

Reserved

Neutral Citation No. - 2023:AHC:227277

Court No. - 78

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 241 of 2023

Applicant :- State of U.P.

Opposite Party :- Mukhtar Ahmad Ansari And Another

Counsel for Applicant :- Shiv Kumar Pal

Counsel for Opposite Party :- Upendra Upadhyay

Hon'ble Raj Beer Singh,J.

1. This transfer application has been moved on behalf of State under Section 407 Cr.P.C. for transfer of Criminal Case No. 961 of 2021 (State vs. Mukhtar Ansari), arising out of Case Crime No.121 of 2021, under Section 21/25 Arms Act, P.S. Muhammadabad, District Ghazipur, pending in the court of learned Chief Judicial Magistrate/Special Court M.P./M.L.A. Ghazipur to the Court of Special Judge M.P./M.L.A. Varanasi and the same be connected with S.T. No.22 of 2005, pending in the court of Special Judge M.P./M.L.A. Varanasi.

2. Heard Sri P.C. Srivastava, learned Additional Advocate General along with Sri Vikas Sahai, learned A.G.A. for the State/applicant and Sri Upendra Upadhyay, learned counsel for the opposite party no.1 and perused the record.

3. The main ground raised on behalf of the applicant / State is that the S.T. No. 22 of 2005, State vs. Mukhtar Ansari, crime No. 266/1990, under section 467/468/420/120-B IPC, PS Mohammedabad, Ghazipur is being tried by the court of Additional Sessions Judge / Special Judge (P.C. Act), Spl. Court No. 1, Varanasi and main allegation in that case is that the opposite party No.1 / accused Mukhtar Aansari has obtained two arms license by way of cheating and forgery, whereas in the case crime No. 121/2021, under section 21/25 Arms Act, P.S. Muhammbabad, Ghazipur, the allegation against the opposite party No. 1 / accused is that after cancellation of above referred two arms license, he did not deposit / surrender the said two weapons and thus he was in un-authorised

possession of the same and this case is pending before the court of C.J.M., Ghazipur. It was submitted by the learned AGA that both cases pertain to same issue and connected with each other and it would be in the interest of justice that both the cases be decided by one and the same court so that conflicting verdict may be avoided.

4. Learned counsel for the opposite party / accused has opposed the transfer application and submitted that S.T. No. 22 of 2005, State V Mukhtar Ansari, pending before the court of Additional Sessions Judge / Special Judge (P.C. Act), Spl. Court No. 1, Varanasi, is at advance stage of trial and that nine prosecution witnesses have already been examined and thus, the transfer of case crime No. 121/2021, under section 21/25 Arms Act from the court at Ghazipur to Varanasi would delay the trial of S.T. No. 22 of 2005, as the case crime No.121 of 2021 is in stage of charge. It was also stated that in both the cases, witnesses are different and thus, they cannot be tried together.

5. I have considered the rival submissions and perused the record. Section 407 Cr.P.C. reads as under:-

"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.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused persons, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose: Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

6. Considering the above stated provisions, it appears that the conditions, on which the power can be exercised under Section 407 Cr.P.C., are:

- (i) fair and impartial inquiry or trial cannot be had;
- (ii) some question of law of unusual difficulty is likely to arise;
- (iii) an order under Section 407 Cr.P.C. is required by any provision of Code of Criminal Procedure, i.e., Cr.P.C.;
- (iv) it will tend to the general convenience of the parties or witnesses;
- (v) it is expedient for the ends of justice.

7. It is also well settled that mere allegation that there would be inconvenience in attending the case, in the absence of any substantial material, can not be a ground for transfer of the case. Transfer of a case

cannot be granted on the surmises or on fancied notion of a litigant. In *Vijay Pal and others Vs. State of Haryana* and another 1999 (9) SCC 67, the Court said that in absence of any justified reason, it is not proper and legal to exercise power under Section 407 Cr.P.C.

8. In the present case, the version of the applicant / State is that in the S.T. No. 22 of 2005, *State vs. Mukhtar Ansari*, the prosecution case is that the opposite party No.1 / accused Mukhtar Aansari has obtained two arms license by way of cheating and forgery, whereas in another case crime No. 121/2021, under section 21/25 Arms Act, P.S. Muhammabad, Ghazipur, the case of prosecution is that after cancellation of above referred two arms licenses, the opposite party No. 1/ accused did not deposit / surrender the said two weapons and thus he was in illegal possession of the same. Thus, issue in both the cases is inter-connected and it appears expedient for the ends of justice that both the cases be tried by one and the same court. The objection of the opposite party No.1 is that the S.T. No. 22 of 2005, *State vs. Mukhtar Ansari* is at advanced stage of trial and the case crime No. 121/2021, under section 21/25 Arms Act, PS Muhammabad, Ghazipur is pending at the charge and thus if case pending at Ghazipur is tried along with S.T. No. 22 of 2005, it would cause unnecessary delay in trial of S.T. No. 22 of 2005. It was also pointed out that witnesses in both the cases are different. In view of these facts, it appears appropriate that the case crime No. 121/2021, under section 21/25 Arms Act, PS Muhammabad, Ghazipur pending before the C.J.M, Ghazipur, be transferred to the court of Additional Sessions Judge / Special Judge (P.C. Act), Spl. Court No. 1, Varanasi, where S.T. No.22 of 2005 is pending, so that both the cases may be decided by the same court, however, considering the stage of S.T. No. 22 of 2005 and the contention that witnesses in both the cases are different, it would be at the discretion of the trial court whether both the cases are tried together by consolidating or separately.

9. In view of aforesaid, the case crime No. 121/2021, under section 21/25 Arms Act, PS Muhammabad, Ghazipur, pending before the court of C.J.M., Ghazipur is withdrawn and transferred from that court to the court of Additional Sessions Judge / Special Judge (P.C. Act), Spl. Court No. 1, Varanasi, where S.T. No. 22 of 2005 is pending, so that both the cases may be decided by the same court. It would be at the discretion of the trial whether both the cases be tried jointly or separately. The District & Sessions Judge, Ghazipur shall ensure the record of case crime No. 121/2021, under section 21/25 Arms Act, PS Muhammabad, Ghazipur, pending before the CJM, Ghazipur is transmitted forthwith to the court of Additional Sessions Judge / Special Judge (P.C. Act), Spl. Court No. 1, Varanasi, through District & Sessions Judge, Varanasi, for disposal in accordance with law.

10. The transfer application is disposed of in above terms.

Order Date :- 01.12.2023

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