

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R. 1577 of 2020
With
C.R.A.N 1 of 2020

Sri Tapan Kumar Das

-Vs-

The State of West Bengal

For the Petitioner: Mr. Arabinda Chatterjee, Adv.,
Mr. Pradyat Saha, Adv.,
Mr. Arkadipta Sengupta.

For the State: Mr. Madhusudan Sur, Ld. A.P.P.,
Mr. Dipankar Pramanick.

For the Opposite Party: Mr. Abhra Mukherjee, Adv.,
Mr. Sauradeep Dutta, Adv.,

Heard on: 25th January, 2021.

Judgment on: 11th March, 2021.

BIBEK CHAUDHURI, J. : –

1. The instant criminal revision arises out of an application under Section 407 of the Code of Criminal Procedure filed by the respondent of Misc Case No.77 of 2020 under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2. Grievance of the petitioner is that his marriage was solemnized with one Mallika Das, opposite party No.2 herein in the year 2014. In the said wedlock the opposite party No.2 gave birth to two female children in the year 2016 and 2019 respectively. Few days after marriage, difference of opinion cropped up between the petitioner and opposite party No.2 and the marital relationship broke down. The opposite party No.2 lodged an FIR on 16th December, 2017 on the basis of which a case under Sections 498A/506 of the Indian Penal Code was registered against the petitioner and other matrimonial relations of the opposite party No.2 at Purulia Sadar Police Station. The opposite party No.2 previously filed an application under Section 12 of the Protection of Women from Domestic Violence Act (hereafter described as the said Act) which was registered as Misc Case No.67 of 2018. The said misc case was disposed of by the learned Judicial Magistrate, 2nd Court at Purulia on being withdrawn by her. She also filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance which was registered as Misc Case No.100 of 2018. The said Misc Case was also withdrawn in view of amicable settlement of disputes between the petitioner and the opposite party No.2 at the relevant point of time. After settlement, both the husband and wife stayed for some days at Kharagpur in the district of West Medinipur. In the year 2020 dispute again cropped up between the parties and on 10th June, 2020 the opposite party No.2 suddenly left the house of the petitioner with her parents and then lodged an FIR on 18th June, 2020 on the basis of which a case under Sections

498A/325/307/506 of the Indian Penal Code was registered against the petitioner.

3. The opposite party No.2 also filed an application under Section 12 of the said Act being Misc Case No.77 of 2020 in the 4th Court of the learned Judicial Magistrate at Purulia. It is alleged by the petitioner that the father of the opposite party No.2 was a Sheristadar working in the court of the learned Civil Judge (Junior Division), Purulia who has recently been transferred to Raghunathpur as a head comparing clerk, coping department, Civil. By dint of his employment in the Purulia Court, he has influence over the members of staff and learned Advocates practicing at Purulia Court. Therefore, the petitioner is not getting appropriate legal assistance from any of the learned Advocates practicing in Purulia Court. The opposite party stated further that the father of the opposite party No.2 is not only exerting undue influence over the members of staff attached to Purulia Court but also putting pressure upon the learned Lawyers so that the petitioner may not get any legal assistance from them. If the petitioner does not get any legal assistance, Misc Case No.77 of 2020 may be disposed of exparte. Therefore the petitioner has prayed for transferring Misc Case No.77 of 2020 to a Court situated in a nearby district outside Purulia.

4. The opposite party No.2 has not filed any affidavit-in-opposition against the application under Section 407 of the Code of Criminal Procedure filed by the petitioner.

5. However, it is submitted by the learned Advocate for the opposite party No.2 that the Misc Case No.77 of 2020 has already been transferred from the 4th Court of the learned Judicial Magistrate to the 3rd Court of the learned Judicial Magistrate. Therefore, the petitioner cannot have any grievance under the changed circumstance. It is admitted by the learned Advocate for the opposite party No.2 that the father of the opposite party No.2 was posted at Purulia Court as Sheristadar in the Court of the Learned Civil Judge (Junior Division), Purulia. But he has been transferred to Raghunathpur. Therefore, he cannot exert influence upon the learned Advocates practicing at Purulia at present. The petitioner has filed the instant petition for transferring Misc Case No.77 of 2020 only to harass the opposite party No.2.

6. Mr. Arabinda Chatterjee, learned Senior Counsel, on the other hand, submits that the petitioner is apprehending that he will not get a fair and impartial justice at Purulia. He has been not getting any legal assistance from any Advocate practicing at Purulia. Therefore, Misc Case 77 of 2020 may be transferred to a district adjacent to Purulia so that both the parties can get legal assistance.

7. It is further submitted by Mr. Chatterjee that the parties 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 of the Code of Criminal Procedure.

8. Learned Advocate for the opposite party, on the other hand, submits that the apprehension of the petitioner of not getting a fair and impartial trial should be reasonable and not imaginary, based upon conjectures and surmises. The father of the opposite party No.2 being an employee of the court under the judgeship of Purulia, cannot exert undue influence over all the members of the Bar at Purulia. The petitioner has failed to make out a specific case alleging, inter alia, that he was refused by any of the learned Members of the Bar at Purulia Court from rendering legal assistance to him in Misc Case No.77 of 2020. A criminal case cannot be transferred on the basis of unfounded and unreasonable allegation.

9. Having heard the learned Counsel for the parties and on careful perusal of the entire record, I like to record that 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 case may be transferred to another court. No universal or hard and fast rules can be prescribed for deciding a transfer petition which always has 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.

10. Judging the case on the above premises, it is found that the opposite party No.2 did not dispute that her father is a senior employee of Purulia Court. The allegation of the petitioner is that he is influencing the

learned Advocates at Purulia Court so that petitioner may not get legal assistance in defending Misc Case No.77 of 2020.

11. I have already stated that fair and impartial dispensation of justice is *sine qua non* of criminal trial. Nobody should be apprehensive that he may not get fair trial in a particular court as a result of undue influence exerted by a person attached with the administrative function of the court.

12. Under such circumstances this Court is of the view that both the parties will not suffer any inconvenience, if the Misc Case No.77 of 2020 is transferred to the Court of the learned Chief Judicial Magistrate, Paschim Burdwan at Asansol. The Court of the Chief Judicial Magistrate, Asansol is the nearest court outside the district of Purulia.

13. Accordingly the instant application is disposed of on contest with a direction that Misc Case No.77 of 2020 be transferred to the Court of the learned Chief Judicial Magistrate at Asansol, Paschim Burdwan. The parties are directed to contest the case in the court of the learned Chief Judicial Magistrate at Asansol.

14. Let a copy of the order be sent to the Courts of learned Judicial Magistrate, Purulia and the learned Chief Judicial Magistrate, Asansol for information and compliance through the department.

(Bibek Chaudhuri, J.)