

## **Smt. Kaushalya Devi vs Shri Mool, Raj And Others on 4 September, 1963**

**Bench: P.B. Gajendragadkar, K. Subba Rao, K.N. Wanchoo, N. Rajagopala Ayyangar, J.R. Mudholkar**

PETITIONER:

SMT. KAUSHALYA DEVI

Vs.

RESPONDENT:

SHRI MOOL, RAJ AND OTHERS

DATE OF JUDGMENT:

04/09/1963

BENCH:

ACT:

Practice-Application by accused for transfer-Affidavit by trying Magistrate opposing application-Propriety.

HEADNOTE:

Criminal proceedings were started against the petitioner and three others on an complaint made by the first respondent alleging that the four accused persons had committed offences under s. 420 read with s. 120B of the Indian Penal Code. Originally the Magistrate had dispensed with the personal appearance of the petitioner in court, but on application made by the complainant, the Magistrate made an order directing the petitioner to be present in court in order to give an opportunity to the complainant's witness to identify her. Apprehending that this order would lead to her prejudice, she made an application in the Supreme Court for transfer of the case to some other court, on the grounds, inter alia, that the facts alleged by the complainant might perhaps constitute a civil dispute but the said facts had been deliberately twisted and a criminal complaint had been made to harass the petitioner. After the petition was admitted and interim stay granted to the petitioner pending the hearing and final disposal of the main petition, an affidavit was filed on behalf of the Delhi Administration, by the Magistrate himself, opposing the application and stating, Inter alia, that the clause indemnifying the purchaser contained in the sale deed on which the petitioner relied on would not absolve the petitioner from criminal liability. Thus it was clear that the

deponent Magistrate had adopted the argument which might probably be. -urged by the complainant at the trial.

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HELD : (i) The action of the Magistrate in making an-affidavit and opposing the application for transfer was wholly improper.

In criminal trials, particularly, it was of utmost importance that the Magistrate who tried the case must remain fearless, impartial and objective; and if a Magistrate chose to make an affidavit challenging the application made by an accused person whose case was pending in his court, made the said affidavit on behalf of the Administration, and in the affidavit put a strong plea opposing the transfer, all essential attributes of a fair and impartial criminal trial were immediately put in jeopardy.

(ii) Even without considering the merits of the contentions raised by the petition or, it was expedient in the ends of 'Justice that the case should be transferred to some other court of competent jurisdiction.

#### JUDGMENT:

ORIGINAL JURISDICTION : Transfer Petition No. 15 of 1963. Petition for transfer of a criminal case pending in the Court of Sub Divisional Magistrate Delhi to any other Court in a neighbouring State.

B. C. Misra, for the petitioner.

R. N. Sachdev, for respondent No. 5.

September 4, 1963. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-The petitioner Mrs. Kaushalya Devi is being tried along with three other persons in the Court of the Sub-Divisional Magistrate, Delhi. These criminal proceedings commenced on a complaint made by Mool Raj Hukam Chand against the petitioner and three other persons alleging that the four accused persons had committed offences under section 420 read with s. 120B of the Indian Penal Code. The complainant's case is that the transaction between him and the petitioner in relation to the registration of Plot No. 210 in Meenakashi Garden was the result of cheating. This transaction took place, according to him, in June, 1959, and the complainant had paid to the petitioner Rs. 1150 at the time of the registration of the document. According to him, the plot shown to him and given in his possession in pursuance of the said transaction did not belong to the petitioner and that, in substance, is the basis of the charge under s. 420 read with s. 120B 1. P. C. The complaint alleges that after independence, a profession of colonisers who cheat the illiterate and poor people by clever means and relieve them of their hard-earned income, has grown in Delhi, and the complainant's grievance against the petitioner and the three other persons mentioned by him in his complaint appears to be that they belong to this class of dishonest Colonisers. The complaint was

filed in the Court of Mr. R. N. Singh, Magistrate 1st Class, Delhi.

After the petitioner appeared before the learned Magistrate, an application was made on her behalf under s.253(2) of the Criminal Procedure Code for her discharge, but no order was made on the said application. The petitioner alleges in her present petition that after she moved the learned Magistrate under s. 253(2) of the Code, the complainant realised that his complaint suffered from several infirmities, and so, he began to make additions and improvements in the case set out by him against the petitioner. With that object he urged before the learned Magistrate that though the transaction between him and the petitioner was substantially carried through by the agents of the petitioner who are the three other accused persons in the case, the petitioner was present at the spot at the relevant time and he suggested that his witnesses would identify the petitioner as the person who was present at the spot on the relevant and material occasion during the course of the negotiations and before the transaction was finalised.

On this representation, the complainant obtained an order from the learned Magistrate, Mr. Grover who was then trying the case, that the petitioner should be produced in court on the 29th May, 1962. Till then, the learned Magistrate had dispensed with the personal appearance of the petitioner in court, but by the order passed by him on the 29th May, 1962, she was directed to be present in court in order to give an opportunity to the complainant's witnesses to identify her. The petitioner's case is that she was not present on the scene and so, none of the complainant's witnesses had seen her at all; the complainant's motive in requiring the petitioner to be present in court was obvious-if the petitioner attended the court, she would be asked to sit in the place meant for accused persons and, even otherwise in all probability, she would be the only lady present court. That is how the complainant's witness could wily pretend to identify her as die person who was present on the scene. Apprehending that this order would lead to her prejudice, the petitioner moved this Court for transfer of the proceedings pending against her before Mr. Grover (Transfer Petition No. 8/1962). At the hearing of the said petition, this Court adjourned the matter for three weeks to enable the petitioner in the meantime to apply to the Sessions Judge for transfer of the case to a Magistrate drawn from a State other than Punjab. Interim stay which had been granted by this Court after admitting the transfer petition was ordered to continue till the disposal of the said petition.

Subsequently, the petitioner moved the learned Sessions judge, Delhi, and the case against the petitioner was transferred to the Court of Mr. S. N. Chaturvedi, Sub- Divisional Magistrate, Delhi, and so, the proceedings were resumed in his Court. During the course of these pro- ceedings, the learned Magistrate, however, saw no reason to modify the order already passed against the petitioner directing her to be present in court when the complainants witnesses would give evidence, and the arguments urged by the petitioner against the propriety and validity of the said order were rejected by the learned Magistrate. That is why the petitioner has filed the present petition praying that the criminal Case No. 44/2 which is at present pending against her and three other persons in the Court of Mr. S. N. Chaturvedi, S. D. M., Delhi, should be transferred from the said Court to any other Court of competent Jurisdiction in any neighbouring State.

In the course of her petition, the petitioner has alleged that Dalip Singh who is one of the persons accused along with her, had been appointed by her as her agent, but the petitioner has now learnt

that Dalip Singh is a great friend of Sardar Partap Singh Kairon, Chief Minister of Punjab, and that his antecedents are far from satisfactory. It has been averred in the present petition that Dalip Singh has recently undergone six months' rigorous imprisonment on a charge of cheating and was later involved in other serious offences. Her apprehension is that by virtue of his friendship with the Chief Minister of Punjab, Dalip Singh wields considerable influence and may take steps to, prejudice the petitioner's case, though he happens to be one of the accused persons. In fact, the petitioner avers that "it is not without significance that Dalip Singh had been holding out the threat that if the petitioner's case is transferred to any Delhi Magistrate's Court, he would get her convicted."

In fact, the main point which the petitioner has made in the present petition is that the present complaint is frivolous and has been filed against her because she happens to be mother-in-law of Mr. R. P. Kapur who has incurred the wrath of the Chief Minister of Punjab. The petitioner herself is 61 years old and has been involved in several cases along with her son-in-law Mr. Kapur. Her grievance appears to be that putting the case of the complainant at its best, the facts alleged by him in his complaint may perhaps constitute a civil dispute, but the said facts have been deliberately twisted and a criminal complaint has been made to harass the petitioner.

After this petition was admitted and interim stay granted to the petitioner pending the hearing and final disposal of the main petition, an affidavit has been filed on behalf of the Delhi Administration by Mr. Chaturvedi, the Sub-Divisional Magistrate, himself and that has created a serious complication. In the ordinary course, an affidavit should have been filed by some officer representing the Delhi Administration. An affidavit could also have been filed by the complainant; but it is not easy to understand how the Delhi Administration requested the learned Magistrate himself to make the affidavit, and how the learned Magistrate accepted the said request. In the petition, the petitioner has not made any specific personal allegation against the learned Magistrate in whose court the present petition is pending. The main ground on which the petitioner is seeking transfer from his court is that like Mr. Grover, the present Magistrate also is insisting upon the petitioner remaining present in court, and that, says the petitioner, is an unreasonable and irrational order. In other words, just as the petitioner moved the Sessions Court successfully for transfer of her case from the court of Mr. Grover on the ground that the said Magistrate had directed the petitioner to remain present in court for the purpose of giving an opportunity to the complainant's witnesses to identify her, so she made the same request by her present petition, because the same order was being enforced by the Sub-Divisional Magistrate in whose court her case now stands transferred; and if the Sub-Divisional Magistrate himself had not made an affidavit, we would have had to consider whether it was necessary to transfer the case on the ground made by the petitioner; but in view of the fact that the Sub-Divisional Magistrate himself has, in a sense, entered the arena and made a counter-affidavit opposing the transfer application, the complexion of the problem is completely changed. That is why we have just indicated after the present petition was admitted, a serious complication has arisen by virtue of the fact that the Sub-Divisional Magistrate himself has made a counter-affidavit.

The affidavit of the Sub-Divisional Magistrate is described as an affidavit made on behalf of the Delhi Administration. In his affidavit, the Magistrate has covered all the allegations made by the petitioner paragraph by paragraph and naturally in several places he has said that the allegations

relate to facts which are not within Ms knowledge, and so, he cannot make any averment in that behalf. Even so, in paragraph 6 of the affidavit, the deponent Magistrate has alleged that the clause indemnifying the purchaser contained in the sale-deeds on which the petitioner. Relies, would not absolve the petitioner from criminal liability; and, thus, it is clear that the deponent Magistrate has adopted the argument which may probably be urged by the complainant at the trial. The affidavit has further averred that the executive has no influence so far as the deponent's court is concerned, and it has emphasised that "there is no Justifiable cause for any apprehension on the part of the petitioner which would justify the transfer of her case from this Court". In the end, the affidavit says that the petition made for transfer should be dismissed.

This Court has had occasion to deal with transfer applications in several cases, but we have never come across a case where the allegations made in the transfer applications are contested by an affidavit made by the learned Magistrate who tries the case himself. It is true that if in a petition for transfer allegations are made against the Magistrate in regard to what he said or did during the 57-2 S. C. India/64 course of the trial, and it appears that the said allegations require to be examined, this Court calls for a report from the Magistrate ; and when a report is thus called for, the Magistrate no doubt gives his version in respect of the allegations made by the petitioner against him. But it is impossible to understand how the Magistrate in whose court the proceedings in question are pending can rush into the arena and make an affidavit disputing the prayer made by the petitioner for transfer of the case. A transfer application can be opposed by the complainant if the proceedings have commenced at the instance of a private complainant; it may be opposed by the State; but the Magistrate in whose court the proceedings are pending should never forget that he is a judge and not a partisan for the Administration or the prosecution; that is why it is inconceivable that he should make an affidavit like the present traversing the grounds set out by the accused person when an application for transfer is made by him/her, but, unfortunately, that is precisely what has happened in the present case. The statement made by the learned Magistrate in paragraph 6 of his affidavit, to which we have already referred, clearly shows that the Magistrate has assumed a partisan role and has purported to contest the plea which the petitioner wanted to raise in defence in respect of the charge levelled against her by the complainant. Unfortunately, in some parts of the country, the policy of separating the Judiciary from the executive has still not been implemented. Nevertheless, we are confident that even in areas where such separation has not taken place, members of the judiciary are functioning without fear or favour. But when an instance like the present comes to the notice of this Court, it naturally causes us considerable concern. The learned Magistrate who has been ill-advised to make the present affidavit, did not realise that when he entered the arena and made an affidavit on behalf of the Administration, his statement that the executive has no influence in his court, is apt to sound idle and meaningless. A little reflection would have satisfied him of the gross impropriety of his action in making an affidavit like the present. It is an elementary principle of the rule of law that judges who preside over trials, civil or criminal, never enter the arena. In criminal trials, particularly, it is of utmost importance that the Magistrate who tries the case must remain fearless, impartial and objective; and so, no argument is required in support of the proposition that if a Magistrate chooses to make an affidavit challenging the application made by an accused person whose case is pending in his court, makes the said affidavit on behalf of the Administration, and in the affidavit puts in a strong plea opposing the transfer, all essential attributes of a fair and impartial criminal trial are immediately put in jeopardy. It is very

much to be regretted that the Delhi Administration chose to request the Magistrate to make an affidavit and that the Magistrate accepted the said request and made the affidavit on the lines we have already indicated. That being so, even without considering the merits of the contentions raised by the petitioner, we think it is expedient for the ends of justice that the case pending against the petitioner and three other persons should be transferred from the court of the learned Sub-Divisional Magistrate, Delhi, to a court of competent jurisdiction in Saharanpur, U. P. We accordingly direct that the papers in this case should be sent to the District Magistrate, Saharanpur, who should nominate a Magistrate of competent jurisdiction in his district to try this case.

It is true that three other persons also stand charged along with the petitioner in the present case, but having regard to the unusual facts which have justified the transfer, we do not think it necessary to consider whether the said three accused persons are agreeable to have their case transferred to a court of competent Jurisdiction in Saharanpur. The complaint discloses that the said accused persons are alleged to be concerned with the offences only as agents and representatives of the petitioner, and so, the main charge is against the petitioner herself. Besides, on the last occasion when the learned Sessions judge, Delhi, transferred the case from the court of Mr. Grover to the court of the Sub-Divisional Magistrate, the transfer was ordered mainly at the instance of the petitioner alone.

In this connection, we ought to make it clear that we have not heard the complainant Mool Raj, nor Dalip Singh against whom the petitioner has made several alle-

gations, and so, in ordering the transfer of the case pending against the petitioner, we are expressing no opinion on the allegations made by the petitioner against the said two parties or against the Chief Minister of Punjab. Transfer ordered.