

09.04.2021

Sl. No. 22

Srimanta

Ct. No.-30

D/L

**CRR/251/2021
(Via Video Conference)**

In Re : An application under Section 407 of the Code of Criminal Procedure, 1973.

In the matter of : Shri Sudipta Sarkar & Ors.

... petitioners.

The petitioners being the husband, mother-in-law and married sister-in-law of the opposite party/aggrieved person has filed the instant revision under Section 407 of the Code of Criminal Procedure praying for transfer of Miscellaneous Case No. 39 of 2020 filed by the opposite party under Sections 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereafter described as the said Act).

The said case was filed before the Learned Additional Chief Judicial Magistrate at Lalbagh and subsequently, it is transferred to the Court of the Additional Court of the Learned Judicial Magistrate at Lalbagh for hearing.

The petitioners have prayed for transferred of the said case on two-fold grounds: -

First, the petitioner no. 2 who is the mother-in-law of the aggrieved person is an octogenarian lady. She has undergone a orthopedic surgery in her heaps and her movement is absolutely restricted. Married sister-in-law is residing at her matrimonial home. The petitioner no. 1 is residing at Jadavpur.

Secondly, near relatives of the aggrieved persons are practicing Advocates of Lalbagh Court. Therefore, the petitioners apprehend that they will not get proper legal

assistance at Lalbagh. So, the case may be transferred to a Court of competent jurisdiction at Kolkata.

In spite of service of notice, the opposite party has not turned up to contest the instant application.

Under Section 407 of the Code of Criminal Procedure a criminal Case can be transferred if it appears to the High Court that a fair and impartial enquiry or trial cannot be at in any criminal Courts subordinate thereto. Other two grounds are not relevant in the instant case.

Physical illness of the respondents is not a ground to transfer a case from one Court to another. If the petitioner no. 2 is unable to attend the Court during trial of the Misc. Case under Section 12 of the said Act, she could be represented by her Learned Advocate.

However, it is pleaded by the petitioners that two near relatives of the opposite party are practicing Advocates of Lalbagh. The petitioners apprehend that they will not get fair and impartial trial at Lalbagh criminal Court as they may not get any legal assistance from the members of Bar at Lalbagh.

Under such circumstances, the case being Miscellaneous Case No. 39 of 2020 under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005 along with the connected execution case be transferred from the Court of the Learned Judicial Magistrate (Additional Court at Lalbagh) to the Court of the Learned Chief Judicial Magistrate at Berhampore, Murshidabad for trial.

The instant application is, thus, **disposed of**.

(Bibek Chaudhuri, J.)