

Sr. No. 60
Regular

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

**TrP (Crl) No. 40/2022  
 CrlM No. 1300/2022**

**Javaid Ahmad Sheikh** ...Appellant(s)/Petitioner(s)

Through: Mr. N.H. Shah, Advocate, with  
 Ms. Shaila Shameem, Advocate.

**Vs.**

**Mohammad Iqbal Thoker** ...Respondent(s)

Through: Mr. Malik Mushtaq, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.**

**ORDER  
 12.12.2022**

1. Through the medium of instant application, the petitioner seeks transfer of criminal complaint titled as "*Mohammad Iqbal Thoker Vs. Javaid Ahmad Sheikh*" from the Court of Sub Judge/Judicial Magistrate, Pulwama, to any other competent Court outside the jurisdiction of District Pulwama on the premise that the complainant-respondent herein filed a false and frivolous complaint under Section 138 of Negotiable Instruments Act, before Sub Judge/Mobile Magistrate Pulwama to harass the petitioner and that on various occasions when the petitioner tried to appear before the said Court, the respondent gave a beating to the petitioner with the help of security personnel attached with the brother of the respondent and that though the petitioner in this connection approached the Police concerned yet the police did not register any case against the respondent and instead illegally detained the petitioner for undisclosed reasons and that not only on account of the said threat to the petitioner, but also owing to the convenience of the parties, the complaint is liable to be transferred to any other Court of competent jurisdiction outside District Pulwama.

2. Objection to the application have been filed wherein the petition filed by the petitioner is being opposed on the ground that the allegations leveled are baseless and false and lacks material particular and that the petition is aimed at to delay the proceedings before the Court at Pulwama and the witnesses of the respondent in the matter hail from District Pulwama and transfer of the complaint to any other Court outside District Pulwama would be inconvenient to the respondent.

**3. Heard learned counsel for the parties and perused the record.**

4. Perusal of the record in particular para 2 of the petition being relevant and significant is extracted and reproduced hereunder: -

*“That the respondent has submitted the present complaint in the court of Judicial Magistrate Pulwama just to harass the petitioner/applicant at various occasions when the applicant/petitioner tried to appear in the court, outside the court respondent/non-applicant has beaten the petitioner/applicant even he has taken the help of security persons who are attached with the brother of the respondent/non-applicant”*

5. The reply filed thereto the said para by the respondent being germane is also extracted and reproduced hereunder: -

*“In reply to Para 2 and 3 it is submitted That the applicant has leveled false and baseless allegations said statement as made in the petition lacks material particulars which only misleading only to delay the proceedings pending before the court of Ld mobile magistrate Pulwama It is submitted there is no foundation or basis for such an apprehensive stand taken by the Applicant that the he is not able to contest the proceedings in the court of special mobile magistrate Pulwama is only it is submitted that the compliant has been filed on 23.11.2021 and the petitioner has caused his appearance before the court after a period of one year hence the allegations made in the”*

6. A bare perusal of the contention urged by the petitioner in para 2 (supra) reveals that a specific allegation has been leveled against the respondent for having harassed the petitioner on his appearance before the Court at Pulwama so much so the alleged beating given to the petitioner with the help of security personnel

attached with the brother of the respondent. The said contention of the petitioner as emerged from a plain reading of reply filed by the respondent has not been specifically denied. Thus the only inference that could be drawn, as such, would be that the contention of the petitioner is being admitted by the respondent.

7. Law is no more *res integra* that under Section 407 of the Code of Criminal Procedure power is vested unto the High Courts to transfer cases from one Court to another and *inter alia* a ground for fair and impartial enquiry or trial as also convenience of parties has been held to be a legitimate ground for transfer of a criminal case.

8. The contention of the petitioner (*supra*) and its response (*supra*) by the respondent thereto manifestly suggests that the petitioner may not likely have fair chance to defend the case before the Court at Pulwama so much so it would also not be inconvenient to the respondent in the event the case is transferred to a Court of competent jurisdiction at Srinagar, being almost at equal distance from the place of residence of the petitioner and respondent.

9. Having regard to the aforesaid facts and circumstances obtaining in the matter as also the position of law noticed in the preceding paras, the petitioner has been able to carve out case for exercise of jurisdiction of this Court under Section 407 Cr.P.C. Accordingly, complaint filed by the respondent against the petitioner titled as “Mohammad Iqbal Thoker Vs. Javaid Ahmad Sheikh” pending before the Court of Sub Judge/ Judicial Magistrate, Pulwama, is withdrawn from the files of the said Court and transferred to the Court of Chief Judicial Magistrate, Srinagar, who shall either retain the same or else transfer/assign the same to any other Court of competent jurisdiction for disposal in accordance with law.

10. Registry is directed to convey this order to the Court of Sub Judge/ Judicial Magistrate, Pulwama, for compliance immediately.

11. Parties, accordingly, are directed to appear before the Court of Chief Judicial Magistrate, Srinagar on 30.12.2022.

12. Disposed of.

**(JAVED IQBAL WANI)  
JUDGE**

**SRINAGAR**

**12.12.2022**

Junaid

