

D/L90
27.09.2022
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C.R.R. No.2005 of 2021

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

Santosh Kumar Sengupta and others
Versus
Smt. Atreyee Sengupta

Mr. Avik Ghatak,
Ms. Afreen Begum.
...for the petitioners.

Mr. Palash Mukherjee,
Ms. Tanya Adhikary.
...for the opposite party.

Leave is granted to the petitioners to amend the cause title.

The present application has been preferred under Section 407 of the Code of Criminal Procedure, thereby praying for transfer Case No.C-65/15 pending before the learned Judicial Magistrate, 2nd Court, Barasat to the court of the learned Judicial Magistrate, 1st Court, Alipore.

Mr. Avik Ghatak, learned advocate appearing for the petitioners submits that the complainant is staying within the jurisdiction of New Alipore Police Station. She has also filed a case before the court at Alipore being Case No.AC-1496 of 2015 which was earlier pending before the learned Judicial Magistrate, 1st Court, Alipore.

Mr. Ghatak further submits that subsequently the said case was quashed by a co-ordinate Bench in CRR 3124 of 2017 because of suppression of the present complaint case pending

before the learned Judicial Magistrate, 2nd Court at Barasat.

Learned advocate for the private opposite party is present.

I have considered the submissions of the learned advocates appearing for the petitioners as well as the private opposite party and I find that there has been change of circumstance as the earlier case pending before the court at Alipore has been quashed on 15.09.2022 in CRR 3124 of 2017 by a co-ordinate Bench of this Court.

Each case has to be appreciated on the foundation which has been laid down. At this stage, it is not possible for a court of law to appreciate the truth or falsity of the contentions, averments and narrations made in the petition of complaint. The factum as to stand of the complainant that in two different complaints she has narrated two different places of residence are issues which are to be considered by the trial court at the appropriate stage. Transfer in this case will not enure the benefit of any of the parties.

However, having regard to the fact that the case arose out of matrimonial discord and number of relations have been implicated in the instant case, I am of the opinion that in case any application under Section 205 of the Code of Criminal Procedure is filed on behalf of the petitioners before the learned Judicial Magistrate, 2nd Court, Barasat, in that case reliance may be placed upon the decision of the Hon'ble Supreme Court in **Puneet Dalmia Vs. Central Bureau of Investigation** reported in **(2020) 12 SCC 695**. Paragraph 5 of the said decision is quoted below:

“5. Heard the learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the appellant is required to appear before the learned trial court on every Friday and the appellant as such is appearing before the learned trial court on each and every Friday since 2013. Nothing is on record that at any point of time the appellant has tried to delay the trial. The appellant is represented through his counsel. The appellant is a permanent resident of Delhi. He is the Director on the Boards of several companies. The distance between Delhi and Hyderabad is approximately 1500 km. Therefore, the appellant sought for exemption from personal appearance before the learned trial court on each and every Friday and submitted the application under Section 205 CrPC and submitted that on all dates of adjournments, his counsel Shri Bharadwaj Reddy shall appear and no adjournment shall be asked for on his behalf. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] and Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585] , this Court had the occasion to consider the scope and ambit of the application under Section 205 CrPC. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] , this Court has observed that if a court is satisfied that in the interest of justice the personal attendance of an accused before it need not be insisted on, then the court has the power to dispense with the attendance of the accused. It is further observed by this Court in the aforesaid decision that if a court feels that insisting on the personal attendance of an accused in a peculiar case would be too harsh on account of a variety of reasons, the court can grant relief to such an accused in the matter of facing the prosecution proceedings. It is observed and held by this Court in the aforesaid decision that the normal rule is that the evidence shall be taken in the presence of the accused. However, even in the

absence of the accused, such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court.”

Relying upon the decision of Puneet Dalmia (supra), I direct that the learned Magistrate on usual undertaking would not insist on the day-to-day appearance regularly before the court until and unless the trial of the case cannot proceed without the physical presence of the petitioners. The prayer for transfer is refused.

However, the revisional application being CRR 2005 of 2021 is disposed of with the aforesaid directions.

Pending application, if any, is consequently disposed of.

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

(Tirthankar Ghosh, J.)