

18.03.2021
Item no.23
Ct. No.2
CHC

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION
(Physical Hearing)**

C.R.R. No.45 of 2021

In Re:- An application under Section 407 read with Section
482 of the Code of Criminal Procedure, 1973.
And

In the matter of:-

Popi Saha @ Papi Saha
.....petitioner

Mr. Jaydeep Kanta Bhowmik
....for the petitioner

Mr. Arun Kumar Sarkar,
Mr. Abhijit Sarkar
....for the opposite parties

This is a transfer application under Section 407 read with Section 482 of the Code of Criminal Procedure. The prayer for transfer is in connection with the pending Misc.Petition No.45 of 2014, under Section 12 of Protection of Women from Domestic Violence Act, 2005, of learned Judicial Magistrate, 3rd Court, Jalpaiguri.

Learned advocate, Mr. Jaydeep Kanta Bhowmik representing the petitioner submits that the concerned court is lying vacant for last couple of months and as a result thereof the petitioner has been made to face undue harassment and hardship.

Petitioner seeking transfer is the widow wife.

Mr. Arun Kumar Sarkar, learned advocate representing the opposite parties submits that the petitioner has proposed for transfer of a case pending in the court of learned Judicial Magistrate, 3rd Court to another Magistrate Court within the same Sessions division, but without exhausting the forum, the instant revisional application proposing transfer is not matured enough to be taken for consideration.

The reason assigned for the transfer is the absence of Presiding Officer of Judicial Magistrate, 3rd Court, Jalpaiguri for sometime past. It is given to understand that there are two other Magistrate Courts, working at the moment in the station.

The innocuous prayer raised by the petitioner is to get the pending case transferred to the learned Judicial Magistrate, 2nd Court, Jalpaiguri, but of course it is within the same Sessions division. Indisputably no application for transfer was proposed before the learned Sessions Judge, Jalpaiguri to get the pending case transferred to any other learned Judicial Magistrate within the same Sessions division in application of the provisions contained in Section 407(2) Cr.P.C. which may be mentioned as hereunder:

“S.407(2). *The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:*

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal

Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.”

Since nothing has been adhered to in application of the provisions contained in Section 408 of the Cr.P.C. for getting pending case transferred to any other Magistrate Court within the same Sessions division, the case is not matured enough to accord the transfer, as proposed. However, liberty is given to the petitioner to make a prayer seeking transfer for required purpose to another Magistrate Court working in the station, in particular the learned Judicial Magistrate, 2nd Court, Jalpaiguti.

If any such prayer is advanced within a fortnight from the date of communication of this order to the learned Sessions Judge, Jalpaiguri, the same shall be duly considered in accordance with the provisions of the law providing sufficient opportunity of hearing to either of the parties to this case. Such exercise on the part of the learned Sessions Judge is desirable to be exercised within one month from the date of filing of petition seeking transfer under Section 408 of Cr.P.C.

With this direction/observation, the instant revisional application stands disposed of.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)

