

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRTA No. 14/2015
CrIM No. 1139/2022
IA No. 1/2015
IA No. 2/2015

Shabir Ahmed Khan

.....Appellant(s)/Petitioner(s)

Through: Mr. Ravi Abrol, Advocate

vs

State of J&K and anr.

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG for R-1

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

1. Notice was sent to respondent No. 2 through registered post on 21.12.2022. As per report, the same has been delivered to the concerned. The service of respondent No. 2 is, therefore, complete.
2. The petitioner/accused has filed the instant petition seeking transfer of criminal challan titled, *State of J&K vs. Shabir Ahmed Khan*, which is pending trial before the court of Chief Judicial Magistrate, Srinagar to any other court of parallel jurisdiction at Jammu.
3. It has been submitted in the petition that the petitioner is a politician and due to political rivalry, in order to tarnish his image, he has been falsely implicated in a case on the basis of a complaint made by respondent No. 2, who happens to be wife of a separatist leader. According to the petitioner, he engaged service of Mr. Mohd. Abdullah Pandit, Advocate for defending his case before the court of Chief Judicial Magistrate, Srinagar and when the said Advocate argued his case before the learned Magistrate, he received threat to his life and thereafter, he refused to appear on behalf of the petitioner. It is

further submitted that two more lawyers, namely, Mr. Maroof Khan and Mr. Shokat were approached by the petitioner to appear on his behalf but they also refused to accept the brief of the petitioner. It is further submitted that the atmosphere surrounding the court premises is highly surcharged and hostile and whenever, he appears before the court, slogans are being raised against him inside and outside the court premises. It is averred that at the time when the case is being taken up for hearing, the court remains jam packed and the petitioner apprehends grave and serious bodily attack from the crowd which gathers over there, upon the instigation of the separatists.

4. Notice of the application was sent to the respondent/State as well as to respondent No. 2/complainant. The State has put its appearance but no objections to the application have been filed, despite lapse of seven years from the date of its filing. The respondent No. 2/complainant has not put in her appearance nor objections to the application have been filed.
5. Heard learned counsels for the parties and perused the record.
6. Section 526 of the Jammu and Kashmir Cr.P.C., which is applicable to the instant case vests power with the High Court to transfer a case from Criminal Court Subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction. The grounds on such power can be exercised by the High Court are enumerated in Clause (a) to (e) of the said provision. One of the grounds of transfer of a case is when it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto. It is this ground which has been pressed into service by the petitioner in the instant case.

7. Coming to the facts of the instant case as have been narrated hereinbefore, it is not in dispute that respondent No. 2, who happens to be wife of a separatist leader, wields some influence amongst certain sections of people living in the valley who subscribe to his ideology. It is a fact of common knowledge that incidents of attacks on main-stream politicians and the people who do not subscribe to the separatists ideology are still taking place in Kashmir Valley. Therefore, it cannot be stated that apprehension expressed by the petitioner to his life at Srinagar while facing trial before the court is unfounded. The contention of the petitioner that at least three Advocates of Srinagar whom he had approached to take up his case, showed their inability to do so, has remained un-rebutted. Therefore, the apprehension of the petitioner that he will not receive a fair trial of the case at Srinagar, appears to be well founded.
8. Having regard to the aforesaid circumstances and keeping in view the status of the petitioner and background of respondent No. 2/complainant, it appears that fair and impartial trial of the case that has been filed against the petitioner on the basis of complaint lodged by respondent No. 2, may not be possible at Srinagar.
9. In view of what has been discussed hereinabove, the petition is allowed and the criminal challan, titled, State vs. Shabir Ahmed Khan arising out of FIR No. 9/2014 for offences under Sections 354 and 509 RPC registered with Police Station, Shaheed Ganj, Srinagar is withdrawn from the court of Chief Judicial Magistrate, Srinagar and is transferred to the court of Chief Judicial Magistrate, Jammu. It is however, directed that the petitioner shall bear diet and travel expenses of all the prosecution witnesses, excepting those belonging to Police

department. The parties are directed to appear before the court of Chief Judicial Magistrate, Jammu on 12.04.2023 by which date, Chief Judicial Magistrate, Srinagar shall transfer the original record of the file to the court of Chief Judicial Magistrate, Jammu. Copies of this order be sent to both the Magistrates for information and compliance.

10. Disposed of.

(SANJAY DHAR)
JUDGE

Jammu
22.02.2023
Neha

