts to arrest the petitioner by falsely implicating him in false cases. Application for extension of the protection to any incident in which the petitioner was sought to be arrayed as an accused was filed which came up for hearing on 16.03.2021 on which learned State Counsel sought time to file reply. The case was adjourned to 06.04.2021 for filing affidavit giving details of the cases in which investigation regarding involvement of the petitioner was pending. In case FIR No.13 dated 02.08.2021 registered under Sections 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 109 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Vigilance Bureau, Phase-I, Mohali the petitioner was granted interim anticipatory bail by this Court vide order dated 12.08.2021. The petitioner having no alternative has filed the present application seeking directions to respondent No.1-State to comply with order dated 16.03.2021 and for preponement of the case.

3. Learned Counsel for the petitioner has submitted that the petitioner has been arrested on 18.08.2021 in violation of the order passed by this Court.

4. Pursuant to advance notice, Mr. Sidharth Luthra, Sr. Advocate assisted by Mr. S.S. Narula, Advocate have appeared and submitted that respondent No.1-State be given time to file reply to the application for pre-ponement of the hearing of the main case.

5. In view of the facts and circumstances mentioned in the application and the prayer made therein, grant of an adjournment for filing of reply to the application is not warranted and filing of reply is not necessary as whatever submissions are to be made on behalf of respondent No.1-State in the reply can be made before this Court by learned Senior Counsel for respondent No.1-State and the Counsel assisting him who are given opportunity to make their submissions. Therefore, adjournment for filing of reply is declined.

6. Application for preponement of the case is opposed by respondent No.1-State and Mr. Sidharath Luthra, learned Senior Counsel assisted by Mr. Sartej Singh Narula, Advocate has submitted that there is no urgency in preponing of the matter. In the application for preponement of the hearing, the petitioner has referred to non-filing of the affidavit by respondent No.1-State in compliance with order dated 16.03.2021 which is not a valid ground as the case stood adjourned to 24.11.2021 and respondent No.1-State was not, therefore, required to file any affidavit before that date. In the application, the petitioner has referred to FIR No.13 dated 02.08.2021 registered under Sections 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 109 and 120-B of the IPC at Police Station Vigilance Bureau, Phase-I, Mohali. In the above said case the petitioner was granted interim anticipatory bail. The petitioner filed an application CRM-25383-2021 in CRM-M-32417-2021 for extension of the interim anticipatory bail order which was dismissed as withdrawn vide order dated 17.08.2021. The present application was filed on 18.08.2021 but copy of the order dated 17.08.2021 has not been attached with the application. The petitioner was arrested on 18.08.2021 and habeas corpus petition has been filed regarding the same. There is no urgency for preponing the case. Therefore, the application for preponement of the case may be dismissed.

7. The petitioner filed petition under Section 482 of the Cr.P.C. seeking directions to respondent No.1-State for transfer of investigation of the cases registered against

him to the CBI or any other independent agency and for issuance of directions to respondent No.1 to keep any proposal for arresting the petitioner in any criminal matter in abeyance for a specific period of time so as to enable him to seek his legal remedies. Vide order dated 11.10.2018, Co-ordinate Bench directed that in case the petitioner is sought to be arrested in Kotkapura sacrilege case or in case involving Aman Skoda of Moga or in any case pertaining to an incident of the period while the petitioner remained as State Vigilance Head or Inspector General of Police, Intelligence, Punjab or Director General of Police Punjab, then one week's advance notice shall be afforded to the petitioner before effecting his arrest so as to enable him to have recourse to remedies available to him. Subsequently vide order dated 23.09.2020 on application filed by the petitioner this Court extended the protection of order dated 11.10.2018 to any incident pertaining to the entire service career of the applicant/petitioner except the incident subject matter of case FIR No.77 dated 06.05.2020 registered under Sections 364, 201, 344, 330, 219, 120-B of the IPC at Police Station City Mataur, District S.A.S. Nagar (Mohali) to which Section 302 of the IPC was added lateron regarding which SLP No.4336 of 2020 titled Sumedh Singh Saini Vs. State of Punjab is pending before Hon'ble Supreme Court. In case the applicant/petitioner is sought to be arrested in any case pertaining to any incident during entire service of the petitioner, other than the incident subject matter of abovesaid FIR No.77 dated 06.05.2020, then one week's advance notice shall be given to the petitioner before effecting his arrest so as to enable him to have recourse to remedies available to him in accordance with law. Vide order dated 16.03.2021 this Court directed respondent No.1-State to file an affidavit of the concerned officer giving the details of the cases in which investigation regarding the involvement of the petitioner was pending. The case was adjourned to 06.04.2021.

8. Due to rampancy of pandemic of Covid-19 the case was adjourned under the orders of Hon'ble the Chief Justice to 24.11.2021. When a case is adjourned under orders of Hon'ble the Chief Justice on the ground of spread of pandemic of Covid-19 it is expected that parties will maintain status quo and will not disturb the same whether the case be on criminal side or civil side without approaching the Court for appropriate directions. If a party to any such case approaches the Court for early hearing generally there can be no valid objection to the same, but for some malafides, as the adjournment was not that by the Court hearing the matter. In the application, the petitioner expressed his apprehension of false implication in criminal matters on account of malice, malafide and ulterior motives which were attributed to the political party in power in the State of Punjab. This application was typed on 17.08.2021 and was filed in the Registry on 18.08.2021 and was accepted for listing today i.e. on 19.08.2021. Copy of order dated 17.08.2021 might have been passed after typing of the present application and therefore, not filing copy of the above said order is inconsequential so far as the disposal of the present application is concerned. To hold otherwise will lead to absurd consequences as during the time the application is typed and then filed and is thereafter mentioned for hearing further developments may take place and if any person is to be required to mention all such developments which take place during such period then there may be no finality of events. Mere pendency of other cases or even filing of the habeas corpus petition is no ground to decline the present application for preponement. The matter involves urgent hearing by this Court as the petitioner is alleged to have been arrested in violation of the orders passed by this Court.

9. In view of these facts and circumstances of the case, the application is allowed and the case is preponed to today i.e. 19.08.2021. CRM-M-45242-2018

10. On being asked Mr. Sidharath Luthra, learned Senior Counsel assisted by Mr. Sartaj Singh Narula, Advocate has submitted that the petitioner has been arrested in

case FIR No.11 dated 17.09.2020 registered under Sections 409, 420, 467, 468, 471 and 120- B of the IPC and Sections 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended in 2018 at Police Station Vigilance Bureau Flying Squad-1, Punjab, Mohali.

11. Respondent No.1-State is directed to file copies of the relevant documents including arrest memo prepared at the time of his arrest, document intimating him about the grounds of arrest, document intimating his family member/friend about his arrest and copy of the FIR through e-mail or through special messenger.

12. As requested by learned Senior Counsel for respondent No.1-State the case will be taken up at 03:00 P.M. for resuming hearing of the matter.

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PUNJAB AND HARYANA HIGH COURT

Before: Justice Harsimran Singh Sethi

BHAGAN DEVI @ BHAGAN – Petitioner,

Versus

DEPUTY COMMISSIONER-CUM-APPELLATE TRIBUNAL FAZILKA, DISTRICT FAZILKA and others - Respondents.

CWP-11088-2021

(i) Maintenance and Welfare of Parents and Senior Citizens Act, 2007, (56 of 2007), Section 8 - Tribunal in its wisdom had allowed the parties to summon the witnesses to support their averments by recording their statements that Tribunal arrive at just and proper conclusion in resolving of the disputes between the parties - Admittedly, Tribunal did not allow the cross-examination of the witnesses after recording their statements in examination-in-chief and the Tribunal decided the lis between the parties on the basis of the statements of the witnesses given in examination-in-chief - The said procedure adopted by the Tribunal is not only faulty, but has caused prejudice - The decision which has been arrived at by the Tribunal by following the process, which has caused prejudice to a party to the lis, cannot be allowed to operate and the appellate authority has rightly found that the proper procedure has not been followed by the Tribunal . [Para 17]

(ii) Civil Procedure Code, 1908 (V of 1908), Order 18 Rule 4 - Cross-examination is held to be mandatory in order to accept the statement of a witness given in examination-in-chief and without the cross-examination, the statement of the witness tendered in examination-in-chief carries no weight and cannot be accepted at all - cross-examination-in-chief is a weapon in hand of a party to test the veracity of the statements given by the witness in examination-in-chief and to put question to the witness to raise question marks on the averments made in the examination-in-chief. The said weapon which is the nature of a right cannot be taken away even under the garb of summary proceedings to be adopted for deciding the lis between the parties under 2007 Act. [Para 12, 13]