

Neutral Citation No. - 2024:AHC-LKO:85614

Court No. - 11

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 102 of 2024

Applicant :- Rizwan Zaheer And Anr.

Opposite Party :- State of U.P.

Counsel for Applicant :- Shashank Singh, Purnendu Chakravarty, Ruby Choudhary

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Sri Anant Pratap Singh, learned A.G.A. for the State has provided the copy of the counter affidavit to the learned counsel for the applicant.
2. Since this application has been filed through e-mode, therefore, learned A.G.A. shall file and upload the same on e-portal within 24 hours.
3. Considering the fact and circumstances of the issue in question, this application is being disposed of finally at the admission stage with the consent of learned counsel for the parties.
4. Heard Sri Purnendu Chakravarty, learned counsel for the applicants assisted by Ms. Ruby Chaudhary and Ms. Aishwarya Saxena, Advocates as well as Dr. V.K.Singh, learned Government Advocate assisted by Sri Ran Vijay Singh and Sri Anant Pratap Singh, learned A.G.A. for the State.
5. By means of this Transfer applicant, the applicant prayed that this Hon'ble Court may be pleased to Transfer the Session Trial No. 203/22 (Computer No. 323/22) : State Versus Rizwan and another, pending in the court of Special Judge (MP/MLA) Additional Session Judge I, District Balrampur to the equal jurisdiction of any other District.
6. Sri Purnendu Chakravarty, learned counsel for the applicants has stated that the learned trial court is showing undue haste in concluding the trial without following the due procedure of law and appropriate opportunity, which should be provided to the defence side, has not been provided and despite the request of the applicants and their counsels, their witnesses have not been called for examination. Sri Chakravarty has also stated that the applicants could have filed transfer application before the Session Court, but since no other court

relating to M.P./M.L.A. cases is available at Balrampur, therefore, the applicants have directly approached this Court seeking transfer of the Session Trial case from one District to another District.

7. Sri Anant Pratap Singh, learned A.G.A. for the State has drawn attention of this Court towards **judgment and order dated 18.12.2024 passed in Transfer Application (Criminal) No.129 of 2024: Afroz Ahmad alias Rinku Vs. State of U.P**, which has been filed by the rival party of another case. The reference of the aforesaid fact has been given in paragraph 7 of the aforesaid order dated 18.12.2024. To clarify the aforesaid fact attention has been drawn towards Annexure-3 of this transfer application, which is a committal order, wherein details of the case has been indicated as **Session Trial No. 203/22 (Computer No. 323/22): State Vs. Rizwan Zaheer and another, Case Crime No. 183/2022, under Sections 323, 504, 506, 327, 307, 447 I.P.C., Police Station Tulsipur, District Balrampur**. For the sake of convenience the order dated 18.12.2024 is being reproduced herein below:

"1. Sri Barharat Ali Khan as well as Sri Ravi Singh and Ms. Ruby Chaudhary, Advocates has filed Vakalatnama on behalf of opposite party No.6 and memo on behalf of opposite party Nos. 2 to 5. The same are taken on record.

2. Heard Sri Ashutosh Singh, learned counsel for the applicant as well as Dr. V.K.Singh, learned Government Advocate assisted by Sri Ran Vijay Singh and Sri Anant Pratap Singh, learned A.G.A. for the State and Sri Barharat Ali Khan assisted by Sri Ravi Singh and Ms. Ruby Chaudhary, learned counsel for the opposite party Nos. 2 to 5.

3. By means of this petition, the petitioner has prayed following relief:

"to transfer the Session Trial No. 85 of 2022 (State Vs. Merazul Haq and others) arising out of F.I.R. No./Case Crime No. 2/2022, under Sections-302, 120 I.P.C., Police Station Tulsipur, District Balrampur, from the Court of Additional Session Judge, Ist (M.P.M.LA. Court) District Balrampur to any other Court of competent jurisdiction."

4. The sole ground seeking transfer of the case from one competent court to another competent court is that after completing necessary exercise under Section 313 Cr.P.C., the defence filed some papers before the court as an evidence but copy thereof has not been provided to the applicant/his

counsel and the case has been fixed/listed for arguments. Despite the fact that the present applicant/his counsel demanded those evidences to address the learned trial court but such evidences/documents have not been provided to him. In absence of those documents the applicant/his counsel would not be able to argue the case. Providing the piece of papers/evidence/documents, which have been filed by either of side, is conformity to the principles of natural justice and it is mandatory also.

5. *Sri B.A. Khan, learned counsel for the private opposite parties has shown the copy of the order dated 21.11.2022 passed by this Court in Applicant under Section 482 No. 2582 of 2022: Afroz Ahmad alias Rinku Vs. State of U.P., thereby this Court on the request of present applicant directed the learned trial court to expedite the proceedings. So in the one hand the applicant is seeking early disposal of trial and on the other hand he is seeking transfer of the trial which will cause the delay in concluding the trial. For the sake of gravity, the order dated 22.11.2022 is reproduced herein-below:*

"1. The present petition under Section 482 Cr.P.C. has been filed seeking direction to expedite the proceedings of Crime No.2 of 2022, under Section 302 and 120-B IPC, Police Station Tulsipur, District Balrampur in pursuance to the direction of the Supreme Court in the case of Ashwani Kumar Upadyay vs. State, pending in the court of Special Court of Magistrate, M.P., M.L.A./C.J.M., Balrtampur, within a stipulate period.

2. Sri Anil K. Tripathi and Sri B.M. Sahai, learned counsel for the opposite parties have informed the Court that the trial is in progress and P.W.-1 is being examined and the date for his examination is fixed on 30.11.2022.

3. Considering the fact that the trial has commenced and P.W.-1 is being examined, it is provided that the trial court should proceed with the trial expeditiously as per the mandate of the Supreme Court in the case of Ashwani Kumar Upadhyaya (supra) and conclude the same as early as possible.

4. With the aforesaid observation and direction, the present petition stands disposed of. "

6. *Sri Barharat Ali Khan has further submitted that if the transfer application has been filed only for the aforesaid reason, he undertakes on behalf of the private opposite parties that he shall instruct the counsel of the private opposite parties to provide the copies of those documents/evidences, which have been filed before the trial court, so that the applicant/his counsel may go through those papers and may address the court properly on such evidence.*

7. *Dr. V.K. Singh, learned Government Advocate has informed the Court that in the present case this application has been filed by the applicant impleading the private opposite party Nos. 2 to 6 in the array of opposite parties, whereas one transfer application bearing No. TACR 102/24:Rizwan Zaheer and another Vs. State of U.P. has been filed by the private opposite parties here to seeking transfer of Session Trial from the court concerned to any other competent court which bears S.S.T. No. 203/22 arising out of Case Crime No. 183/22. The aforesaid case is listed tomorrow i.e. 19.12.2024.*

8. *Learned Government Advocate has stated though the Hon'ble Supreme Court has given catena of judgments, wherein it has been observed that the power of transfer of a case must be exercised meticulously with precision under compelling circumstances, where on the basis of material on record it appears to the court that there is strong reason for doing so and by not transferring the case there would be miscarriage of justice, but since both the rival parties are levelling allegation on the same court concerned, any appropriate order may be passed in the interest of justice.*

9. *Be that as it may, I am also of the considered opinion that unless and until there is/are strong reason/reasons for transferring the case in the interest of justice, the case should not be transferred from one competent court to another competent court only on the basis of apprehension or only on the basis of some reason which may be cured by passing appropriate order.*

10. *My attention has been drawn at the Bar on one order dated 08.06.2020 passed by this Court in Transfer Application (Criminal) No. 133 of 2020: Tarun Raj Singh Vs. State of U.P. and another, wherein the guidelines being given by the Apex Court in catena of cases for transferring case from one court to another court, has been considered thoroughly. The details of the case are as under:*

"Gurcharan Dass Chadha Vs. State of Rajasthan AIR 1966 SC 1418, Maneka Sanjay Gandhi Vs. Rani Jethmalani (1979) 4 SCC 167, K.P. Tiwari Vs. State of M.P. 1994 SCC (Cri) 712, Abdul Nazar Madani Vs. State of Tamil Nadu (2000) 6 SCC 204, K. Anbazhagan Vs. Superintendent of Police (2004) 3 SCC 767, Zahira Habibulla H. Sheikh Vs. State of Gujarat (2004) 4 SCC 158, Captain Amarinder Singh Vs. Parkash Singh Badal and others (2009) 6 SCC 260, Nahar Singh Yadav and another Vs. Union of India and others JT 2010 (12) 641, Lalu Prasad Vs. State of Jharkhand (2013) 8 SCC 593, Amit Agarwal Vs. Atul Gupta 2014 (11) ADJ 414 (All.) and Usmangani Adambhai Vahora Vs. State of Gujarat and another (2016) 3 SCC 370"

11. This Court in *Re: Tarun Raj Singh (supra)* has observed in paragraph Nos. 8 and 9 as under:

"8. In view of dictum and guidelines laid down by the Apex court, as mentioned above, this court is also of the view that the power of transfer of a case must be exercised meticulously with precision under compelling circumstances, where on the basis of material on record it appears to the court that there is strong reason for doing so and by not transferring the case there would be miscarriage of justice. No universal or hard and fast rules can be applied for deciding a transfer application which has always to be decided on the basis of facts of each case. It is also well settled that the apprehension concerned, has to be one which would establish that justice will not be done. The apprehension of not getting a fair and impartial justice is required to be reasonable based on strong material and not hypothetical. Merely making vague allegation that there is an apprehension in the mind of applicant that justice will not be done in a given case alone does not suffice.

9. Considering the facts and circumstances of the case and submissions of learned counsel for the parties in the light of guidelines laid down by the Apex court, I find that allegations leveled by the applicant as mentioned above are wholly vague and general in nature, which are not supported by any material on record. Now a days such kind of frivolous allegations and triviality are being used

unflinchingly by one party of a case as a tool to pressurize the presiding officer to settle its personal score. Entertaining such kind of frivolous allegations without any strong material on record will indirectly cast stigma upon the concerned Presiding Officer for no fault of his. Any such attempt made by any person must be discarded in order to maintain judicial discipline, otherwise on each and every step of proceeding either party will try to hamper the judicial proceeding adopting different modus operandi in justice delivery system and it will very difficult for them to discharge their judicial function with free mind. In the opinion of this court apprehension expressed by the applicant is not reasonable. There is no basis for the apprehension of the applicant that he will not get proper justice. There is nothing on record to indicate that the presiding officer has done any act calculated to create such an apprehension in the mind of the applicant. Illegitimate apprehension without any basis/material on record cannot constitute a legitimate ground to transfer a case from one court to another court. The grounds set out by the applicant do not justify the transfer of case as prayed by the applicant. I do not find any good ground to interfere in the matter. There is no error or illegality in the order dated 20.02.2020 passed by District Judge, Bareilly. "

12. *I am also in agreement with observation of this Court in Re: Tarun Raj Singh (supra) as given in paragraph Nos. 8 and 9.*

13. *It would be opt to observe here that if both the rival parties are seeking the same relief to transfer the case from a particular court and there are no cogent material or evidence to the effect that the case should be transferred from that court, then the particular court must feel more responsibility to decide the cases of the rival parties with care and precaution and the trial court should follow the settled provision of law, considering the submissions of both the sides providing ample opportunity of hearing to the rival parties indicating the reasons and appreciating the evidences, inasmuch as any careless approach or lapse on the part of the*

court would create doubt in the mind of the superior courts to the effect that though there was no cogent material or evidence to the effect that the case should be transferred from that court to any other court but the court concerned has not discharged its pious responsibility and duty to decide the case strictly in accordance with law, as observed above.

14. The aforesaid observation of this Court should not mean that this Court is suggesting any manner to decide the cases pending before the court, but it would mean that the court concerned should remain so careful. Therefore, while deciding the aforesaid cases, the trial court shall not be influenced from any observation affecting the trial and the trial cases would be decided independently as per provisions of law.

15. The opposite party Nos. 2 to 6 or their counsel shall provide the copies of the documents/evidences which have been filed before the trial court to the applicant/his counsel within a week through Speed Post mode and personally and the trial court shall ensure that the applicant/his counsel has received those evidences and documents, thereafter the date for final arguments may be fixed.

16. Both the rival parties may address the court on the final arguments and may submit written submissions indicating the relevant case laws referred by the parties and the trial court shall consider such written submission properly.

17. Since no other ground has been taken in the present case seeking transfer the case from one competent court to another competent court and for the sole ground, the direction has already been given herein-above, therefore, I do not find any ground or reason to transfer the case from the present court to any other court. Accordingly, this transfer application is disposed of in the light of aforesaid directions and observations.

18. No order as to cost."

8. The observations/directions of this Court vide order dated 18.12.2024 have been given from paragraph Nos. 13 to 16 and those observations/directions would be complied with by the trial court in the present case also in its letter and spirit.

9. Considering the fact that the grievance so pleaded by the learned counsel for the applicants for filing this transfer application may be redressed, if the applicants are provided ample opportunity of hearing and the arguments so advanced by the parties are considered strictly in accordance with law and while concluding the trial, the order of the trial court would be speaking and reasoned one strictly in terms of the directions being issued in the **order dated 18.12.2024 (supra)**.

10. In this case I do not find any good ground or reason to transfer the Session Trial in question from one District to another District, therefore, this transfer application is **disposed of** in the light of aforesaid observations/directions as well as the directions/observations being given **vide order dated 18.12.2024 (supra) in Re: Afroz Ahmad Alias Rinku (supra)**.

11. It is needless to say that the trial proceedings in both the aforesaid cases be concluded with expedition, but by affording an opportunity of hearing to the parties concerned in accordance with law.

12. No order as to cost.

[Rajesh Singh Chauhan,J.]

Order Date :- 19.12.2024

Arvind