

28.08.2023
SL No.22
Court No.3

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRR 121 of 2023

In the matter of : Sunaina Devi

Mr. Arijit Ghoshpetitioner.
... For the Petitioner.

Mr. Sujit Kr. Sarkar
Mr. Debjit Kundu
Mr. Sistri Sarkar
... For the O.P.No.2.

Mr. Aditi Shankar Chakraborty
Mr. Nilay Chakraborty
....for the State.

This is an application under Section 407 of the Code of Criminal Procedure filed by the defacto complainant of Bhaktinagar P.S. Case No. 988 of 2009 seeking transfer of the proceeding being G.R.Case No. 3451 of 2009 from Jalpaiguri to Durgapur.

Heard Mr. Ghosh, learned counsel for the petitioner, Mr. Sujit Kr. Sarkar, learned counsel representing the opposite party/accused person and Mr. Nilay Chakraborty, learned counsel representing the Stat.

It is contended by Mr. Ghosh that the defacto complainant who is the victim wife has shifted to Durgapur and has taken refuge to her parental house with her children. She is facing difficulty to attend the court at Jalpaiguri, from Durgapur. It is

contended that whenever she appeared before the court her evidence could not be recorded for one reason or the other.

Mr. Sarkar, learned counsel for O.P./ accused persons refuting such submission of Mr. Ghosh contends that there is no whisper in the application that the petitioner is apprehensive of denial of fair trial her only grievance is the distance which may place the accused persons including the husband to the same difficult position.

Mr. Chakraborty also opposes the application seeking transfer of case.

Section 407 of the Code of Criminal Procedure can be invoked in a case if it is found that such order will tend to the general convenience of the parties, in absence of any other allegation made in the petition.

At the behest of the petitioner, Sunaina Devi, this New Jalpaiguri Bhaktinagar P.S. Case No. 988 of 2009 was registered. After investigation police submitted charge-sheet citing eight witnesses who would adduce evidence for the State and the petitioner is one of them.

Six accused persons have been sent up for trial and they are all residents of Dakshinagar P.S. Bhaktinagar. When this fact is examined in contradistinction with the convenience as propagated on behalf of the petitioner, I do not find any reason to invoke the provision of Section 407 of the Code of Criminal Procedure to transfer the case. The balance of convenience does not tilt in favour of the petitioner.

However, the learned trial court is requested to consider if the evidence of the victim lady can be recorded on virtual platform with the help of technology. In that event, the victim lady is to provide the details required to hold such examination on virtual mode, else, the victim lady shall have to appear before the learned trial court physically on the date fixed and on that particular date her evidence is to be concluded, both evidence in chief and cross – examination in compliance with the provision of Section 309 of the Code of Criminal Procedure.

With this revisional application is disposed of.

Let a copy of this judgment be sent down to the learned trial court for information and necessary compliance

The interim order of stay, if any, stands vacated.

(Siddhartha Roy Chowdhury,J)