

28.09.2021
Ct No. 34
SL. No.22
Somnath (PA)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
(Through Video Conference)**

**CRR 1113 of 2020
With
CRAN 1 of 2020 (Old CRAN 4109 of 2020)**

Sahensa Gazi @ Shahensa Gazi & Ors.
Versus
State of West Bengal & Anr.

In Re: An application under Section 482 of the Code of
Criminal Procedure, 1973

Mr. Bibaswan Bhattacharya,
Mr. Sahid Uddin Ahmed,
Mr. Anupam Bar

.....For the petitioners.

Mr. Rana Mukherjee,
Ms. Sujata Das,
Ms. Debjani Sahu

..... For the State.

The present revisional application has been preferred
against the order dated 11.03.2020 passed by the Learned
Sessions Judge, South 24-Parganas at Alipore in Criminal
Motion No. 76 of 2020 in connection with Mathurapur
Police Station Case No. 123 of 2019 dated 19th May, .2019

under Sections 498A/304B/306/406/34 of the Indian Penal Code and Sections 3/ 4 of the Dowry Prohibition Act.

The order dated 11.03.2020 reflects that the learned Sessions Judge by the said order was pleased to allow Criminal Motion No. 76 of 2020 and transferred S.C No. 25 of 2020 arising out Mathurapur Police Station Case No. 123 dated 19.05.2019 from the Court of the Learned Additional Sessions Judge, Fast Track 3rd Court at Diamond Harbour to the Learned Additional Sessions Judge, Fast Track 1st Court, Alipore, South 24-Parganas. The reason which was assigned by the Learned Sessions Judge for transferring the case was the contention of the complainant/opposite party No.2 to the effect that on 21.10.2019 at about 9.00 a.m. when the petitioner was on his way to Diamond Harbour Court the accused persons along with others illegally restrained and threatened him to withdraw the case. It was also alleged that the complainant was assaulted with fists and blows and threatened that in case he adduced evidence against them, they will murder him. Over such illegal act of the accused persons, the complainant informed the matter to the local police station and on the basis of the said complaint, Mathurapur Police Station Case No. 305 dated 03.11.2019 was registered for investigation under Sections 341/323/195A/506/34 of the Indian Penal Code and was

pending before the Learned Additional Chief Judicial Magistrate, Diamond Harbour.

It was contended before the Learned Sessions Judge by the complainant that the complainant being the charge-sheet witness No. 1 is unable to appear along with other vital witnesses before the Court situated at Diamond Harbour. The Learned Sessions Court relied upon such contentions as also the documents relied upon in respect of the case relating to Mathurapur Police Station Case No. 305 dated 03.11.2019 and on such consideration transferred the case from the Court of the Learned Additional Sessions Judge, Fast Track 3rd Court, Diamond Harbour to the Learned Additional Sessions Judge, Fast Track 1st Court, Alipore.

Mr. Bibaswan Bhattacharya, Learned Advocate appearing for the accused/petitioners before this Court, contended that the Learned Sessions Judge was carried away by the contention advanced on behalf of the complaint and did not take into consideration that most of the charges so alleged were dropped by the Investigating Agency while submitting the charge-sheet. It was further argued by the Learned Advocate that the said case was renumbered and charge-sheet was filed only under Section 341/506 of the Indian Penal Code and that to only against one of the accused persons being the petitioner No. 1 Sahensa Gazi.

The learned Advocate, therefore, contended that as in the said case the offence under Section 195A was not substantiated on conclusion of investigation, the issue relating to “threatening of witness” which was the foundation of transfer did not survive and as such the order dated 11.03.2020 passed by the Learned Sessions Judge in Criminal Motion No. 76 of 2020 is liable to be set aside.

On the earlier occasion when the matter appeared before this Court a direction was passed upon the State to submit report regarding the status of the case before the Learned Trial Court. Further, the Learned Advocate for the petitioner was also directed to submit certified copy of the latest orders before this Court. Mr. Bibaswan Bhattacharya has submitted the certified copy of the order-sheets of the Learned Trial Court, wherein, from the order dated 10.08.2021 it is reflected that the next date has been fixed on 28.09.2021 for evidence of the complainant and the record has been transmitted from the Learned Additional Sessions Judge, Fast Track 3rd Court at Diamond Harbour to the Learned Additional Sessions Judge, Fast Track 1st Court, Alipore, South 24-Parganas.

Ms. Debjani Sahu, Learned Advocate, has also submitted report of the Officer-in-Charge, Mathurapur Police Station, it also reflects that charge has already been framed by the Learned Sessions Court and trial of the case

has already commenced. Report also reflects that the date has been fixed on 28th September, 2021 for evidence of the complainant.

I have considered the submissions advanced by the accused/petitioners as well as the State, however, none appeared for the complainant/opposite party No. 2. On an appreciation of the order dated 11.03.2020 wherein the Learned Sessions Judge was pleased to transfer the case, I am of the view that the Learned Sessions Court should have considered the materials appearing in both the cases particularly on the issue of transfer. It was incumbent upon the Learned Sessions Court to take into consideration the charge-sheet which was filed wherein the allegation of threatening of the witness was diluted, as on conclusion of investigation charge-sheet was filed only under Section 341/506 of the Indian Penal Code. Further, the materials collected by the Investigating Agency, reflect that only one of the accused person was implicated in the charge-sheet of the said case and the liability has been saddled by the Learned Sessions Judge by its order upon rest of the accused persons.

This Court by exercising its inherent power is to balance between the orders so passed by the Learned Sessions Judge and subsequent progress of the case. The admitted position as on date is that charge has been framed

and evidence has commenced before the transferee Court i.e. the Learned Additional Sessions Judge, Fast Track 1st Court, Alipore.

I am of the opinion that re-transfer at this stage would be an unnecessary exercise of the jurisdiction, more so because of the fact that both the Courts are within the same district (although under different Sub-Division).

In view of the aforesaid observations, no interference is called for, however, the Learned Trial Court would expeditiously conclude the trial by fixing regular schedule so that the same can be taken to its logical conclusion within a reasonable period of time.

With the aforesaid observation, CRR 1113 of 2020 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)