

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1131 of 2020

With

CRAN 1 of 2020

(Old No. CRAN 4469 of 2020)

With

CRAN 2 of 2020

(Old No. CRAN 4470 of 2020)

Kakali Rani Majumdar @ Kakali Dey

Vs

State of West Bengal & Anr.

For the Petitioner	: Mr. Shibaji Kumar Das, Ms. Suranjana Bhattacharyya.
For the State	: Mr. Arijit Ganguly, Mr. Sanjib Kumar Dan.
For the Opposite Party No. 2	: Mr. Sourav Chatterjee, Mr. Narayan Prasad Agarwal.
Hearing concluded on	: 22.08.2023
Judgment on	: 18.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against Order No. 5 dated 30th January, 2017 passed by the Learned Sessions Judge, Hooghly at Chinsurah in connection with Criminal Misc. Case No. 2451 of 2016 being a proceeding under Section 408 of the Code of Criminal Procedure, 1973 filed in connection with Sessions Case No. 49 of 2015 previously pending in the Court of the Learned Additional Sessions Judge, Fast Track, Chandannagore, District-Hooghly corresponding to Chandannagore Police Station Case No. 198 of 2014 dated 12th November, 2014 under Sections 302/34 of the Indian Penal Code, 1860 corresponding to G.R. No. 1461 of 2014 which culminated in Charge Sheet No. 17 of 2015 dated 28th February, 2015 under Sections 306/34 of the Indian Penal Code, 1860 and presently pending in the Court of the Learned Additional Sessions Judge, 1st Court, Hooghly at Chinsurah where it has been renumbered as Special Case No. 9 of 2017.
2. The petitioner's case is that she is the daughter-in-law of the opposite party no. 2 and is a victim of a false case. That the son of the opposite party no. 2 received accidental burn injuries while preparing some food in a stove and ultimately died. As the son of the opposite party no. 2 had married the petitioner herein against his wish, the opposite party no. 2 had never accepted the said marriage between his son and the petitioner so they had to live in a separate house.

3. That the only son of the opposite party no. 2 died under unnatural circumstances, succumbing to severe burn injury and based on such incident, on the basis of the Written Complaint lodged by the opposite party no. 2, addressed to the Officer-in-Charge, Chandannagore, Police Station, District – Hooghly, Chandannagore Police Station Case No. 198 of 2014 dated 12th November, 2014 under Sections 302/34 of the Indian Penal Code, 1860 corresponding to G.R. No. 1461 of 2014 was started by the police authorities against the Petitioner which was pending in the Court of the Learned Additional Chief Judicial Magistrate, Chandannagore, District – Hooghly.
4. Charge Sheet was submitted by the Criminal Investigation Department, Government of West Bengal before the Court of the Learned Additional Chief Judicial Magistrate, Chandannagore, District – Hooghly under Sections 306/34 of the Indian Penal Code, 1860 against the petitioner being No. 17 of 2015 dated 28th February, 2015.
5. The Court of the Learned Additional Chief Judicial Magistrate, Chandannagore, District – Hooghly took Cognizance and committed the said case to the Court of Sessions wherein it was numbered as Sessions Case No. 49 of 2015 and was transferred to the Court of the Learned Additional Sessions Judge, Fast Track, Chandannagore, District – Hooghly for trial and disposal.
6. The petitioner states that prior to framing of charge as against the petitioner which would commence the Trial in connection with the said

Criminal Proceeding, the opposite party no.2 on 1st August, 2016 had filed a petition under Section 408 of the Code of Criminal Procedure, 1973 before the Court of the Learned Sessions Judge, Hooghly at Chinsurah which was registered as Criminal Misc. Case No. 2451 of 2016 (hereinafter called & referred to as the said Petition) inter-alia praying for transfer of the said Criminal Proceeding from the Court of the Learned Additional Sessions Judge, Fast Track, Chandannagore, District – Hooghly to any Court in Chinsurah, so that the opposite party no. 2 and the other witnesses can be able to adduce evidence fearlessly.

7. It was further alleged that while the petitioner was in custody she developed a relationship with a notorious criminal of the locality who was also in custody in connection with murder cases and NDPS cases and ultimately on the prayer of the Controller, Chandannagore Sub-Correctional Home, she was shifted to Chinsurah Correctional Home vide Order dated 5th January, 2015 passed by the Court of the Learned Additional Chief Judicial Magistrate, Chandannagore, District – Hooghly.
8. On 10th November, 2016 the matter was heard by the Learned Sessions Judge, Hooghly at Chinsurah and 30th January, 2017 was fixed for further hearing of the same.
9. That on 30th January, 2017 which was the date fixed for further hearing of the matter, and none of the parties took steps in the instant case, on the basis of the hearing made on 10th November, 2016 and the averments made by the petitioner in the petition, the Learned Trial Court

proceeded to dispose of the Misc. Case and vide Order No.5 was pleased to allow the prayer on contest and Sessions Case No. 49 of 2015 pending in the Fast Track of the Learned Additional Sessions Judge, Chandannagore was withdrawn and transferred to the 1st Court of the Learned Additional Sessions Judge, Hooghly at Chinsurah for trial.

10. That pursuant to the Order No. 5 dated 30th January, 2017 passed by the Court of the Learned Sessions Judge, Hooghly at Chinsurah, the case records pertaining to Sessions Case No. 49 of 2015 have already been transferred from the Court of the Learned Additional Sessions Judge, Fast Track, Chandannagore, District – Hooghly to the Court of the Learned Additional Sessions Judge, 1st Court, Hooghly at Chinsurah where it has been renumbered as Special Case No. 9 of 2017 and date has been fixed for framing of Charge.

11. Mr. Shibaji Kumar Das, learned counsel for the petitioner has submitted that the Learned Trial Court while passing the impugned order erred both in law and in facts and failed to appreciate that it is admitted state of affairs that the opposite party no. 2 is a resident of Chandannagore and the place of occurrence of the alleged incident and the Prosecution Witnesses also reside in Chandannagore and hence transfer of the said Criminal Proceeding from Chandannagore to Chinsurah would cause great hardships to the said witnesses for which there is every likelihood that the truth will not be unearthed which would

subject the petitioner to suffer irreparable loss and injury and serious prejudice.

12. It is further submitted that the Learned Trial Court while passing the impugned order erred both in law and in facts and thereby failed to appreciate that 30th January, 2017 was the date fixed for further hearing of the said case and on that day none of the parties took any steps as will be revealed from the order impugned and hence it was highly improper on the part of the Learned Court to proceed to dispose of the said case on the basis of the hearing held on 10th November, 2016 which was by itself illegal and arbitrary and violative of the principles of Natural Justice & Fair Play in consideration of the fact that the petitioner is an accused person in connection with the said Criminal Proceeding.
13. That the Learned Trial Court while passing the order impugned did not provide adequate opportunity to the petitioner to rebut the contentions raised by the opposite party no. 2 in his petition being Criminal Misc. Case No. 2451 of 2016 under Section 408 of the Code of Criminal Procedure, 1973.
14. The Learned Trial Court while passing the impugned Order erred both in law and in facts being **oblivious of the fact that the petitioner is a lady who would face difficulties for travelling to Chinsurah from either Chandannagore being her matrimonial home or Kalyani being her paternal home on the dates fixed.**

15. That the impugned order passed by the Learned Trial Court is otherwise bad both in law and in facts and the same is liable to be set aside in the interest of justice.
16. **Mr. Arijit Ganguly, learned counsel for the State** submits that the state/prosecution is **not aggrieved** by the order under revision.
17. **Mr. Sourav Chatterjee, learned counsel for the opposite party no. 2/de facto complainant** has submitted that the order under revision was passed on 30.01.2017. Since then 32 dates have fixed by the Sessions Court.
18. Vide Order dated 19.07.2022, the prayer for discharge by the petitioner was rejected.
19. From the materials on record including the revisional application it appears that **the petitioner is a resident of Kalyani, District – Nadia.**
20. **The present Trial Court at Chinsurah, on transfer is closer to the petitioner's place of residence than that at Chandannagore.**
21. The contention of the petitioner that no opportunity of hearing was given, while hearing the petition for transfer is unfounded **as it is clear from the order under revision that the petitioner's lawyer before the Sessions Court was heard.**
22. Section 408 empowers the Sessions Judge/Court to transfer a case from one Criminal Court to another Criminal Court, if deemed fit **in the interest of justice** in its Sessions Division.

Sessions Judge may act:-

1. On its own.
2. On a lower court report.
3. On the application of a party.

23. In the present case, it is seen that the Learned Sessions Judge has passed a well reasoned order taking all relevant facts and circumstances into consideration, expedient for the ends of justice and no prejudice has been caused to the petitioner nor has there been any abuse of process of law.

24. The order under revision thus being in accordance with law needs no interference.

25. CRR 1131 of 2020 is dismissed.

26. The Trial Court shall make all endeavour to dispose of the case expeditiously without granting any unnecessary adjournments.

27. All connected applications, if any, stands disposed of.

28. Interim order, if any, stands vacated.

29. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

30. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)