

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRIMINAL) NO.597/2022

NEELIMA SURI & ANR.

PETITIONER(S)

VERSUS

STATE OF MADHYA PRADESH & ANR.

RESPONDENT(S)

WITH

TRASNFER PETITION (CRIMINAL) NOS.165-166/2023

O R D E R

1. These transfer petitions seek transfer of investigation in the following three FIRs:

(i) FIR No.0210 dated 04.04.2022 under Section 384, 506, 109 read with Section 34 of the Indian Penal Code, 1860 (in short, 'IPC'), registered at Police Station Guna Kotwali, District Guna, Madhya Pradesh. This FIR has been registered against the petitioners and one Sartaz Hussein, on a complaint made by respondent no.2 (Tarun Wadhwa).

(ii) FIR No.0794 dated 11.11.2022 under Section 420 of IPC, registered at Police Station Guna Kotwali, District Guna, Madhya Pradesh. The aforementioned FIR has been registered against petitioner no. 2 (Rohit Suri) at the instance of Vidushi Wadhwa, wife of respondent no.2.

(iii) FIR No.0075 dated 26.01.2023 under Section 420 read with Section 34 of IPC, registered at Police Station Guna Kotwali, District Guna, Madhya Pradesh. The said FIR has

been registered against both the petitioners on a complaint made by respondent no.2.

2. The genesis of above-mentioned three FIRs appears to be a Mechanical, Electrical and Plumbing (MEP) Contract executed on 11.10.2018 between M/s. Kings Chariot, whose proprietor is petitioner no.1, and M/s. Sunny Vista Hotels Pvt. Ltd., which is a hotel project of respondent no.2. The proprietorship firm of petitioner no. 1 entered into the contract to execute the interior works like electric fire system, air cooling system, plumbing work, etc. for the hotel being constructed by the company of respondent no.2 at Guna. The petitioners allegedly failed to execute the work as per the agreed specifications, as a result of which respondent no.2 suffered loss in his hotel project. Over and above, the petitioners allegedly raised a tax invoice for a grand total of Rs.3,05,08,653/- and a proforma invoice of Rs.2,12,15,510/-, despite not completing the work as envisaged in the agreement. Respondent no.2 on the other hand, allegedly made excessive payment of Rs.1,63,17,638/- to the petitioners.

3. In order to extract more money from respondent no.2, the petitioners are alleged to have extended threat through their employee—Sartaz Hussein—through WhatsApp messages, which prompted respondent no.2 to lodge the first FIR mentioned in paragraph 1 of this order. The second FIR, lodged by the wife of respondent no.2, also pertains to a monetary transaction originating out of a

similar business deal between the parties. In this FIR, she alleged that petitioner no. 2 took an advance payment from her to carry out a renovation work, but neither has started the work nor refunded the advance money. The third FIR, which is also linked to the dispute outlined in the first FIR, alleges that the petitioners have prepared false bills to illegally fetch money from the company of respondent no. 2.

4. Akin to the respondents, the petitioners have also initiated criminal proceedings against them. The petitioners, who are stated to be the residents of Gurugram, first approached the Illaqa Magistrate-cum-Judicial Magistrate First Class, Gurugram by way of a complaint. Pursuant to the direction issued under Section 156(3) of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') vide order dated 08.06.2022 of the learned Judicial Magistrate, Gurugram, FIR No.221 dated 13.06.2022 under Sections 120B, 415, 417, 418, 420, 422 and 506 of IPC has been registered against respondent no.2 and his company at Police Station Sector 56, Gurugram. A perusal of the allegations contained in this FIR indicate the same set of allegations and counter allegations as are contained in the first FIR lodged by respondent no.2 against the petitioners.

5. All the three FIRs lodged against the petitioners at the instance of respondent no.2 or his family as well as the FIR lodged by the petitioners against respondent no.2

and his company are still under investigation. No chargesheet has been filed so far.

6. The instant transfer petitions have been filed seeking transfer of the first three FIRs, mentioned in the paragraph 1 of this order, *inter alia*, alleging the misuse and abuse of powers by the Madhya Pradesh Police. It has been alleged that the Guna Police is acting at the behest of the respondent no.2 and a civil dispute emanating from the work contract has been converted into criminal offences. Similar set of allegations have been made by respondent no.2 against the petitioners with reference to the FIR got registered by them against him and his company at Gurugram.

7. During the course of hearing, it is pointed out by learned senior counsel/counsel for the parties that both sides have in the meanwhile invoked arbitration clause contained in the work contract and have filed their respective petitions under Section 11 of the Arbitration and Conciliation Act, 1996 before the Madhya Pradesh High Court and the Delhi High Court, respectively.

8. We have heard learned senior counsel/counsel for the parties and have perused the record.

9. It is trite law that in exercise of power conferred under Section 406 of Cr.P.C., this Court would not transfer the investigation of an FIR.¹ It is only when

¹ *Ram Chander Singh Sagar (Dr) v. State of T.N.*, (1978) 2 SCC 35, para 1 and 2; *State of U.P. v. State of Punjab*, (2021) 19 SCC 519, para 24; *Rhea Chakraborty v. State of Bihar*, (2020) 20 SCC 184, para 19.

after investigation there is likelihood of causing some prejudice to an accused in the course of trial, that the power under Section 406 of Cr.P.C. can be invoked in exceptional cases and sparingly.

10. However, here is a peculiar situation where the MET dated 11.10.2018 for execution of various civil/electrical engineering works undertaken by the petitioners in the hotel projects of respondent no.2 has led to initiation of criminal proceedings against each other. The broad allegations in the FIRs registered at the instance of respondent no.2 and his family against the petitioners on the one hand, and the allegations made by the petitioners in their FIR against respondent no.2 and his company on the other, are overlapping and admittedly emanate from the dispute that has arisen as a result of the alleged failure to execute the work as per the agreed specifications.

11. Hence, the two sets of FIRs (i.e., the three FIRs lodged by the respondents against the petitioners and the one FIR lodged by the petitioners against the respondents) are broadly in the nature of case and cross-cases. What is alleged in the first set of FIRs is countered in the second set, and in essence, represent the conflicting versions of the same incident.

12. We are thus of the considered opinion that with a view to get a comprehensive understanding of the case, all the FIRs must be investigated together. If these are investigated in silos, not only could such isolated

investigations result in an incomplete picture, but they might also produce contradictory conclusions. Such conflicting results might ultimately lead to contrasting criminal proceedings, or may necessitate additional investigation to resolve the discrepancies between the two opposing versions. In case of the former, the parties will face the danger of conflicting judgements on similar facts. In case of the latter, the multiplicity of investigation proceedings would unnecessarily lead to duplication of efforts and wastage of public resources, which would not be in the larger public interest.

13. In such *sui generis* circumstances, it will be in the interest of administration of criminal justice that the investigation of all the four FIRs is entrusted to one and the same agency so that a complete, impartial and fair investigation can be conducted to find out the element of criminality (if any) and the party/persons responsible for such an offending act.

14. We may hasten to add that while the petitioners have made allegations against the Madhya Pradesh Police, respondent no.2 has also alleged that the petitioners are not residents of Gurugram and that they have got registered the FIR in order to put undue pressure on him. All these issues are disputed questions of fact which can be effectively determined by an impartial investigating agency on consideration of the material that may be collected in the course of investigation.

15. Consequently, we deem it a fit case to invoke our powers under Article 142 of the Constitution of India and transfer all the four FIRs, referred to in paragraph nos.1 and 4 of this order, to one and the same Investigating Agency, namely, Delhi Police. The Madhya Pradesh Police and Haryana Police are therefore directed to transfer the records of the subject FIRs to Commissioner of Delhi Police forthwith.

16. The Commissioner of Police, Delhi is accordingly directed to constitute an SIT to be headed by an officer in the rank of DYSP along with two other officers. The SIT will take over the investigation in all the four FIRs forthwith. On investigation, the final reports shall be submitted by the SIT to the Court of competent jurisdiction in Delhi. The parties shall not raise any objection to territorial jurisdiction of the Court(s) in Delhi.

17. The petitioners as well as respondent no.2 and their family members are admitted to pre-arrest bail in all the four FIRs, subject to the condition that they shall fully cooperate with the SIT and will join the investigation and all of them execute bail bonds to the satisfaction of SIT of Delhi Police.

18. The SIT shall be at liberty to record the statements of the witnesses, if so required, through virtual mode, especially when it finds that some of the persons are not in a position to travel to Delhi.

19. It is clarified that we have not made any observations on the merits of the allegations and counter allegations.

20. The pending investigation shall have no bearing on the petitions filed by the parties under Section 11 of the Arbitration and Conciliation Act, 1996 and the High Courts are requested to decide such petitions as per their own merit.

21. The Transfer Petitions are disposed of in the above terms.

.....J.
(SURYA KANT)

.....J.
(K.V. VISWANATHAN)

New Delhi;
April 03, 2024

ITEM NO.2

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Petition(s)(Criminal) No(s).597/2022

NEELIMA SURI & ANR.

Petitioner(s)

VERSUS

STATE OF MADHYA PRADESH & ANR.

Respondent(s)

(IA No. 147545/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.137181/2022 - EX-PARTE STAY, IA No.137179/2022 - EXEMPTION FROM FILING O.T.)

WITH

T.P.(Crl.) No.165-166/2023 (II-A)

(IA No. 52228/2023 - EXEMPTION FROM FILING O.T., IA No.52227/2023 - STAY APPLICATION)

Date : 03-04-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. Siddhant Sharma, AOR
Mr. Naveen Gaur, Adv.
Mr. Neveen Gaur, Adv.
Mr. Deepak Jain, Adv.
Mr. Yadwinder Singh, Adv.
Mr. Dilraj Singh Bhinder, Adv.

For Respondent(s) Mr. Yashraj Singh Bundela, AOR
Mrs. Pratima Singh, Adv.
Mr. Pawan, Adv.
Mr. Chanakya Baruah, Adv.

Mr. Vinay Kumar Garg, Sr. Adv.
Mr. Bharat Khurana, Adv.
Mr. Sheshadri Sekhar Ray, Adv.
Mr. Satyam Maheswari, Adv.
Mr. Nitin Bhardwaj, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The transfer petitions are disposed of in terms of the signed order.
2. All pending applications, if any, also stand disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(PREETHI T.C.)
COURT MASTER (NSH)

(signed order is placed on the file)