

Reserved

Neutral Citation No. - 2023:AHC:237741

Court No. - 78

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 332 of 2023

Applicant :- Smt. Neha

Opposite Party :- Smt. Maya Devi

Counsel for Applicant :- Vishnu Pratap Pandey

Counsel for Opposite Party :- Jata Shankar Pandey

Hon'ble Raj Beer Singh,J.

1. This transfer application under section 407 CrPC has been moved on behalf of applicant / accused for transfer of complaint case No. 827 of 2021 (Maya Devi vs. Smt. Neha and Others), under section 323, 504, 452 IPC, P.S. Etmaudula, District Agra from the court of Chief Judicial Magistrate, Agra to the Court of Additional Chief Judicial Magistrate, Muzaffarnagar.
2. Heard learned counsel for the applicant and learned counsel for the opposite party and perused the record.
3. Learned counsel for the applicant submitted that the applicant was married with the son of the opposite party on 16.06.2020 but later on her husband and his family members have harassed her for dowry and thus, she has lodged a case under section 498-A/323/313/504/506 IPC and section 3/4 D.P. Act at Muzaffarnagar. One case under D.V. Act and another under section 125 CrPC, lodged by the applicant, are also pending at Muzaffarnagar. Learned counsel submitted that the case in question has been lodged by the opposite party against the applicant and her family members as counterblast to those cases. The applicant is a lady and her father is quite old and thus, she would face hardship in coming from Muzaffarnagar to Agra to attend the proceedings of the said case. The applicant is residing at Muzaffarnagar. It was submitted that in view of aforesaid facts and circumstances the aforesaid complaint case No. 827/2021 Maya Devi vs. Smt. Neha and others may be transferred from

the court of Chief Judicial Magistrate, Agra to the competent court at Muzaffarnagar.

4. Learned counsel for the opposite party / complainant has opposed the transfer application and submitted that the opposite party / complainant is an old lady and she is a patient of arthritis and heart related illness and her husband is suffering from cancer. The son of opposite party (husband of the applicant) is working in Railway Protection Force and he remains posted at different places. In view of these facts if the said case is transferred from the court of Chief Judicial Magistrate, Agra to Muzaffarnagar, she would face hardship in attending the proceedings at Muzaffarnagar, as she has to travel from Agra to Muzaffarnagar on each date. As the case in question is a complaint case, thus being complainant, the opposite party would be often required to attend the proceedings of the said case. Further, the father of applicant is an ex- M.L.A and he enjoys clout in the area of Muzaffarnagar. Referring to the aforesaid facts, it was submitted that no case for transfer of the case in question is made out.

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, it appears that essentially the matter relates matrimonial dispute and the applicant, who is daughter-in-law of opposite party, has lodged a few cases against her husband and his family members at the courts at Muzaffarnagar, where she is residing. The complaint case No. 827/2021 Maya Devi vs. Smt. Neha and others has been lodged by the opposite party against the applicant and her family members at Agra, which pending before the court of Chief Judicial Magistrate, Agra. The opposite party / complainant is stated an old lady, aged about 65 years, and she is stated a patient of Arthritis and heart related illness and her husband is also stated suffering from cancer. The husband of the applicant is working in Railway Protection Force. In view of these facts and circumstances, it appears that in case the said complaint case is transferred from Agra to Muzaffarnagar, it would cause more hardship to the opposite party then the hardship to be suffered by the applicant, if the case is not transferred. Considering entire facts of the matter, no case for transfer of aforesaid complaint case No. 827/2021 Maya Devi vs. Smt. Neha and others, under section 323/504/452 IPC, P.S. Etmaudula, District Agra from the court of Chief Judicial Magistrate, Agra to the Court at Muzaffarnagar is made out. The transfer application has no merit and thus, liable to be dismissed.

9. The transfer application is **dismissed**.

Order Date :- 15.12.2023

Neeraj