

D. R. Bhatti and Others

Vs

State of Punjab

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Vs

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Transfer Petitions (Criminal) Nos. 16 and 91

(R. S. Pathak, V. Khalid, B. C. Ray)

20.12.1986

JUDGMENT

KHALID, J. :-

1. The petitioners in these cases are accused in a murder case registered as FIR No. 162 dated September 5, 1983. The matter is now pending before the Judicial Magistrate, First Class, Ludhiana, for committal proceedings.
2. Transfer Petition No. 16 of 1986 and Special Leave Petition 491 of 1986 are by D. R. Bhatti, Commandant, 7th Battalion, Punjab Armed Police, Jalandhar Cantonment, Punjab, the first accused in the case. Transfer Petition No. 91 of 1986 is by six other accused, two of whom are Sub-Inspectors and two Head Constables. These persons along with 9 others are accused of murder on August 13, 1983, of Dalip Singh and three others.
3. The petitioners have directly come to this Court with these transfer petitions without approaching either the Sessions Judge or the High Court. The reason why they have done so is given in the transfer petition filed by D. R. Bhatti. It has been stated in the petition that a volatile situation exists in Punjab and that he is the prime target of the extremities. The alleged incident took place on August 13/14, 1983. An FIR was lodged on September 5, 1983. The CBI filed a challan on December 31, 1985 when alone his name was given for the first time as conspirator.
4. The petitioner has stated as follows. He joined the Indian Police in the year 1970. He was posted as Assistant Superintendent of Police, Ferozpur, in the year 1972, wherefrom he went to Ludhiana in the year 1973. He was promoted as Superintendent of Police in the year 1975. He served at several stations in this capacity. In May 1981, he was posted as Senior Superintendent of Police at Ludhiana.
5. Warrants of arrest were issued against the late Bhindranwale in connection with the murder of Lala Jagat Narain. The petitioner was entrusted with the task of execution of the warrant of arrest. He proceeded to execute the warrant with a police party under the supervision of the then DIG, Patiala range. Resistance was offered by the late Bhindranwale and his men by opening fire and in

the exchange of fire Shri Bhindranwale escaped. Various allegations were made against the petitioner in relation to that incident, including the one that religious books were burnt.

6. Under pressure from the late Shri Bhindranwale, a Commission of Enquiry was appointed under the Chairmanship of Justice Gurnam Singh, a retired Judge of the High Court of Punjab and Haryana. The enquiry proceedings were challenged before the High Court pursuant to which the proceedings remained stayed and the Commission of Enquiry was finally abandoned. Shri Bhindranwale harboured personal grouse and animosity against the petitioner. He incited his followers to kill him. The animosity increased when on September 20, 1981, the petitioner arrested Shri Bhindranwale and interrogated him. He was subsequently released. It is stated in the petition that subsequent to this, various attempts were made by extremists on the life of the petitioner.

7. In April 1983, a party of five persons attempted to assassinate him. They were intercepted and fired upon. In June 1983, a parcel was received by the petitioner containing a live HE-36 grenade which had been sent to him from Amritsar. On the same day, there had been two similar other parcels which had exploded in the office of the daily newspaper "Veer Pratap" at Jalandhar and the house of DSP Shri Gurbachan Singh at Amritsar. On September 21, 1983, while the petitioner was alighting from his car in front of his office he was fired upon. He received bullet injuries. Due to the said injuries he was hospitalised and had to undergo treatment for four months. After this he was posted as Commandant on the 7th battalion, Punjab Police. In June 1984, he was again posted as Senior Superintendent of Police at Ludhiana. At Ludhiana attempts by extremists continued to kill him. There was an unsuccessful attempt to poison him by his own constable, Harjit Singh who was subsequently murdered by the extremists. The petitioner was sent to Hoshiarpur in May 1985. In December 1985, he was brought back to Jalandhar as the Commandant of the 7th Battalion, Punjab Armed Police.

8. The petitioner states that there was demonstration even inside the courtroom of the Magistrate before whom the case is pending and that his life would be in great danger if the trial is permitted to continue in Punjab inasmuch as he is and has been since 1981 the target of extremists' attack. He also fears that witnesses would be intimidated and pressurised since he was implicated as late as 1985, though the investigation began in 1983.

9. In the connected transfer applications also it is stated that the atmosphere in Punjab is neither congenial nor peaceful for this case to be tried in any court in Punjab.

10. The petitioner moved an application for anticipatory bail before the Sessions Judge at Ludhiana and also before the High Court of Punjab and Haryana. Both were dismissed. It is against this order that the Special Leave Petition (Criminal) No. 491 of 1986 has been filed.

11. This, in short, is the background material furnished by the petitioner to justify his prayer about the transfer if the case now pending against him.

12. The prayer in the transfer petition is to transfer the case - State v. D. R. Bhatti, arising out of FIR No. 612 dated September 5, 1983, to any other court of equally competent jurisdiction in the Union of India except in the State of Haryana. The prayer to exclude courts in the State of Haryana is because appeals from their judgments would be to the High Court of Punjab and Haryana at Chandigarh.

13. On February 19, 1986, this Court issued notice returnable on March 10, 1986, in the first

transfer petition and directed that, pending notice, there will be ex parte stay of the execution of the warrant of arrest issued against the petitioner. In the other transfer petition also notice was ordered.

14. It is necessary to note that in the case sought to be transferred, there are in all 16 accused. Those who are not petitioners in the transfer application filed Criminal Misc. Petition No. 1272 of 1986, for intervention. In the intervention application it is stated that the prosecution has cited 140 witnesses most of whom are from places near about Ludhiana and that the prosecution intends to produce 298 documents. These statements are made to show that the trial would be a long drawn out process. It is further stated that most of the intervenors are constables under suspension and are getting only very meagre amount as subsistence allowance. Under these circumstances, they opposed the application for transfer since it would not only prejudice them but would make it difficult for them to defend the case effectively and properly. They have already engaged their respective defence counsel and have paid large sums of fees to them. They intend to examine defence witnesses on their side. The intervention application is opposed by the CBI by filing counter-affidavit.

15. The CBI supports the transfer applications. The State of Punjab opposes the applications. It is, stated by the latter that the situation in Punjab is not as volatile as the petitioner intends to convey and that despite the terrorists activities the work in the State is going on as nearly normal as is possible. That the petitioner is the prime target of the extremists is denied. The apprehension of a highly placed officer like the petitioner, it is stated, is not well founded.

16. This Court as per its order dated August 26, 1986, stayed further proceedings before the Magistrate and directed that the order made in favour of the petitioner on February 19, 1986, will continue.

17. Some of the accused have filed Criminal Misc. Petition No. 389 of 1986, for bail. Paragraphs 16 and 17 of that application can be usefully read :

16. The applicants state and submit that they now understand that the Hon'ble Court is considering favourably to transfer the case from Ludhiana to a place outside Punjab and it has changed the circumstances so that the applicants are moving this application for the consideration of this Hon'ble Court.

17. The applicants are merely constables and thus they are only to act under orders of their superior. The applicant Paramjit Singh is not even attributed any overt act in the entire affair. Therefore, the applications could not be settled with any liability.

We have extracted the above two paragraphs only to show that these accused also felt that the circumstances of the case would justify transfer of the case from Ludhiana to a court outside Punjab.

18. We have considered the relevant materials placed before us and have given our anxious consideration to them. We are conscious of the fact that the petitioners have leap-frogged into this Court ignoring the Sessions Court and the High Court. We are also conscious of the fact that the petitioner is a highly placed officer, now working in the State of Punjab. Still we are of the opinion that the prayer made by the petitioners cannot be rejected as being wholly unfounded. The materials before us persuade us to act more in favour of the transfer application than in favour of rejecting it. We feel that the interests of justice would be served more by granting the prayer than by rejecting it.

19. However, some safeguards will have to be made for those who oppose the prayer for transfer.

Most of them are constables. They continue to be government servants though under suspension. We feel it will be only fair in the circumstances of this case to make appropriate direction to the State Government to meet a part of their expenses. This we propose to do by directing the State Government to pay to those accused who have opposed the transfer applications and who are government servants, travelling allowance and daily allowance to which they would have been entitled if they were in service on days on which they appeared before the Transfer Court in connection with their case.

20. In the result, the transfer applications are allowed and the case pending in the Court of the Judicial Magistrate, First Class, Ludhiana, titled State v. D. R. Bhatti, arising from FIR No. 162 dated September 5, 1983, is directed to be transferred to a competent Magistrate at Una, Himachal Pradesh, for commitment proceedings to be committed to the Sessions Judge, Una. We have every confidence that the case will be proceeded with and disposed of strictly in accordance with law and justice. We direct the transferee Magistrate and the Sessions Judge to consider the grant of exemption from personal appearance to the petitioners and also to the accused government servants who have opposed the transfer applications, in the circumstances of the case then obtaining before them. We direct the State of Punjab to pay to those accused who are government servants and who have opposed the transfer applications, travelling and daily allowances, to which they would have been entitled as government servants, for the days on which they appear before the transferee court in connection with the case.

21. The interim directions issued by this Court regarding stay of warrant against the petitioners will continue. The transferee court will pass appropriate orders when moved, after the records reach that court, regarding the bail of the petitioners. The special leave petition is disposed of accordingly.

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