

A SHREE BAIDYANATH AYURVED BHAWAN PVT. LTD.

v.

STATE OF PUNJAB & ORS.

(Transfer Petition (Criminal) No. 377 of 2006)

AUGUST 4, 2009

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[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973 – s. 406 – Transfer of cases – Power of – Petition for, transfer of complaints/FIRs for and against petitioner from courts situated in one State to courts situated in another State – Permissibility of – Held: Not permissible – Apprehension does not appear to be reasonable one – All courts would act impartially and those facing trial would be dealt with very fairly – However, District Judges of two cities where criminal matters are filed to consider desirability of transferring them.

The instant transfer petition is filed u/s. 406 Cr.P.C., 1973 for transfer of complaints/FIRs for and against the petitioner to the Delhi High Court or any other High Court or courts subordinate to such High Court from the Punjab & Haryana High Court and/or Courts subordinate thereto.

Dismissing the transfer petition, the Court

HELD: 1.1. Although section 406 of Cr.P.C., 1973 empowers this Court to transfer a criminal case from one Court situated in one State to another situated in another State but indisputably the convenience of the parties including the witnesses to be produced at the trial is a relevant consideration therefor. [Para 17] [313-C-D]

Abdul Nazar Madani v. State of Tamil Nadu and Anr. (2000) 6 SCC 204, referred to.

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1.2. At the time of filing of the transfer application, in some of the matters investigations were pending. Some of the criminal cases have been filed in the Ludhiana Courts by the company itself. It has an office at Ludhiana. [Para 16] [313-B-C]

1.3. Some apprehensions have been expressed that justice may not be done to the company but keeping in view the facts and circumstances of this case, its apprehension does not appear to be a reasonable one. There is no doubt that all the Courts concerned would act impartially and the Company and its Directors and Officers who are facing trial before the courts concerned would be dealt with very fairly. However, the District Judges of Chandigarh and Ludhiana are requested to consider the desirability of transferring all the criminal matters (as far as practicable and legally permissible) to one court so as to enable them to be disposed of one after the other. Furthermore, if and when applications for dispensation of personal appearance are filed by the accused, the same shall be considered by the courts concerned on their own merits. [Paras 18 and 19] [313-F-G; 313-H; 314-A-B]

Case Law Reference:

(2000) 6 SCC 204 Referred to. Para 17

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Crl.) No. 377 of 2006.

Sunil Gupta, T.S. Doabia, Rishi Maheshwari, Shally Bhasin Maheswari, Vikramjeet Banerjee, Anne Mathew, B. Rangnathan, Atul Shankar Mathur, Shruti Verma (for Khaitan & Co.), Anil Grover, Manish Kumar, Pramod Swarup, V.P. Singh, Anil Kumar Jha, Sunita Sharma, Subhash Kaushik, Anil Katiyar (for D.S. Mahra), J.S. Bhatti Shree Pal Singh, Ajay Pal, Kuldip Singh, Javed Mahmud Rao for the appearing parties.

A The Judgment of the Court was delivered by

B **S.B. SINHA, J.** 1. The present petition is filed under Section 406 of the Code of Criminal Procedure, 1973 for transfer of multiple cases by way of complaints/FIRs for and against the Petitioner Shree Baidyanath Ayurved Bhawan Ltd. to the Delhi High Court or any other High Court or courts subordinate to such High Court from the Punjab & Haryana High Court and/or Courts subordinate thereto.

C 2. Shree Baidyanath Ayurved Bhawan Pvt. Ltd. (hereinafter referred to as 'the company' for the sake of brevity) is a company registered and incorporated under the Indian Companies Act, 1956. It manufactures Ayurvedic medicines. For the purpose of distribution of its products, it engages Carrying and Forwarding Agents to receive goods from it, store and sell them to the stockists.

E 3. The company appointed M/s. S. Bhatia Enterprises, Ludhiana (Respondent No.5 herein) (for short, 'the firm') of which Praveen Bhatia, Ramkishan Bhatia, Ashwani Bhatia and Promila Bhatia are partners.

The agreement between the parties incorporating the terms and conditions of Carrying and Forwarding Agency contained an arbitration clause.

F 4. Between 2000 and 2001, Respondent No.5 allegedly made fraudulent credits amounting to Rs.4,00,000/- in the account of M/s. Dhanwantri Ayurvedic Store, Hambram, said to be a bogus firm. However, subsequent audit reports of the company allegedly continued to show fraudulent credit entries which were said to be detected by Company's Account Manager. The respondents were warned in respect thereof.

H 5. On or about 18.10.2001, allegedly, one of the respondents, namely, the Respondent No.5, along with some other persons assaulted Company's Account Manager, namely,

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T.S. Thakur and made a threat on his life, and also snatched audit reports and other documents from him. The matter was reported to the Police Station, Kailash Chowk, Ludhiana vide FIR No.29 under Sections 406, 420, 467, 468, 471, 504, 506, 382, 323 and 120B of the Indian Penal Code. The police filed a closure report on the premise that the accused no longer has any interest in M/s. S. Bhatia Enterprises. However, at the instance of the petitioner, a competent court directed the police to make investigation. No charge-sheet in the said case is said to have been filed as yet.

6. A report of the company dated 2.11.2001 allegedly revealed that the respondent had embezzled the goods and sale proceeds amounting to Rs.2.36 crores. On 13.11.2001, an FIR being No.303 came to be registered at Jhansi against the respondents. However, the said FIR was transferred from Jhansi to Ludhiana by an order dated 29.5.2002 of the High Court of Punjab and Haryana.

7. Soon thereafter, an FIR being No.276 was filed against the petitioners under Sections 452, 383, 384, 323 and 342 of the Indian Penal Code in Ludhiana on a complaint being made by the respondents alleging forcible trespass into their godown.

8. Subsequently, the respondents filed four different petitions [CMM No.18962 of 2003, 18958 of 2003, 14773 of 2003 and 39666 of 2003] seeking quashing of FIR No.303. Respondents also filed CMM No.19961 of 2003 seeking the stay of arrest in any future case filed against them by the petitioners.

9. On or about 15.5.2003, Respondents again filed CM No.21830M of 2003 asking for registration of FIR against the petitioners herein for having secretly removed the stocks from the firm's godown.

10. Petitioners thereafter filed CM No.23513 of 2003 under Section 482 of the Code of Criminal Procedure praying

A to direct the State to have the investigation of all the cases pending between the parties to be conducted by an independent agency outside the State of Punjab.

B 11. Indisputably, the parties have filed a large number of criminal cases against each other. The company filed as many as nine criminal cases which are pending in different courts of Punjab and Haryana. The firm also filed six criminal cases against the company and/or its officers which are pending in the courts of CJM, Chandigarh and several courts at Ludhiana.

C 12. It is submitted by the petitioner that the present cases arise out of or in relation to a single transaction. It is further submitted that at present there are sixteen criminal cases filed by the Respondent against the petitioner in various courts in the State of Punjab. In addition, the petitioner has also filed four D criminal cases against Respondents. There are ten FIRs pending against the parties and investigation in six of the cases has resulted in charge sheet being filed against the parties.

E 13. The petitioner also prayed for transfer of all criminal cases pending in various courts of Punjab including the High Court of Punjab and Haryana at Chandigarh between the parties, which may not be in the knowledge of the petitioner and hence also may not be mentioned in this transfer petition.

F 14. Mr. Sunil Gupta, learned senior counsel appearing on behalf of the appellant, would contend that as all the cases arise out of the same transaction, the interest of justice would be subserved if all the matters are clubbed together in order to avoid multiplicity of proceedings. The proceedings in various courts would show that the company and its officers have G unfairly been treated.

H 15. Mr. Bhatt, learned counsel appearing on behalf of the respondents, on the other hand, would urge that for transfer of a criminal case, there must be a reasonable apprehension on the part of a party to a case that justice would not be done which

the petitioners have failed to do.

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16. Some of the cases, namely, cases arising out of FIR Nos.29, 276 and 303 having been transferred from Ludhiana and Jhansi to the Court of Chandigarh, it would, in our opinion, be inappropriate to transfer all criminal cases to Jhansi.

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Indisputably, at the time of filing of the transfer application, in some of the matters investigations were pending. Some of the criminal cases have been filed in the Ludhiana Courts by the company itself. Indisputably, it has an office at Ludhiana.

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17. Although Section 406 of the Code of Criminal Procedure empowers this Court to transfer a criminal case from one Court situated in one State to another situated in another State but indisputably the convenience of the parties including the witnesses to be produced at the trial is a relevant consideration therefor.

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In *Abdul Nazar Madani v. State of Tamil Nadu & Anr.* [(2000) 6 SCC 204], this Court has categorically held that before an order of transfer is effected, the convenience not only of the petitioner but also prosecution, other accused and witnesses including the larger interest of the society should also be taken into consideration.

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18. It is true that some apprehensions have been expressed that justice may not be done to the company but keeping in view the facts and circumstances of this case, we are of the opinion that its apprehension does not appear to be a reasonable one. We have no doubt in our mind that all the Courts concerned would act impartially and the Company and its Directors and Officers who are facing trial before the courts concerned would be dealt with very fairly.

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19. We would, however, request the District Judges of Chandigarh and Ludhiana to consider the desirability of transferring all the criminal matters (as far as practicable and

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A legally permissible) to one court so as to enable them to be disposed of one after the other. We are, furthermore, of the opinion that if and when applications for dispensation of personal appearance are filed by the accused, the same shall be considered by the courts concerned on their own merits.

B 20. The transfer petition, therefore, is dismissed with the aforementioned directions/observations.

N.J.

Transfer Petition dismissed.