

Form No. J(2)

***IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION***

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 1826 of 2021

**Sulaman Khan @ Salman Khan @ Salman
-vs-
The State of West Bengal & anr.**

For the Petitioner	: Mr. Debayan Ghosh Mr. Kaustav Bagchi Ms. Priti Kar
For the State	: Mr. Madhusudan Sur, Id. A.P.P. Mr. Dipankar Paramanick
For the O.P.2	: Mr. Sourav Sen Ms. Adrisnata Chakraborty
Heard on	: 17.03.2022
Judgment on	: 17.03.2022

Jay Sengupta, J.:

This is an application challenging an order dated 25.08.2021 passed by the learned Sessions Judge, Barasat, North 24 Parganas in case No. CMC 1519 of 2021.

Learned counsel appearing on behalf of the petitioner submits as follows. In the course of trial of case no. ST 01(01) of 2019 before

the learned Additional Sessions Judge, 2nd Court, Barracpore, North 24 Parganas under Sections 302 and 34 of the Penal Code and Sections 25 and 26 of the Arms Act, the accused alleged bias in the mind of presiding officer and prayed that the matter should not be taken up by the learned court. An application to this effect was filed before the learned court. Thereafter, the petitioner filed an application under Section 408 of the Code seeking transfer of the case from one court to another within the same Sessions division. By the impugned judgment, which is available with the lower court records of the Sessions Court that was called for, the learned Sessions Judge rejected the application on the ground that after commencement of trial and recording of evidence, the Sessions Judge had no power to transfer a case to another court within the same Sessions division. After the accused raised such an issue before the learned trial court, the learned trial court had been adjourning the matter and had expressed a desire to rescue himself from the matter. This is a case where an accused is facing custody trial. For the ends of justice, the matter needs to be transferred to another court for a just and fair trial. In the alternative, it is submitted on behalf of the petitioner that in the event the matter is not transferred from the learned trial court, where this is pending, a direction may be passed to expedite the trial.

Learned counsel for the de facto complainant submits as follows. The de facto complainant does not have any problem with

having the matter tried by the learned trial court where the case is pending at present.

Learned counsel appearing on behalf of the State submits as follows. A reference is made to the application made on behalf of the accused petitioner before the learned trial court alleging bias. First, the manner in which the pleadings were made is quite objectionable. Secondly, if it is accepted that the learned trial court was indulging in such wrong and adamant practices, then he should not be able to take up any matter whatsoever. As per an earlier order passed by this Court directing an expeditious disposal of the proceeding, the matter was being taken up with expedition by the learned trial court. The unfortunate interjection by the accused has only caused delay. In fact, as is apparent from the order sheet, a chaos was created in court by the concerned lawyers. If the matter is transferred at this stage, it would cause further delay in disposing of the matter. There is no ground whatsoever in transferring the case away from the learned trial court where it is presently pending.

I have heard the submissions of the learned counsel for the parties and have perused the revision petition, the lower court records and the copy of the application of the accused petitioner, as filed on behalf of the State earlier.

First, it is trite law that after the commencement of trial, a learned Sessions Judge does not have any power to transfer the case within the same Sessions division. To that extent, there is no illegality in the impugned order.

Secondly, the allegations leveled in the petition filed before the learned court alleging bias do not necessarily evince that there was any bias in the mind of the presiding officer. Had the learned Judge been afflicted with a bias, he would not have offered to recuse at the very outset.

The issues raised regarding admissibility of evidence can fairly taken up during arguments.

Applications are often filed to take away a matter from a particular judge. Even intemperate language is often used. A Court of law cannot be intimidated and consequently, coerced into recusing from a case in this manner.

It is not a case where the presiding officer had any personal ground for recusal. Filing of an application expressing 'no confidence' in the presiding officer or, for that matter, creating a ruckus in Court is no ground for recusal from hearing a case.

Furthermore, it is the duty of this Court to see that the learned officers of the District Judiciary are not intimidated in any manner or face discomfort in adjudicating cases.

In the fact and circumstances, I do not find any worthwhile reason to transfer the present case from the learned trial court where it is presently pending.

In view of the same the revisional application is dismissed.

There shall, however, be no order as to costs.

The learned trial court is requested to conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties, preferably within a period of ten months from the next date of hearing.

In the event any further impediment is caused by anyone in administering justice in the present case, it shall be open to the learned trial judge to take appropriate steps to uphold the dignity of the Court.

The LCR shall be sent back to the learned revisional court.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Jay Sengupta, J.)