

13.09.2023
Serial no. 61
[G.S.D]

CRR 3405 of 2023

In the matter of : Bidhan Chandra Kundu

... .. Petitioner

Mr. Dilip Kumar Samanta

Mr. Debapriya Samanta
Ms. T. Paul

... for the petitioner

The petitioner earlier preferred an application for transfer of the case being Criminal Misc. Case No. 513 of 2023 pending before the Id. Sessions Judge, Bardhaman, Dist.-Purba Bardhaman. The said transfer was in respect of withdrawal of Complaint Case No. 274 of 2022 under Section 138 of the N.I.Act from the Court of the Id. JM, 4th Court, Katwa to the Court of Id. JM, 4th Court, Burdwan.

The said order also reflects that earlier a case being Burdwan P.S. Case No. 746 of 2022 dated 10.7.2022 under Sections 406/420/323/504/34 of the IPC was initiated.

The Id. Sessions Court while considering the application under Section 408 of the Cr.P.C. was of the opinion that mere threat of life is not a sufficient ground for transfer of a case without a complaint being lodged, which would substantiate the same and, to that effect, the Id. Sessions Court relied upon (2005) 2 C Cr.L.R. (Cal) 382 and

also an order of the Hon'ble Apex Court dated 26.10.2021 in IA No. 137610/2021.

The Id. Sessions Court on consideration of whole of the circumstances rejected the prayer under Section 408 of the Cr.P.C.

The present petitioner also approached in WPA 13189 of 2022 before a Co-ordinate Bench having determination under Article 226 of the Constitution of India, wherein there was specific direction that the police authorities would ensure that no unnecessary harassment is caused to the petitioner or, his son and it was also stated that if the petitioner feel insecure, at that time, he would approach the Superintendent of Police for necessary order of police posting.

In the same order, it was recorded that the allegations in respect of Burdwan P.S. Case No. 746 of 2022 dated 10th July, 2022 were not found to be correct.

The present is a case under Section 138 of the N.I. Act, wherein transfer has been sought for by invoking the provision under Section 407 of the Cr.P.C., the said provision can be dealt with by this Court by not taking into account the order passed by the Id. Sessions Judge.

Having considered the manner in which the judicial system is being utilised by the petitioner for the purposes of his/her wish to have the jurisdiction transferred without any

foundation of law, I hold that the application under Section 407 of the Cr.P.C. has been filed in a vexatious manner for the purpose of frustrating the proceedings of Complaint Case No. 274 of 2022, which is a case under Section 138 of the N.I. Act.

Hence, the issue relating to transfer of the case is not interfered with.

With the aforesaid observations, CRR 3405 of 2023 is dismissed.

Pending application, if any, is also dismissed.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court at Calcutta.

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

(Tirthankar Ghosh, J.)