

GAHC010103422023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Tr.P.(Crl.)/12/2023

RAJDIP BHUYAN
S/O LT. LAKHI BHUYAN, R/O HOUSE NO. 48, ANANDA NAGAR, SIXMILE,
DIST-KAMRUP (M), ASSAM, PIN-781022

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:HASEN ALI
S/O LATE ABDUL JABBAR
R/O VILL-NO. 2 GAGALMARI
P.O.-GAGALMARI
P.S.-MAYONG
DIST-MORIGAON
ASSAM
PIN-782121

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

22.05.2023

Heard Mr I H Saikia, learned counsel for the petitioner. Also heard Mr P Borthakur, learned Additional Public Prosecutor, appearing on behalf of the State of Assam.

2. The petitioner has filed an application under Section 407 of CrPC, praying for transferring the FIR registered as Mayong PS Case No. 200/2021, under Sections 406/420 IPC, to the jurisdictional police station under Dispur.

3. The case of the petitioner is that the respondent No. 2/informant lodged an FIR before Mayong PS alleging inter alia that he had given an amount of Rs. 9,00,000/- (Rupees Nine Lakh) Only, in the Carnest Motor Dealer, for purchasing one JCB, but the said dealer failed to deliver the said JCB to the informant. Accordingly, on receipt of the FIR, Mayong PS Case was registered as aforesaid.

4. It is further stated that petitioner is the proprietor of Carnest Motors, which deals in sale and purchase of auction vehicles, motor parts, repairing of vehicles etc. at marginal profit. The complainant had agreed upon a deal of buying of a JCB from Carnest Motors at a total consideration of Rs. 20,00,000/- (Rupees Twenty Lacs) Only, out of which complainant has paid only Rs. 9,00,000/- (Rupees Nine Lacs) Only, as advance and promised to pay the remaining balance amount at a later point of time, before delivery of the vehicle. But despite the deal, the complainant failed to pay the remaining balance amount and thereafter lodged the present FIR to harass the petitioner's firm, i.e., Carnest Motors. Thereafter, the petitioner had repaid an amount of Rs. 2,00,000/- (Rupees Two Lacs) Only to the complainant on 18.05.2022. Subsequently, the petitioner also approached before this Court by filing an anticipatory bail application seeking pre-arrest bail, being AB No. 3591 of 2022 and accordingly which was allowed vide order dated 05.12.2022. But the complainant has been regularly threatening him with dire consequences of life if he visits Mayong and as such, the petitioner has not been able to appear before the Investigating Officer till date. Therefore, the petitioner has approached before this Court to exercise the jurisdiction under Section 407 CrPC.

5. The further case of the petitioner is that the informant has again lodged an FIR before the DGP Grievance Cell, along with two others, having similar allegations, on 17.03.2023, which has been registered as Dispur PS Case No. 568 of 2023, under

Sections 406/420 IPC. The petitioner again approached this Court by filing an anticipatory bail application, being AB No. 1514 of 2023, praying for granting pre-arrest bail in connection with the said case and this Court vide order dated 08.05.2023, has granted the interim protection to the petitioner. As the cause of action of both the cases are same and it comes under the Dispur Police Station, the PS case at Mayong is required to be transferred and tagged with Dispur PS Case No. 568 of 2023. It is also stated that monetary transaction took place at Guwahati under the jurisdiction of Dispur Police Station.

6. Learned counsel for the petitioner had argued that the Police of Mayong Police Station had failed to appreciate that the entire transaction between the parties took place in Guwahati and the cause of action arises thereon. As such, it is a fit case where this Court may interfere with the matter and transfer the matter being Mayong PS Case No. 200/2021, under Section 420/406 IPC to the Dispur Police Station, to tag it with Dispur PS Case No. 568 of 2023, registered under Sections 406/420 IPC for further proceeding/investigation.

7. It is also submitted by learned counsel for the petitioner that there is a threat to life and property of the petitioner at Mayong. If the impugned FIR is not transferred from Mayong to Guwahati, the petitioner will not be able to cooperate with the investigation without any fear. Therefore, for the ends of justice, Mayong PS Case No. 200/2021, registered under Sections 420/406 IPC may be transferred to Dispur Police Station.

8. Learned counsel for the petitioner also contended that the High Court has ample power to transfer a case under Section 407 (1) (c) CrPC even during investigation from one district to another. According to him, Section 407 (1) (c) confers power to the High Court to transfer a case from one district to another district, if it tends to the general convenience of the parties or witnesses or is expedient for the ends of justice.

9. Learned counsel further submits that as per Section 407 (2) CrPC the High Court can transfer a case on its own initiative, also apart from the application from the parties.

Learned counsel submits that the term ‘case’ would not essentially refer to a stage of enquiry or trial but would also cover the stage of investigation.

10. On the other hand, learned Additional Public Prosecutor has submitted that the transfer of FIR from one district to another district is not permissible in law. He submits that Section 407 CrPC does not provide for transfer of investigation, but appeal and cases, where a fair enquiry or trial is not possible under Section 407 (1) (a) and other circumstances mentioned in 407 (1) (b) of CrPC are satisfied.

11. The main contention of learned Additional Public Prosecutor is that no case can be transferred from one district to another district at the stage of investigation. It can be transferred only at the stage of enquiry or trial.

12. In order to appreciate the submission of learned counsel for the parties, it would be appropriate to reproduce the provisions of Section 407 CrPC, as follows:-

“407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from

a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.”

13. A bare look into the provision would show that Section 407 CrPC relates to power of High Court to transfer cases and appeals. The moot question is whether transfer of case would take into its ambit a prosecution at stage of investigation and whether the term- ‘case’ has been used in respect of stage which would refer to a stage post completion of investigation and includes within its sweep the stage of commencement of enquiry and onwards.

14. The word ‘case’ is not defined in [the Code](#) of Criminal Procedure. The word ‘case’ has a very wide connotation and meaning. It is a state of fact which furnishes occasion for exercise of jurisdiction of a court of justice. As per Law Laxicon the term ‘case’ is wider than that of a suit or criminal prosecution or proceeding in Rem. In other words, it is a formal legal proceeding instituted in a court of law. Once an FIR is registered basically a case is registered in respect of the offence alleged.

15. As per Black’s Law dictionary, the term ‘case’ can be referred to a proceeding, action, suit or controversy at law. According to it, the term ‘case’ also visualizes the stage of criminal investigation.

16. The Hon’ble Apex Court in the case of ***Bhimappa Bassappa Bhu Saunavar Vs***

Laxman Shivarayappa Samagonda & others, reported in **A.I.R. 1970 SC 1153**, has interpreted the word ‘case’ to mean ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. In other context, the word ‘case’ represent other kinds of proceedings also.

17. In the case of ***State (CBI) Vs Klichine Aleksandre & Ors***, reported in **1996(1) Cal HN 507**, has observed that ‘case’ means a proceeding for the prosecution of a person alleged to have committed an offence. It will also take within its ambit the stage of investigation also.

18. In the backdrop of the aforesaid facts, it would be difficult to accept the contention of the learned counsel for the petitioner that the word- ‘case’ referred to in Section 407 of the CrPC would only mean a proceeding prior to submission of charge sheet in a police instituted case. Once an FIR is instituted a proceeding for prosecution of a person begins. The person who is alleged to have committed offence is subject to constraints of various provisions of the CrPC including one of taking bail etc. Furthermore, Section 407(1)(i) also visualizes that a case can be transferred at a stage of investigation, if conditions mentioned under Sections 177 to 186 CrPC are satisfied.

19. However, the conjoint reading of Section 407(1) (a) (b) & (c) would show that the word ‘case’ occurring in Section 407 has been used in reference to enquiry or trial and the legislature in its wisdom has omitted the word ‘investigation’ in Section 407(1)(a) of the Code. It may be noticed that word ‘investigation’ and the manner in which it has to be conducted has been used in same enactment namely CrPC. In view of above, section 407 CrPC refers to circumstances and at an stage under which the High Court can transfer cases, i.e., at the stage of enquiry or trial, if conditions mentioned in sub-clause (a)(b) & (c) so justifies.

20. Section 407 of the Code deals with the power of the High Court to transfer cases and appeal. Such power can be exercised on the report of the lower court or on the application of party interested or even on its own initiative.

Section 407(1)(a) of CrPC states that if High Court is satisfied that a fair and impartial enquiry or trial cannot be had in any subordinate criminal court, it can transfer the case from one court to the other.

Section 407(1)(a) confers power on High Court to transfer a proceeding of enquiry also.

Though section 407(1)(b)(c) do not repeat the term enquiry and trial, the provision evidently refers to the stage of enquiry and trial and are in continuation of sequence referred to in section 407(1)(a) CrPC

Section 407(1)(b) provides the second situation in which appeal and cases at stage of enquiry or trial can be transferred if question of law of unusual difficulty is likely to arise.

The third circumstance is provided in Section 407(1)(c), which confers power on High Court to transfer a case, if it is so required by any provisions of this Code or the same will tend to the general convenience of the parties or witnesses, or if the same is required for the ends of justice.

21. Under such backdrop, it is held that Section 407 (1) (a) (b) and (c) does not cover and refer to stage of investigation of a case. Accordingly, the present application for transfer of the FIR, i.e., Mayong PS Case No. 200 of 2021, under Sections 406/420 IPC, which is at the stage of investigation, is not maintainable and is accordingly dismissed.

22. With the aforesaid observations, this transfer petition stands disposed of.....

JUDGE

Comparing Assistant