

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK JAIN**

**ON THE 23<sup>rd</sup> OF NOVEMBER, 2023**

**MISC. PETITION No. 6953 of 2023**

**BETWEEN:-**

**MAHESH PRASAD SEN (NAPIT) S/O LATE SHRI KAMTA PRASAD SEN NAPIT, AGED ABOUT 52 YEARS, OCCUPATION: SERVICE IN S.E.C.L. R/O VILLAGE AND POST DAIKHAL POLICE STATION BHALUMADA TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI R.S. RATHORE - ADVOCATE)**

**AND**

**DHANNULAL NAMDEO S/O SHRI RAM PRASAD NAMDEO, AGED ABOUT 55 YEARS, R/O VILLAGE AND POST DAIKHAL POLICE STATION BHALUMADA TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**

**.....RESPONDENT**

**(NONE)**

.....  
*This petition coming on for admission this day, the court passed the following:*

**ORDER**

The present petition has been filed under Article 227 of the Constitution of India being aggrieved by the order annexure P-1, dated 08.8.2023 passed by the Principal District Judge, Anuppur. By the said order, the Principal District Judge rejected application of petitioner filed under Section 24 (5) of the Code of Civil Procedure for transferring the pending Civil Suit No. 20-A/2021 from the Court of a particular Civil Judge, Senior Division, Anuppur to some other Court. The petitioner has submitted that the petitioner is the plaintiff in the said suit.

2. The learned counsel for the petitioner has submitted that earlier also there was a litigation between the same parties and for executing the final judgment passed therein, execution proceedings are pending at case No. Ex. 1/2020 before the same Court. Therein the same presiding officer passed certain orders prejudicial to the interests of the present petitioner and on 24.4.2023, possession warrant was ordered to be issued against the petitioner. The counsel for the petitioner submits that this order passed in execution was legally incorrect, hence, the petitioner challenged the said order in MP No. 2723/2023 wherein this Court vide order dated 12.6.2023 (Annexure P-13), stayed operation of the order dated 24.4.2023. The learned counsel further contends that this order was communicated to the learned judge on 15.6.2023, but the possession was already taken over on 12.6.2023 by the other party with police help. This fact is indicated by the order-sheets dated 15.6.2023 and 16.6.2023 (Annexure P-14). The learned counsel further contends that the learned civil judge is hurriedly proceeding ahead with the suit. In nut-shell, the sole cause for apprehension in the mind of the petitioner is that the same civil judge having earlier passed an order adverse to interest of the petitioner in some other case (execution proceedings of judgement and decree passed in a separate suit), the petitioner has lost his faith in the said civil judge.

3. It is submitted by the learned counsel that the application under section 24 (5) was submitted on these very allegations.

4. The Principal District Judge while passing the order Annexure P-1 has rejected the application on the ground that the same judge having earlier passed some adverse order against the petitioner in some other case is not a ground to seek transfer of the present case. It has been further held that the remedy against an adverse order is to file appeal/revision/petition. Seeking transfer of other cases is not proper because imaginary and baseless mistrust cannot become a ground for seeking transfer.

5. Heard learned counsel for the petitioner and perused the record.

6. Transfer of cases from one Court to another is a serious matter particularly when transfer is sought by making allegations against Presiding Officer. It sometimes indirectly causes doubt on the integrity and competence of Presiding Officer of the Court from whom the matter is transferred. In cases where ground for transfer is likelihood of bias of Presiding Officer, it is onerous duty of Court to see, whether such ground has been substantiated with reasonable certainty or not. It should not be done without a proper and sufficient cause.

7. In *Maneka Sanjay Gandhi Vs. Rani Jethmalani*, (1979) Cri.L.J. 458 (SC) the Hon'ble Supreme Court has said:

*Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case.*

8. One of the common ground which generally is taken is of distrust in Presiding Officer of the Court. Here the Courts have to be very careful while passing the orders for transfer of case.

09. The allegations of bias of Presiding Officer, if made the basis for transfer of case, before exercising power under Section 24 C.P.C., the Court must be satisfied that the apprehension of bias or prejudice is bona fide and reasonable. The expression of apprehension, must be proved/ substantiated by circumstances and material placed by such applicant before the Court. It cannot be taken as granted that mere allegation would be sufficient to justify transfer.

10. Mere suspicion by the party that he will not get justice would not justify transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of

case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise. See *Rajkot Cancer Society vs. Municipal Corporation, Rajkot*, AIR 1988 Gujarat 63; *Pasupala Fakruddin and Anr. vs. Jamia Masque and Anr.*, AIR 2003 AP 448; and, *Nandini Chatterjee vs. Arup Hari Chatterjee*, AIR 2001 Calcutta 26.

11. Where a transfer is sought making allegations regarding integrity or influence etc. in respect of the Presiding Officer of the Court, this Court has to be very careful before passing any order of transfer.

12. In the matters where reckless false allegations are attempted to be made to seek some favourable order, either in a transfer application, or otherwise, the approach of Court must be strict and cautious to find out whether the allegations are bona fide, and, if treated to be true on their face, in the entirety of circumstances, can be believed to be correct, by any person of ordinary prudence in those circumstances. If the allegations are apparently false, strict approach is the call of the day so as to maintain not only discipline in the courts of law but also to protect judicial officers and maintain their self esteem, confidence and above all the majesty of institution of justice.

13. The justice delivery system knows no caste, religion, creed, colour etc. It is a system following principle of black and white, i.e., truth and false. Whatever is unfair, that is identified and given its due treatment and whatever is good is retained. Whoever suffers injustice is attempted to be given justice and that is called dispensation of justice. The prevailing system of dispensation of justice in Country, presently, has different tiers. At the ground level, the Courts are commonly known as "Subordinate Judiciary" and they form basis of administration of justice. Sometimes it is said that subordinate judiciary forms very backbone of administration of justice. Though there are various other kinds of adjudicatory forums and then various kinds of Tribunals etc. but firstly

they are not considered to be the regular Courts for adjudication of disputes, and, secondly the kind and degree of faith, people have, in regular established Courts, is yet to be developed in other forums. In common parlance, the regular Courts, known for appropriate adjudication of disputes basically constitute subordinate judiciary, namely, the District Court; the High Courts and the Apex Court.

14. The hierarchy gives appellate and supervisory powers in various ways. The supervisory control of District judiciary has been conferred upon High Court, which is the highest Court at provincial level and is under constitutional obligation to see effective functioning of subordinate Courts by virtue of power conferred by Article 235 read with 227 of the Constitution of India.

15. If there is a deliberate attempt to scandalize a judicial Officer of subordinate Court, the damage is caused not only to the reputation of the concerned Judge, but, also to the fair name of judiciary. The foundation of our system is based on the independence and impartiality of the men having responsibility to impart justice i.e. Judicial Officers. If their confidence, impartiality and reputation is shaken, it is bound to affect the very independence of judiciary. Any person, if allowed to make disparaging and derogatory remarks against a Judicial Officer, with impunity, is bound to result in breaking down the majesty of justice. Reference may be made to the judgement of the High Court of Allahabad in the case of Amit Agrawal vs. Atul Gupta, reported in 2014 SCC OnLine All 16200.

16. There is no manner in which a judicial officer may wear his impartiality on his sleeves. Scandalizing a judicial Officer of subordinate Court is bound to shake confidence of the litigating public in the system and has to be tackled strictly.

17. This Court also had the occasion to consider the necessity and desirability of transfer of a case from one court to another on the apprehension of one of

the parties to the case. Kindly see Sudarshan Jain Vs. Deep Chand, reported in AIR 2006 MP 6. It was inter-alia held therein as under :-

*“In view of the aforesaid pronouncement of law as far as the allegation that the learned trial Judge has rejected certain applications cannot be considered for transfer of the case. The finding recorded by the learned District Judge that the petitioner was making endeavour to procrastinate the proceedings, in my considered opinion, is totally immaterial for adjudication of the controversy in this case. What really has arisen for adjudication is whether the allegation made against the Presiding Officer warrants transfer and should have been allowed by the learned District Judge. What the real ground is that the respondent No. 1, Deep Chand Jain, has been visiting the house of the learned trial Judge. It is, in fact, a plea of bias a stand relating to prejudice and stance of mala fide. As has been pleaded, this has created an apprehension in the mind of the petitioner. As has been stated, it is well settled that a case ought to be transferred when a party reasonably apprehends that he is not likely to have a fair trial before a particular Court. Narration of facts clearly exposit that the petitioner was aggrieved by certain orders passed by the learned trial Judge and also by certain adverse remarks because he refused the application for adjournment on the ground that a counsel from Jabalpur would be conducting the proceeding. The said ground cannot be treated to be a justified ground for transfer. ....”*

18. In the light of the above exposition of law, the pleadings in the case in hand have been examined. The grounds taken by applicant are vague and wholly unsubstantiated. It is established from record that the warrant of possession issued in execution had already been executed and possession taken three days prior to communication of stay order. The allegation of bias by mere fact of an adverse order is not sufficient to justify transfer unless it is also substantiated by relevant material, which is not the case in hand. No ground, therefore, justifying transfer is made out under Section 24 C.P.C. In my considered view, the learned District Judge has not committed any error by refusing to entertain an application under Section 24 of the CPC and accordingly, I have no hesitation

in giving stamp of approval to the impugned order Annexure P-1. The petition being devoid of merits, stands dismissed.

MISHRA

**(VIVEK JAIN)**  
**JUDGE**

