

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43381 of 2023

Arising Out of PS. Case No.-102 Year-2019 Thana- PARBATTIA District- Bhagalpur

PRUSHOTAM YADAV @ CHOTU S/O RAMRATI YADAV R/O Village-
Lahra, PS. Gopalpur, Dist. Bhagalpur Petitioner/s
Versus

1. THE STATE OF BIHAR
 2. GAURAV RAI S/O RAJ KISHORE RAI R/O Village- Tulsipur, PS. Kharik,
Dist. Bhagalpur
- Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Adv. Mr. Vikram Singh
For the State	:	Mr. Binod Kumar
For the O. P. No. 2	:	Mr. Umesh Prasad Singh, Sr. Adv. Mr. Rajni Kant Singh Mr. Vaibhav Veer Shankar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
JUDGMENT AND ORDER
ORAL

Date : 04-09-2023

The petitioner, who is an accused in Sessions Trial No. 82 of 2020, has filed the present application, under Section 407 of the Code of Criminal Procedure, 1973, for setting aside the order, dated 10.05.2022, passed in Misc. Transfer Case No. 76 of 2022, whereby the records of Sessions Trial No. 82 of 2020 has been transferred from 2nd Additional Sessions Judge, Naugachia Sub-Division, Bhagalpur, to 1st Additional Sessions Judge, Bhagalpur, at the instance of the informant/Opposite Party No. 2.

2. The main submission advanced by learned Senior Counsel for the petitioner is that the record of Sessions Trial No. 82 of 2020 has been transferred without any notice to the petitioner by the learned Sessions Judge, Bhagalpur. The prayer for



transfer of the records of Sessions Trial No. 82 of 2020 from Naugachia to Bhagalpur at the instance of the informant/Opposite Party No. 2 was dismissed earlier on three occasions on identical facts by the learned Sessions Judge, Bhagalpur. In support of his argument, learned Senior Counsel relies upon a decision of the Supreme Court, in the case of **Nirmal Singh v. State of Haryana**, reported in **(1996) 6 SCC 126**.

3. Learned Senior Counsel also argued that Section 362 of the Code of Criminal Procedure, 1973, bars the jurisdiction of the criminal court to review the order and judgment, which has already been rendered. He also relied upon the decision of the Supreme Court, in the case of **State of Punjab v. Divinder Pal Singh Bhullar and Others**, reported in **(2011) 14 SCC 770**.

4. The Supreme Court, in paragraph 44 of **Divinder Pal Singh Bhullar** (supra), has held that when an order is passed, it cannot be reviewed. Section 362 of the Code of Criminal Procedure, 1973, is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes *functus officio* and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law.



5. Accordingly, the submission is that in the light of the fact that earlier, on three occasions, similar petitions, filed by the informant/O.P. No. 2, were dismissed, the impugned order passed by learned Sessions Judge, Bhagalpur, directing for transfer of a case from Naugachia to Bhagalpur amounts to reviewing the earlier order passed by learned Sessions Judge, Bhagalpur.

6. On the other hand, learned Senior Counsel appearing on behalf of the informant/Opposite Party No. 2 submits that the present application, under Section 407 of the Code of Criminal Procedure, 1973, is not maintainable against the impugned order of transfer passed by the learned Sessions Judge, Bhagalpur, inasmuch as the impugned order cannot be challenged in exercise of jurisdiction of this Court under Section 407 of the Code of Criminal Procedure, 1973, which is the power of the High Court to transfer cases or appeals. Learned Sessions judge, Bhagalpur, has exercised the power under Section 408 of the Code of Criminal Procedure, 1973 and while exercising his jurisdiction, he ordered for transfer of Sessions Trial No. 82 of 2020 within the same sessions division, in changed circumstances. The remedy before the petitioner against the impugned order is to file either revision application before the High Court or invoking the inherent jurisdiction of the High Court under Section 482 of the Code of



Criminal Procedure, 1973. He further submits that the petitioner is a history-sheeter, having 24 criminal antecedents and the prosecution witnesses are being threatened and intimidated by the petitioner. He next submits that the lawyer of the accused, during the course of trial, threatened P.W. 5 and the Public Prosecutor appearing on behalf of the prosecution in the trial complained about the same to learned 1st Additional Sessions Judge, Bhagalpur, upon which the learned 1st Additional Sessions Judge, Bhagalpur, has directed, by order, dated 25.05.2023, the Superintendent of Police, Bhagalpur, to hold enquiry against the concerned lawyer and one of the accused, Rakesh Rai. The said lawyer of the accused approached this Court under inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, challenging the order of enquiry directed by the learned 1st Additional Sessions Judge, Bhagalpur, In Criminal Misc. No. 37459 of 2023, and a co-ordinate Bench of this Court, vide order, dated 02.08.2023, directed the learned Additional Sessions Judge, Bhagalpur, to proceed with the trial on day-to-day basis in accordance with law and after providing lawyer to the accused, who is not co-operating in the trial.

7. After transfer of Sessions Trial No. 82 of 2020 from Naugachai to Bhagalpur, six, out of ten prosecution witnesses,



have already been examined and the cross-examination of seventh prosecution witness has been refused by the side of the petitioner on the ground that transfer petition is pending before the High Court.

8. Accordingly, the submission is that the petitioner can invoke the inherent jurisdiction of this Court against the impugned order of transfer, particularly when one of the co-ordinate Bench of this Court has exercised its inherent jurisdiction and directed the trial, at Bhagalpur, to be expedited and to proceed with the trial on day-to-day basis.

9. I have heard learned Counsel for the parties concerned and have gone through the provisions of law.

10. Section 408 of the Code of Criminal Procedure, 1973, deals with the power of the learned Sessions Judge to transfer cases and appeals, in its sessions division, whenever it is made to appear to the Sessions Judge that the transfer is expedient for the ends of justice. Any order passed under Section 408 of the Code of Criminal Procedure, 1973 is not appealable.

11. Section 407 of the Code of Criminal Procedure, 1973 is the power of the High Court to transfer cases or appeals. As per the statutory provisions, the Sessions Judge has the power to transfer a case or appeal in the same sessions division and the



High Court has power to transfer a case or appeal from one sessions division to another sessions division. The proviso to Section 407 (2) of the Code of Criminal Procedure, 1973 prescribes 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. The petitioner is not seeking transfer of the trial; rather, he has challenged the order passed under Section 408 of the Code of Criminal Procedure, 1973 by learned Sessions Judge, Bhagalpur, by which Sessions Trial No. 82 of 2020 has been transferred in the same sessions division, from Naugachia to Bhagalpur.

12. It is clear that the petitioner is not invoking the power under Section 407 of the Code of Criminal Procedure, 1973, for transfer of the case from one sessions division to another sessions division and/or for transfer of the case in the same sessions division after rejection of his prayer for transfer before the Sessions Judge; on the contrary, the petitioner has challenged the order of transfer of Sessions Trial No. 82 of 2020, passed on the prayer of the informant/Opposite Party No. 2, by which the learned Sessions Judge, Bhagalpur, has transferred the Sessions Trial No. 82 of 2020 from 2nd Additional Sessions Judge, Naugachia Sub-



Division, Bhagalpur, to 1st Additional Sessions Judge, Bhagalpur, by order, dated 10.05.2022. Accordingly, in my opinion, the impugned order cannot be challenged under Section 407 of the Code of Criminal Procedure, 1973, and the petitioner has remedy before the appropriate forum under the relevant provision of law prescribed under the Code of Criminal Procedure, 1973.

13. Accordingly, I hold that the present application, in its form, under Section 407 of the Code of Criminal Procedure, 1973, is not maintainable.

14. In the result, this writ application is dismissed as not maintainable.

15. There shall be no order as to costs.

16. The petitioner will be at liberty to approach the appropriate forum challenging the impugned order of transfer of Sessions Trial No. 82 of 2020.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04-09-2023
Transmission Date	04-09-2023

