

Court No. - 83

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 606 of 2023

Applicant :- Smt. Shashi Bindra

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ravikant Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori,J.

Sri Ravikant Shukla, learned counsel for the applicant and Sri Umesh Chandra Verma, learned A.G.A. for the State are present.

The present transfer application has been filed to set aside the order dated 17.08.2023 passed by Sessions Judge, Kanpur Nagar in Criminal Misc. Transfer Application No. 1190 of 2023, by which the transfer application has been rejected. The Criminal Misc. (Transfer Application) No. 1190 of 2023 has been filed by the applicant to transfer the Session Trial No. 849 of 2006, under Section 302 IPC to any other court of same judgeship.

Learned counsel for the applicant submits that the impugned order has been passed without considering the provision of Section 407, 408 (3) of Cr.P.C. It is further submitted that the Session Trial is pending for argument of the case relating to Section 302 IPC. the appellant is an accused in the above noted Session Trial. It is further submitted that the case is related to circumstantial evidence.

It is further submitted that the order dated 17.08.2023 has been passed on the same day without completing 24 hours of filing of the transfer application without affording an opportunity to the prosecution.

The transfer application has been filed on 17.08.2023.

The main question arose in the present transfer application is as to whether the impugned order dated 17.08.2023 has been passed in accordance with sub-Section 3 of Section 408 Cr.P.C.

Sub-Section (3) of Section 408 Cr.P.C. provides that sub-Section (5) of Section 407 Cr.P.C. is applying in relation to application to the Session Judge for transfer under Section 408

Cr.P.C.

Sub-Section (5) of Section 407 Cr.P.C. provides that every accused person making such application shall give to the public prosecutor notice in writing of the application, together with the copy of the grounds on which it is made; and no order shall be made on the merit of the application unless at least 24 hours have elapsed between the giving of such notice and the hearing of the application.

The provision of sub-Section (3) of Section 408 Cr.P.C. has not been complied with, which is a pure question of law. Therefore, this transfer application is decided without giving opportunity of hearing to the opposite party no.2.

In view of the above facts and circumstances of the case, this transfer application is allowed without going through the merit of the case and the order dated 17.08.2023 is set aside and the matter is remanded back to Sessions Judge to decide afresh the transfer application after affording opportunity to the parties.

The present criminal transfer application is allowed.

Office is directed to send a certified copy of this order to the Sessions Judge concerned for compliance.

Order Date :- 23.11.2023

MAA/-