



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous Transfer Petition No.62/2025

Manoj Kumar Meena Son Of Shri Kanhaiya Lal Meena, Aged About 41 Years, Resident Of Meena Colony Sawai Madhopur At Present Resident Of Plot No. 1, Royal Angan Society Jasinghpura Jaipur



----Petitioner

Versus

Smt. Preeti Meena Wife Of Shri Manoj Kumar Meena Daughter Of Shri Anant Lal, Aged About 38 Years, Resident Of Plot No.1 Royal Angan Society Jaisinghpura At Present Resident Of House No.60, Mahaveer Nagar First, Near Ranthambhore Circle, Sawai Madhopur P.s. Kotwali Sawai Madhopur.

----Respondent

Connected With

S.B. Criminal Miscellaneous Transfer Petition No.63/2025

Manoj Kumar Meena Son Of Shri Kanhaiya Lal Meena, Aged About 41 Years, Resident Of Plot No. 3/363 Meena Colony, Sawai Madhopur Rajasthan

----Petitioner

Versus

1. Preeti Meena Wife Of Shri Manoj Kumar Meena Daughter Of, Aged About 40 Years, Shri Anant Kumar Meena
2. Mishika Meena Daughter Of Manoj Kumar Meena, Through Natural Guardian Mother Preeti Meena Wife Of Manoj Kumar Meena
3. Ishika Meena Daughter Of Manoj Kumar Meena, Through Natural Guardian Mother Preeti Meena Wife Of Manoj Kumar Meena Resident Of Plot No. 3/363 Meena Colony, Sawai Madhopur Resident Of Plot No. 60, Mahaveer Nagar First, Ranthambhore Circle, Sawai Madhopur Rajasthan

----Respondents

For Petitioner(s)	:	Mr. Ram Ratan Gurjar
For Respondent(s)	:	Mr. Amir Aziz

JUSTICE ANOOP KUMAR DHAND



04/11/2025

Reportable

For convenience of exposition, this judgment is divided in the following parts: -

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Prelude:

Courts are temple of justice and they should remain open for all litigants. Every litigant is constitutionally and legally entitled to a fair and impartial hearing. The litigants cannot be arbitrarily denied their right to seek justice and present their case before the Court of law.

Judiciary plays a significant role in our legal system, and it enjoys high levels of public support. The phrase “Judiciary is our last hope” is frequently used. The court is referred to as the “Temple of Justice”, with justice being the ultimate goal of the legal system.

A free and fair trial would necessarily involve the creation of a neutral atmosphere where parties can participate freely by availing themselves of effective legal assistance. Fair trials are guaranteed under Article 21 of the Constitution of India. Everyone is treated equal before the law and fair trials are an essential part of the legislation that guarantees equality. They are also





guaranteed by many international treaties and laws, including Article 6 of the European Human Rights Convention. The Indian Legal System guarantees the right to a fair trial, a fundamental aspect of justice. This includes the right to legal representation. The right to a fair trial is one of the fundamental safeguards in place to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedom.



In India, the Right to legal aid and counsel is recognized as fundamental right of an accused person under Article 22(1) of the Constitution of India, which provides that no person shall be denied the right to counsel and to be defended by a legal practitioner of his choice. Sections 303 and 304 of the Cr.P.C. and corresponding Sections 340 and 341 of BNSS are mechanisms in the criminal justice system under this constitutional mandate. In **Khatri & Ors. vs. State of Bihar & Ors.** reported in **1981(2) SCC 493**, the Hon'ble Apex Court has held that the accused is entitled to get free legal services not only at the stage of trial, but also when first produced before the Magistrate and also when remanded.

Further, Article 39-A was also introduced in the Constitution as part of the 42nd Constitutional Amendment, 1976, which requires that the state should pass suitable legislations for promoting and providing free legal aid. To fulfill this constitutional mandate, the Parliament has enacted the Legal Services Authorities Act, 1987. Section 12 of the Legal Services Authority Act provides legal services to the persons specified under the provision.



Hence, it is the duty of the Court to ensure that the accused, who has been put on trial in a criminal case is effectively represented by a competent defence. If he is unable to engage a counsel of his choice, it becomes the duty of the Court to provide him with appropriate and meaningful legal aid at the expense of the State.



Issue involved in this petition:

The legal issue involved in this petition is “whether the accused-petitioner can be deprived getting legal assistance of the local lawyers of his choice to face criminal trial before the court of law?, whether he can be deprived of legal assistance at the instance of the complainant or the local Bar Association?” It is in this background that the issue is required to be decided.

Factual matrix of the case:

1. Both these transfer petitions have been preferred under Section 447 of BNSS, 2023 for transfer of Case No.2093/2023 titled as State Vs. Manoj Kumar Meena from the Court of the Chief Judicial Magistrate, Sawai Madhopur to the Court of the Chief Judicial Magistrate, Hindaun City and the other criminal Case No.185/2024 titled as Preeti Meena & Others Vs. Manoj Kumar Meena from the Family Court, Sawai Madhopur to the Family Court, Hindaun City.

Contentions of the petitioner:

2. Learned counsel for the petitioner submits that owing to matrimonial dispute between the parties, an FIR No.75/2023 has been registered by the respondents-complainants against the petitioner at Police Station Mahila Thana (Sawai Madhopur) for the offences under Sections 498A and 406 IPC. Thereafter, charge-



sheet has been filed against him before the Court of Chief Judicial Magistrate, Sawai Madhopur where the petitioner is now facing trial. Learned counsel submits that simultaneously the respondents have also submitted an application under Section 125 Cr.P.C. against the petitioner seeking maintenance before the Family Court. Learned counsel further submits that the respondent is a practising lawyer at Sawai Madhopur. She wrote a letter/complaint to the President, Bar Association, Sawai Madhopur seeking directions against the three lawyers, i.e., Govind Prasad Gupta, Mukesh Bairwa and Anees Mohammad, not to appear on behalf of the petitioner and also taking disciplinary action against them. Learned counsel submits that aforesaid application was submitted by her on 10.06.2025, and on the basis of the same, the President of the Bar Association has issued notice to all the three above-mentioned lawyers of the petitioner, seeking their explanation regarding the complaint submitted by the respondent.

3. Learned counsel for the petitioner further submits that the petitioner is an accused in a criminal case and also a litigant in the proceedings pending against him before the Family Court, hence, he has every right to a fair trial by seeking assistance of a legal practitioner/lawyer. However, in the instant case, this vital right of the petitioner has been compromised at the instance of the petitioner, as no lawyer is now willing to provide legal assistance to the petitioner looking to the fact that the respondent is an influential lawyer practicing in the Courts at Sawai Madhopur. Learned counsel submits that although, by the present petition, a prayer has been made to transfer the above noted cases from



Sawai Madhopur to Hindaun City, however, in the interest of the petitioner, these matters be transferred to Jaipur instead of Hindaun City.

Contentions of the rival side:

4. Per contra, learned counsel appearing on behalf of the respondents opposes the arguments raised by learned counsel for the petitioner and submits that the notice dated 19.06.2025 issued to the above-noted three lawyers was withdrawn by the office bearers of the Bar Association, Sawai Madhopur, on the same day, i.e., 19.06.2025. However, this fact was not brought to the notice of this Court at the time of filing of the instant petitions. Learned counsel submits after considering all the arguments put forward by learned counsel for the petitioner, this Court vide order dated 01.09.2025 has stayed the proceedings of the trial court and Family Court as an interim relief. However, in the garb of the interim order, the petitioner is avoiding paying maintenance to the respondent, hence, under these circumstances, the instant petitions submitted by the petitioner, are liable to be rejected.

5. Learned counsel for the respondents has placed reliance upon the judgments passed by the Hon'ble Apex Court in the case of **Ruchi Rawat Vs. Principal Judge, Family Court Etah & Anr.** reported in **(2022) 6 SCR 1148**, and **NCV Aishwarya Vs. A.S. Saravana Karthik Sha** while deciding **Civil Appeal No.4894/2022** on 18.07.2022.

Discussions, Analysis & Findings:

6. Heard and considered the submissions made at the Bar and perused the material available on the record.



7. Perusal of the record indicates that the petitioner and the respondent are husband and wife and their marriage was solemnised on 24.04.2010. However, their marriage could not continue harmoniously and owing to the matrimonial dispute between them, the respondent lodged an FIR No.75/2023 against him with the Mahila Thana (Sawai Madhopur) for the offences under Sections 498A and 406 IPC. Thereafter, the petitioner has been charge-sheeted for the above stated offences before the Court of Chief Judicial Magistrate where he engaged three lawyers namely; Govind Prasad Gupta, Mukesh Bairwa and Anees Mohammad, to appear on his behalf in the pending criminal proceedings.

8. Apart from the above, the respondent has also filed an application under Section 125 Cr.P.C. against the petitioner before the Family Court, Sawai Madhopur seeking maintenance from him.

It appears that an order of interim maintenance dated 30.06.2025 has been passed directing the petitioner to pay maintenance of Rs.15,000/- per month.

9. Perusal of the record indicates that the respondent is a practicing lawyer at Sawai Madhopur. She submitted an application/complaint before the Bar Association, Sawai Madhopur stating therein that owing to the dispute between the petitioner and herself, the petitioner is facing trial in Criminal Case No.2093/2023 before the Court of Additional Chief Judicial Magistrate wherein three lawyers namely; Govind Prasad Gupta, Mukesh Bairwa and Anees Mohammad have been engaged by him as his legal counsel. A prayer was made by the complainant-respondent to the President of Bar Association for taking



disciplinary action against all of them and further prayed that they be restrained from providing legal assistance to the petitioner. The aforesaid application was submitted by the respondent on 10.06.2025 and on the basis of the same, the Bar Association has issued a notice to all the above-mentioned three lawyers seeking their reply/explanation vide notice dated 19.06.2025.



10. At this juncture, counsel appearing on behalf of the respondent apprised this Court that on the very same day, i.e., 19.06.2025, an executive meeting of the Bar Association, Sawai Madhopur was called upon and a decision has been taken to withdraw the aforesaid notice.

11. Be that as it may, looking to the fact that the respondent is a practicing lawyer at Sawai Madhopur and considering that she has successfully influenced the Bar Association into taking action against the abovementioned lawyers, appearing on behalf of the petitioner, it appears that the petitioner has no hope of getting the opportunity of a fair trial before the Courts situated at Sawai Madhopur, in absence of adequate legal assistance and lawyers willing to represent the same.

12. Getting legal assistance is a fundamental right contained under Article 21 of the Constitution of India, and no litigant can be deprived of the same.

13. It is by far now well settled legal proposition that it is the duty of the Court to see and ensure that an accused, put on a criminal trial, is effectively represented by a defence counsel and if on account of indigence, poverty or illiteracy or any other disabling factor, he is not able to engage a counsel of his choice, it becomes the duty of the Court to provide him appropriate and meaningful



legal aid at the State expenses. What is meant by the duty of the State to ensure a fair defence to an accused is not the employment of a defence counsel for namesake. It has to be the provision of a counsel who defends the accused diligently to the best of his abilities. While the quality of the defence or the calibre of the counsel would not militate against the guarantee to a fair trial sanctioned by Articles 21 and 22, respectively, of the Constitution, a threshold level of competence and due diligence in the discharge of his duties as a defence counsel would certainly be the constitutional guaranteed expectation. The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent.

Section 304 CrPC refers to legal aid to the accused at State expenses in certain cases which reads thus:

"304. Legal aid to accused at State expense in certain cases.—(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rule providing for—

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fee payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before the Courts of Session."



14. The Hon'ble Apex High Court in the case of **Kishore Chand v. State of H.P.** reported in **1991 (1) SCC 286** held as under:

"13. Though Article 39-A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides Amicus Curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the bar who has either a little experience or no experience is assigned to defend him. It is high time that Senior Counsel practising in the court concerned, volunteer to defend such indigent accused as a part of their professional duty. If these remedial steps are taken and an honest and objective investigation is done, it will enhance a sense of confidence of the public in the investigating agency."

15. In **Ranchod Mathur Wasawa v. State of Gujarat** reported in **1974 (3) SCC 581**, it is observed that, the Sessions Judge should view with sufficient seriousness the need to appoint State counsel for undefended accused in grave cases. Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates, equal to handling the complex cases, not patronising gestures to raw entrants to the Bar. Sufficient time and complete papers should also be made available to the advocate chosen so that he may serve the cause of justice with all the ability at his command, and the accused also may feel confident that his counsel chosen by the court has had adequate time and material to defend him properly.

16. In **Ramanand v. State of U.P.** reported in **2023(16) SCC 510**, the Hon'ble Apex Court observed as under:-





"133. This case provides us an opportunity to remind the learned District and Sessions Judges across the country conducting Sessions trials, more particularly relating to serious offences involving severe sentences, to appoint experienced lawyers who had conducted such cases in the past. It is desirable that in such cases Senior Advocate practising in the trial court shall be requested to conduct the case himself or herself on behalf of the undefended accused or at least provide good guidance to the advocate who is appointed as Amicus Curiae or an advocate from the legal aid panel to defend the case of the accused persons. Then only the effective and meaningful legal aid would be said to have been provided to the accused."

17. The Hon'ble Apex Court in the case of **M.H. Hoskot v. State of Maharashtra** reported in **1978(3) SCC 544** had emphasised upon the need of securing the competent and efficient legal services for a prisoner who is standing trial in a criminal case or for the commission of alleged offence. The Court ruled as under:-

"14. The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law. Free legal services to the needy is part of the English criminal justice system. And the American jurist, Prof. Vance of Yale, sounded sense for India too when he said: [Earl Johnson, Jr., *Justice and Reform*, p. 11.]

What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are



open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?

15. Gideon's trumpet has been heard across the Atlantic. Black, J. there observed: (*Gideon case* [*Processual Justice to the People*, (May 1973) p. 69 [**Gideon v. Wainwright**, reported in **372 US 335 (1963)**].

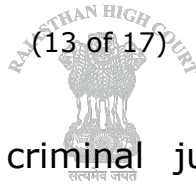


'9. ... Not only those precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, ... who fail to hire the best lawyers they can get to prepare and present their defences. That Government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trial in some countries, but it is in ours. From the very beginning, our State and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.'

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18. The American Bar Association has upheld the fundamental premise that counsel should be provided in the criminal proceedings for offences *punishable by loss of liberty*, except those types of offences for which such punishment is not likely to be imposed. Thus, in America, strengthened by cases, counsel for the accused in the more serious class of cases which threaten a person with imprisonment is regarded as an essential component of



the administration of criminal justice and as part of procedural fair play. This is so without regard to the sixth amendment because lawyer participation is ordinarily an assurance that deprivation of liberty will not be in violation of procedure established by law. In short, it is the warp and woof of fair procedure in a sophisticated, legalistic system plus lay illiterate indigents aplenty. The Indian socio-legal milieu makes free legal service, at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance."



18. Considering the above facts and circumstances of the case, where the local Bar Association is acting under the instructions of the complainant/respondent and looking to the fact that notices have been issued to the counsels for the petitioner appearing before the trial court for taking action against them for engaging themselves on behalf of the petitioner, it appears that the petitioner has been deprived from getting legal assistance and there is no hope or chance that the petitioner would get a fair opportunity of contesting a fair trial against him at Sawai Madhopur.

19. The inability of a litigant such as the petitioner to secure effective legal assistance due to reluctance caused by the Bar Association under the influence or creation of a hostile environment by the respondent, especially when she is a lawyer practicing in the same court, compromises the fundamental principle of fair trial.

20. In the considered opinion of this Court, it is trite law that inability to engage counsel owing to reluctance caused by the local factors by the respondent may constitute a valid ground to transfer the trial of the proceedings under Section 407 Cr.P.C. (now Section 447 BNSS).



21. In **Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158**, the Hon'ble Supreme Court opined that a free trial would necessarily involve creation of a neutral atmosphere where parties can participate freely by availing effective legal assistance.

It was held as under:

"36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all-comprehensive to exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will be not correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. **Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.** If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."(emphasis added)

22. Further, the Hon'ble Supreme Court in **Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167** has opined that:

"2. 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 imperilling, 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. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

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4. Now to the next ground. **The sophisticated processes of a criminal trial certainly require competent legal service to present a party's case. If an accused person, for any particular reason, is virtually deprived of this facility, an essential aid to fair trial fails. If in a certain court the whole Bar, for reasons of hostility or otherwise, refuses to defend an accused person - an extraordinary situation difficult to imagine, having regard to the ethics of the profession - it may well be put forward as a ground which merits this Court's attention.** Popular frenzy or official wrath shall not deter a member of the Bar from offering his services to those who wear unpopular names or unpalatable causes and the Indian advocate may not fail this standard..."(emphasis added)

23. While dealing with transfer of the trial from Tamil Nadu to a different State due to apprehension of political interference a two Judge Bench of the Hon'ble Supreme Court in ***K. Anbazhagan v. Superintendent of Police, (2004) 3 SCC 767***, speaking through Justice H.K. Sema, observed as follows:



"23. Free and fair trial is *sine qua non* of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner."



24. **Lord Hewart C.J.**, observed in **Sussex Justices, Mc Carthy, Exparte (1924) 1 KB 256** as under :-

"The trial of the case should be in an atmosphere which does not create even a suspicion that there has been or is likely to be an improper interference with the course of justice. It is not merely of some importance but of fundamental importance that justice should not only be done but should manifestly be seen to be done."

Conclusions and Directions:

25. There is no question of inconvenience of the complainant-respondent for conducting the proceedings of above cases at Sawai Madhopur because she is mis-using her position of being lawyer before the trial court and not allowing any lawyer to appear on behalf of the petitioner. Such an act and conduct of the respondent and the local Bar Association is not appreciable and is liable to be condemned and deprecated. The judgments relied upon by the counsel for the respondents are not applicable in the peculiar circumstances of the case created by none other than the respondent herself.

26. Looking to the fact that the petitioner is unable to secure profitable legal representation at Sawai Madhopur, this Court finds in the interest of justice, it is appropriate to transfer the trial of



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the above two cases to another district by invoking the powers contained under Section 407 Cr.P.C./Section 447 of BNSS.

27. Accordingly, while considering the overall facts and circumstances of the case, this Court deems it just and proper to transfer both the criminal cases and it is directed that Criminal Case No.2093/2023 tiled as State Vs. Manoj Kumar Meena pending before the court of Chief Judicial Magistrate, Sawai Madhopur along-with the other Criminal Case No.185/2024 titled as Preeti Meena & Others Vs. Manoj Kumar Meena pending before the Family Court, Sawa Madhopur is ordered to be transferred to the Court of Chief Judicial Magistrate, Jaipur Metropolitan-I and the Family Court No.1, Jaipur Metropolitan respectively.

28. Needless to observe that the petitioner would not be allowed to escape his liability to comply with the order dated 30.06.2025 passed by the Family Court. In case, the petitioner fails to comply with the aforesaid order, the respondent would be at liberty to take appropriate action against the petitioner. The petitioner is also directed to make regular payment of interim maintenance to the respondent without any default and also make payment of the arrears, if any, within a period of three months.

29. With the aforesaid observations, both the Criminal Transfer Petitions stand disposed of. Stay application as well as all applications (pending, if any) also stand disposed of.

(ANOOP KUMAR DHAND),J

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