

GAHC020005922023

2024:GAU-NL:540-DB



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

Case No. : Tr. P.(Suo Moto)/4/2023

XXX AND 8 ORS
MOKOKCHUNG, NAGALAND

2: MR. MEYALEPDEN
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAND

3: MR CHEPKAKMAYANG
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAND

4: MR. TONGPANGTSUBA
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAND

5: MR. BENDANGSUNEP
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAND

6: MR SUPONGSUNEP
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAND

7: MR. IMTIZACHET
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAND

8: MR. LIPOKTEMSU
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAND

9: MR. TEMSUAKUM
PERMANENT R/O CHUNTIA VILLAGE
MOKOKCHUNG
NAGALAN

VERSUS

THE STATE OF NAGALAND AND ANR
KOHIMA NAGALAND

2:INFORMANT/VICTIM
G.R. CASE NO. 34/23
ARISING OUT OF MKG P.S.-11-II C/NO 13/23
THROUGH THE OFFICER-IN-CHARGE MKG P.S. II
MOKOKCHUNG
NAGALAND

Advocate for the Petitioner : J. RENGMA (R/1,2 & 4-7), S. RANA,A.
SOPHIE,VILIEZONUO RHETSO,WONCHANO HUMTSOE,KEZHOSANO
KIKHI,PAKINRICHAPBO,ELVIN SHITIRI,,,ANGSHUMAN SARMA (R/3,8 & 9)

Advocate for the Respondent : P.P, NAGALAND,

Date of hearing	: 17.09.2024.
Date of Judgment	: 16.10.2024

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA
HON'BLE MR. JUSTICE BUDI HABUNG

:: JUDGMENT AND ORDER ::
[CAV]

Budi Habung, J

Heard Ms. V. Suokhrie, learned Addl. Advocate General
along with Ms. S. Mere, learned Senior Government Advocate

cum PP, for the State of Nagaland, Mr. A. K. Bhuyan, the learned counsel for the respondent No.2/victim/informant, Mr. A. Sophie, the learned counsel for the accused No. 2, 4, 5, 6 and 7 and Mr. Pakinrichapbo, the learned counsel for the accused No. 3, 8 and 9.

2. This Suo Moto transfer petition has arisen out of the reference made by the Principal District & Sessions Judge, Mokokchung, Nagaland, vide Letter No. PD&SJ/MKG/Estt-1/2023-24/94 dated 17.10.2023 addressed to the Registrar, Gauhati High Court, Kohima Bench, informing that the Government of Nagaland, Department of Law & Justice, Kohima, by an order dated 13.10.2023, has transferred the criminal case GR case no. 34/2023 arising out of Mokokchung PS-II case no. 13/23 under Sections 120B/34/365/302 IPC from Sessions Court, Mokokchung to the Court of Sessions Judge, Dimapur. The letter further stated that under Section 407 of the Code of Criminal Procedure the power of transfer of case is vested only with the High Court, hence, requested to bring the same to the notice of the Hon'ble High Court for necessary direction. The Registrar, Gauhati High Court, Kohima Bench, Nagaland, had then referred the same to the Principal Seat of the Gauhati High Court at Assam vide his letter dated 17.10.2023 for bringing the same into the notice of the Hon'ble the Chief Justice for decision on the administrative side. The Hon'ble Gauhati High Court in administrative side then conveyed the approval and requested the Registrar, Gauhati High Court, Kohima Bench for registration of Suo Moto transfer

petition. Hence, this Suo-Moto Transfer petition.

3. Notices were issued to all concerned including the informant/victim's family and all the accused persons and in the meantime, pending disposal of the Suo moto transfer petition, the trial proceeding of the GR case no. 34/23 arising out of Mokokchung PS-II Case no. 13/23 under sections 120B/34/365/302 IPC pending before the Principal District & Sessions Judge, Mokokchung, Nagaland, was stayed.

4. The learned PP, Nagaland while referring to the affidavit filed by the state respondent has submitted that the power exercised for issuance of the order of transfer of criminal case from Mokokchung to Dimapur by the State Government was made in terms of Rule 22C of the Rules for Administration of Justice & Police in Nagaland, 1937 which was amended vide the Rules for Administration of Justice & Police in Nagaland (3rd Amendment) Act, 1934.

5. Section 1(3) of the Rules for Administration of Justice & Police in Nagaland (3rd Amendment) Act, 1984 mandates that the said act shall come into force on such date the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Rules contained in the Act. However, the learned PP submitted that the said Act has not been brought into force by any government notification as per the mandate till date.

6. Since the matter pertains to an important question of

law having wide spread ramification in the State of Nagaland, the matter was referred before the Hon'ble Chief Justice of Gauhati High Court for taking decision as to whether this matter requires adjudication by a Single Judge or by the Division Bench of this Court. Accordingly, the Hon'ble Chief Justice of the Gauhati High Court on 29.02.2024 has approved on administrative side and directed the above Tr.P.(Suo Moto)/4/2023, to be listed before the Division Bench at Kohima Bench. It is pursuant to the said administrative approval order that, this matter has been placed before the Division Bench.

7. Thus, a reference was made to the Division Bench on account of the question of law which arises in these proceedings as to whether in exercise of powers under Rule 22C of the Administration of Justice and Police Rules, 1937, the State authorities could transfer a criminal proceeding and whether such exercise of power would amount to interference with the jurisdiction of the High Court under the Constitution of India.

8. The State as respondent no. 1 has filed affidavit on a specific query as to why the Chapter XXXI of the Code of Criminal Procedure, 1973 has not been made applicable in the State of Nagaland till date. The State respondent contended that as per Section 1(2)(a) of the Code of Criminal Procedure, 1973 the provision of the said code other than those relating to Chapter VIII, X and XI thereof, shall not apply to the State of Nagaland but the concerned State Government may by notification apply such provisions or any of them to the whole or part of the State

of Nagaland. However, till date, the Government of Nagaland has not brought out any notification for application of Chapter XXXI Cr.P.C to the State of Nagaland.

9. It is submitted that section 407 Cr.PC which falls under Chapter XXXI Cr.PC empowers the High Court to transfer Criminal Case from one criminal Court to another Criminal Court. However, the said Chapter XXXI is not applicable to the State of Nagaland till date. It is further contended that by virtue of Section 22C of the Rules for Administration of Justice and Police in Nagaland (Third Amendment) Act, 1984, the State government is empowered to transfer a particular case or appeal from one Criminal Court in a district to another Court in a different district in the State of Nagaland on the report of any Court or on the application of a party interested or on its own initiative for the ends of justice.

10. It is further submitted that the Secretary, Law & Justice Department on receipt of an application dated 27.07.2023 made by the elder sister of the deceased victim requesting for change of jurisdiction in the interest of justice. The learned counsel for the State respondent further submitted that in this regard, the Department had sought the views and comments from the Deputy Commissioner, Mokokchung, Nagaland, the Superintendent of Police, Mokokchung, Nagaland and the Public Prosecutor, Mokokchung, Nagaland for transferring out the case from the jurisdiction of Mokokchung district in the interest of justice. While seeking views and comments, the department had

cited the apprehension of pressure and interference from accused party if the trial proceedings is held in Mokokchung Court. In response to the letter seeking views and comments, all the officials including the Deputy Commissioner, Mokokchung, Nagaland, the Superintendent of Police, Mokokchung, Nagaland, the Public Prosecutor, Mokokchung, Nagaland has cited the case to be very sensitive and stated that the court proceedings is likely to be affected in the future and therefore, the transfer of the case from Mokokchung to any other district, according to them would be in the interest of justice and to avoid any untoward situation.

11. It is further submitted that the Secretary, Law and Justice Department after receiving views and comments from the Deputy Commissioner, Mokokchung, Nagaland, the Superintendent of Police, Mokokchung, Nagaland, the Public Prosecutor, Mokokchung, Nagaland came to the conclusion that any untoward incident cannot be ruled out in future and that fair trial may be hampered therefore, in exercise of Section 22C of the Rules for the Administration of Justice and Police in Nagaland (Third Amendment) Act, 1984, the Secretary, Law and Justice by order dated 13.10.2023 has transferred the G.R. Case No. 34/23 of Mokokchung PS-II case no. 13/23 under section 120B/34/365/302 IPC from the Court of Mokokchung to the Court of Principal District and Sessions Judge, Dimapur to ensure fair trial.

12. The respondent No. 2 is the informant who had made

an application before the Law Department seeking change of jurisdiction and transfer of G.R. Case No. 34/23 of Mokokchung PS-II case no. 13/23 from Mokokchung to any other Court in Nagaland for fair trial and for the ends of justice. The respondent no. 2 also in her application stated that after commission of murder of the deceased, the accused side has threatened the victim's family for which a separate FIR was lodged. She further stated that the accused parties are majority in Mokokchung and there has been constant threatening to the informant party when they appear the Court during Trial. The learned counsel for the respondent no. 2 further submits that all witnesses are not from Mokokchung; 21 prosecution witnesses out of 45 are official witnesses who have no problem attending the Court at any other court in Nagaland. He further submits that 7 witnesses are from the victim's family who are under threat and whose appearance before the Court at Mokokchung are endangered. Therefore, the learned counsel for the respondent No. 2 prays that the case may be transferred from Mokokchung to Dimapur or any other court other than Mokokchung.

13. The learned counsel for the respondent No. 2 gave the following reasons for transfer of the present case from Mokokchung to Dimapur. The reasons stated at Para 5 of the affidavit is reproduced herein below:

"(i) On the night of 11th November, 2021 at around 9:30 pm a mob trespassed to our compound in search of my brother. Since he wasn't there the mob harassed my mother and sister. The following

days, the mob continued to threaten and trespassed some other families as well. So, my brother and his friends lodged FIR on 13th November, 2021 at Mokokchung Police Station-II. Without any explanation or reasoning from the village council, they forced and pressurised my brother to withdraw the FIR. Two individuals from the mob are accused in my brother's murder.

(ii) In another incident on 9th July, 2022 at around 10pm, my cousin brother Imkongkumzuk was beaten up by the so called Chuntia Senso party while he was visiting an aunt at her house. After thrashing him black and blue he was threatened to leave the village otherwise he will face direct consequences.

(iii) On 18th February, 2023, the so called senso party mob (retd. Major Toshikaba party) trespassed JD(U) candidate camp and provoked the members present there. One Mr. Lipoktemjen, son of Mr. Narowati pushed and shoved my brother, provoked him. When my brother asked Lipoktemjen why he was being aggressive towards him, Lipoktemjen replied that he will not forget or forgive him for not supporting the majority senso party and will take revenge one day. From the mob again, two are in the accused list of my brother's murder.

(iv) Following these incidents, on 21st February, 2023, my brother was abducted and brutally murdered. Early morning of 22nd February my maternal uncle Imtiakum who was in the search party of my missing brother went to drop a companion and even then, he was beaten by a mob in the middle of the village.

(v) Even after my brother's murder, the atrocities from different bodies and group does not end here. My uncle Imtiangshi who was a village council member was fined and expelled from the council for helping us during our difficult time. Also, one of my mother's friend Mrs. Temsunaro Ajem who was filmed by the media while

crying in anguish after the recovery of my brother's body was fined a pig by the village council and ordered her to publish apology letter in the media for using village name.

(vi) On the morning of 9th June, 2023, I found a waist bag containing two bullets, a knife and some other things in the vicinity of my compound. Frightened what to make of the situation and taking it as a sign of threat to my family, I hesitated at first but later on reported the findings to the police.

(vii) Our family and some sympathisers went to attend the CC proceeding at Mokokchung Session Court on 20th July, 2023. One of our relative and close friends of my brother, Mr. Imtikumzuk came to the court with us. While we were outside the court building, the accused were brought to the court by the police. On seeing the murderers of my beloved brother there was an outburst of emotions. During this time, Mr. Mezatoshi, elder brother of the accused Chubanichet and also a factional group member (Tatar) charged and threatened Imtikumzuk that he will settle scores with him back in the village and he was not afraid of the consequences whatever happens."

14. The learned counsel submitted that the respondent No. 2 has also filed an FIR on 11.06.2023 before the Officer-in-Charge, Police Station-II, Mokokchung, Nagaland informing the police about the poly bag containing waist bag placed in the vicinity of her compound. The items including 2 misfired 9mm live rounds, 1 small knife, 15 numbers of marbles, 17 numbers of iron fishing net balls, 2 lighter, 9 equirex tablets, 1 small size bandage roll, 1 brown shoe lace, 1 camo adidas waist bag were handed over to the police and seized.

15. The learned counsel for the respondent no. 2 also submitted that the mother of the informant also filed FIR before the Officer-in-Charge, Police Station-I, Mokokchung, Nagaland under the subject, 'Report of threat against the family of late Imkongjeba Kichu by the murderer accused'. The respondent's mother filed the above FIR following the incident of threat and intimidation. It is stated that on 13.10.2023, after the Court's proceeding for consideration of charge, as the accused persons were taken by the police in the prison van, some of the accused persons shouted at the family member of the victim, where one of the accused persons threatened them by screaming at the top of his voice in Ao dialect, "Lalaevodi" meaning "we will come out". This incident was also witnessed by the onlookers and it was also recorded in video. It is submitted that even after the gruesome murder of her son, the accused persons are still in pursuit of harming her and her family and their sympathizers.

16. Therefore, it is submitted that under the circumstances, a fair trial may not be expected in the Court at Mokokchung. For fair trial and for securing the ends of justice, the case is necessary to be transferred from the Court of Mokokchung to Dimapur or any other Court having jurisdiction.

17. The learned counsel for the accused persons, A1, A2, A4, A5, A6 and A7 submits that the respondent no. 2/informant has no evidence on record to show or any event to suggest that the victim's family are being harassed or threatened, nor have they made any complaint or lodged an FIR after the registration

of the above case. It is submitted that after completion of the investigation, the case has been submitted into chargesheet. The charges have already been considered and framed against the accused persons. The accused persons have been in custody for more than a year; however, so far not even a single evidence has been recorded. The learned counsel for the accused persons submits that there are altogether 45 prosecution witnesses and if the above Sessions Case is transferred from Mokokchung to any other place, the trial of the case would be delayed. Not only that, it would cause an untold inconvenience to the witnesses and financial loss to the parties. Hence, prays for a direction for speedy trial of the case.

18. The learned counsel for the accused persons A3, A8 and A9 submitted that the order dated 13.10.2023 passed by the Government of Nagaland, Department of Law and Justice is illegal in as much as it is beyond the power of the executive to transfer the criminal proceedings. The provisions of the section 407 Cr.P.C clearly states that the power to transfer case within the State lies with the High Court of the concerned State and that, the executive has no power to transfer the criminal case from one court to another court. The learned counsel for the accused persons further submits that there is no any communal tension on the ground. However, if the above criminal case is transferred from Mokokchung to Dimapur or any other court, the trial of the case is likely to be delayed and huge financial burden also would falls upon the witnesses for travelling to such a

distance to give their evidence.

19. In support of his submission, the learned counsel for the accused persons has taken reliance upon the decision of the Hon'ble Supreme Court in the case of ***Abdul Nazar Madani Vs. State of Tamil Nadu and Anr*** reported in ***(2000) 6 SCC 204***, the relevant paragraph is reproduced herein below:

"7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any Court or even at any place, the appropriate Court may transfer the case to another Court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."

20. Heard the submissions of all the learned counsel for the parties. We have also perused and considered the documents available on record. Upon hearing the parties, the question arises

to be decided by this Court is as to:

(i) whether in exercise of power under Rule 22C of the Administration of Justice and Police Rules, 1937, the State authorities can transfer a criminal proceeding and, whether such exercise of power would amount to interference with the jurisdiction of the Hon'ble High Court under the Constitution of India.

(ii) whether in view of the alleged threatening and intimidation by the accused side on the family members of the victim the case can be transferred from Mokokchung court to Dimapur or any other court in the State.

21. The learned Additional AG has submitted that till date, the Chapter XXXI of the Code of Criminal Procedure, 1973 has not been made applicable in the State of Nagaland. Accordingly, she has justified the invocation of power under Rule 22C of Administration of Justice and Police Rules, 1937 for effecting transfer of the criminal proceeding. She has submitted that the trial relates to offence of murder. It is further submitted that the victim's family is a minority in the concerned area and that the accused persons are majority and, therefore, the majority community is trying to dominate the victim's family who are being threatened and thereby intimidated and hence, under such circumstances impartial trial cannot be effectively ensured.

22. Supporting the submission of the State respondent, the learned counsel for the respondent no. 2 submits that there has

been threatening and intimidation on the family members of the victim by the accused persons for which the informant and the mother of the victim has lodged FIR before the police, which is still under investigation. It is further submitted that after committing the gruesome murder of the deceased, the accused persons and their supporters are a regular threat to the family members of the victim due to which they are living in fear and, under the circumstances it would be difficult for them to freely give evidence before the Court.

23. Under the circumstances, and as the threatening of the accused are even in presence of the police, a fair trial of the case cannot be expected, therefore, prays for transfer of the case from Mokokchung to Dimapur or to any other court where the witnesses, especially the family of the victim can give their evidence freely.

24. Per contra, the learned counsel for the accused persons has referred to the decision of the Division bench of this Court in the case of ***Registrar General, Gauhati High Court Vs. Union of India and Ors*** reported in ***2013 (4) GLT 1109***, and it is submitted that by virtue of the said decision, the provisions of the Cr.P.C are applicable to the regularly constituted criminal courts without any manner limiting operation of Article 371A of the Constitution of India in so far as the functioning of village, customary or any other courts other than the regularly constituted civil and criminal courts in the State of Nagaland manned by members of the judicial service. Therefore, it appears

that the provision of Cr.P.C. would be applicable to the regularly constituted regular courts.

25. Upon hearing the arguments advanced by the learned counsel for the parties and on perusal of the documents including the office notification and the decision of the Division Bench of this Hon'ble Court, it appears that as per the provision of section 407 Cr.P.C, the power of transferring the case within the State lies with the High Court of the concerned State.

26. It is submitted that although Chapter XXXI of the Code of Criminal Procedure has not been made applicable by any government notification in the State of Nagaland till date, however, by virtue of the decision of the Division Bench of this Court in the case of ***Registrar General, Gauhati High Court Vs. Union of India and Ors*** reported in ***2013 (4) GLT 1109***, the provisions of the Cr.P.C is applicable to the regularly constituted criminal courts without any manner limiting operation of Article 371A of the Constitution of India in so far as the functioning of village, customary or any other courts other than the regularly constituted civil and criminal Courts in the State of Nagaland manned by members of the judicial service. As such, the invocation of power under Rule 22C of the Administration of Justice and Police Rules, 1937 for effecting transfer of the criminal proceeding is without any authority and as such, the same is not tenable in law.

27. Accordingly, the order dated 13.10.2023, passed by the Government of Nagaland, Department of Law and Justice,

whereby the GR case no. 34/2023 arising out of Mokokchung PS-II case no. 13/23 under Sections 120B/34/365/302 IPC has been transferred from Mokokchung to Dimapur, is hereby quashed and set aside.

28. Coming to the second point, it appears that the accused persons are in majority in Mokokchung and there has been an incident where the accused side has threatened and intimidated the family of the victim when they appeared in the Court to watch the court proceeding. For such intimidation and threatening the victim side has also lodged an FIR before the Officer-in-Charge, PS, Mokokchung. The threatening and the intimidation upon the victim's family is alleged to have made even in the Court premises in presence of the police personnel as could be seen from the copy of FIR. Under the circumstances, when one party has domination over the weaker party, a fair trial of the case cannot be expected. The weaker party who are under threat would always be in fear of giving evidence freely before the Court which ultimately would cause an injustice to the weaker party.

29. It is evident from the record that the victim's side has lodged an FIR against the accused which took place after the incident of alleged murder. There is an allegation of repeating the same. This clearly shows that there has been threatening and intimidation against the victim's family. On receipt of complaint and request for transferring of the case from Mokokchung to any other court, the Government of Nagaland sought for comment

from the Deputy Commissioner, Mokokchung, Nagaland, the Superintendent of Police, Mokokchung, Nagaland, the Public Prosecutor, Mokokchung, Nagaland; the Assistant Public Prosecutor, Mokokchung regarding the allegation and request for transfer. In reply to the comment sought by the Government of Nagaland, the Deputy Commissioner, Mokokchung, Nagaland, the Superintendent of Police, Mokokchung, Nagaland, the Public Prosecutor, Mokokchung, Nagaland and the Assistant Public Prosecutor, Mokokchung stated that there is an apprehension that the Court proceeding may be affected in the future. They clarified that the transfer of the present case from Mokokchung to any other district Court will be in the interest of justice and to avoid any untoward situation. Therefore, for the reasons projected above and for fair trial, it may be in the interest of justice to transfer the case from the jurisdiction of Mokokchung court to any other court within Nagaland.

30. Upon consideration and for the reasons stated above, taking into account the fair trial of the case and for the ends of justice, we are of the opinion that keeping this Suo moto transfer petition would further prolong the trial of the pending case before trial Court; therefore, it would be just and fair if the criminal case pending before the Mokokchung is transferred to any other court within the State of Nagaland. In our opinion, geographically, Kohima is nearer to Mokokchung instead of Dimapur, as such, the GR case no. 34/23 of Mokokchung PS-II case no. 13/23 under section 120B/34/365/302 IPC is ordered to

be transferred from District & Sessions Court, Mokokchung to the District & Sessions Court, Kohima for proper trial and disposal.

31. The Sessions Judge, Mokokchung is directed to transfer the entire trial court records of the GR case no. 34/23 along with the seized articles from the Court of District & Sessions Court, Mokokchung to the District & Sessions Court, Kohima forthwith. On receipt of the record, the Sessions Judge, Kohima shall expedite the trial and complete the trial proceeding of the case as early as possible, preferably within 12 (twelve) months from the date of receipt of the record. For the speedy trial, the accused persons shall be transferred/shifted from the District Jail at Mokokchung to the District Jail at Kohima.

32. With the above observations and directions, this Tr.P (Suo Moto) stands disposed of.

33. Furnish copy of this order to all concerned for necessary compliance.

34. Send back the Trial Court record immediately.

JUDGE

JUDGE

Comparing Assistant