

**SUPREME COURT OF INDIA**

Milap Choraria

Vs.

Sanjay Kumar Jhunjhunwala

Tr.P(Civil)No.644 of 2012

(Kurian Joseph and R.Banumathi,JJ.,)

05.05.2017

**ORDER**

T.P.(Civil)No.644 of 2012

1. This transfer petition is filed with the following prayer:-

"(a) transfer suit No. 250 of 2011, titled as "Sanjay Jhunjhunwala Vs. Milap Choraria & Ors." pending in the court of Hon'ble Mr. Justice I.P. Mukerji of Calcutta High Court along with all the applications and records of earlier Civil Suit No. 244 of 1990 filed by above named respondent No. 1 against the Petitioner, from the original side of the Calcutta High Court to the competent court in Delhi."

2. The petitioner, who has appeared in-person, submits that in view of his health problems and advanced age, he is not in a position to travel to Kolkata and, therefore, the suit may be transferred to Delhi where he is presently residing. There is also an allegation of threat to the life of the petitioner.

3. The learned counsel for the respondents points out that the petitioner had been prosecuting many cases in Kolkata when he filed this transfer petition in the year 2012 before this Court. It is submitted that the cause of action arose in Kolkata and, therefore, the suit could be tried only in Kolkata.

4. Having heard the petitioner-in-person and the learned counsel appearing for the respondents, we do not find any special reason for the transfer. The petitioner submits that this court may exercise its jurisdiction under Article 142 of the Constitution of India and dismiss the suit as not maintainable, since according to the petitioner, the suit is an abuse of process, frivolous and not maintainable as an earlier suit for the same cause of action had been dismissed by the High Court vide order dated 16.03.2006.

5. We are afraid, the jurisdiction under Article 142 of the Constitution of India is not meant to be invoked in such situations. It is for the petitioner to pursue his remedies in case he is of

the view that the suit is not maintainable, including raising a preliminary issue in that regard. Therefore, this Transfer Petition is dismissed, making it clear that in case, a preliminary issue is raised, the court will first try that issue before the trial of the case.

“1. This Writ Petition is filed under Article 32 of the Constitution of India with the following prayers:-

"(A) Issue a writ of mandamus or any other appropriate writ, order or direction holding that under the Constitutional Scheme to protect the Fundamental Rights under Article 14, 19(1)(d), 19(1)(e) and 21 of the Constitution, Respondent No. 3 is duty bound to hold the investigation in the matter of crimes committed against the petitioner, which cannot be covered within the definition, meaning, scope and ambit of the subject matter of the law and order or public order being enumerated under the State List under Article 246(1) of the Constitution of India, since such crimes prevailed under the Criminal Conspiracy and Connivance between the Politicians in Powers of the Respondent no.2 on one side and the Respondent No. 4 and/or 5 on the other side and prevailed under open patronage, protection and support from the concerned Public Servants of the respective Departments or Public Authority under the control or supervision of the Respondent No. 2 which more fully described in the full set of the application dated 10th November, 2008 (Annexure P-37) addressed to H.E. the then Governor of West Bengal with copy to the then Chief Minister of West Bengal and described in another application being subject matter of File No. 419/05/2009-ADV.IV (Annexure P-39) of the concerned Department of the Respondent No. 1;

(B) Issue a writ of mandamus or any other appropriate writ, order or direction upon the Respondent no. 3 to hold the preliminary enquiry/investigation in the matters more fully described in the full set of the application dated 10th November, 2008 (Annexure P-37) addressed to H.E. the then Governor of West Bengal with copy to the then Chief Minister of West Bengal and described in another application being subject matter of File No. 419/05/2009-ADV.IV (Annexure P-39) of the concerned Department of the Respondent No. 1 and submit its status report for further order or direction by the Hon'ble Supreme Court;

(C) Issue show cause upon Respondents, that why such writ of mandamus or any other appropriate writ, order or direction should not be issued in terms of the prayer as aforesaid; and

(D) Allow the present Writ Petition with the exemplary costs."

2. When this writ petition was considered by this Court on 01.08.2016, the following order was passed:- "Petitioner appears in-person and submits that he has also filed Transfer Petition (C) No. 644 of 2012. List the Transfer Petition (C) No. 644 of 2012 along with this petition."

6. We have already dismissed the transfer petition as above. We do not find any special reason to entertain this writ petition filed under Article 32 of the Constitution of India. It is for the petitioner, if so advised, to approach the High Court for appropriate relief. Without prejudice to such liberty given to the petitioner, the writ petition is dismissed.