

07.03.2024
Serial no.49
Aloke
Ct. No. 30

CRR 47 of 2022

Sunanda Mukherjee

Vs.

The State of West Bengal & Anr.

Mr. Apurba Kumar Datta,
Ms. Sreemoyee Mukherjee.
..... for the Petitioner

Ms. Amita Gaur.
..... for the State/O.P. No.1

None.
..... for the Opposite Party No. 2

- 1.** Learned counsel for the petitioner and the State are present. Affidavit-of-service is filed. In spite of service there is no representation on behalf of the opposite party no. 2. Affidavit-of-service be kept with the record.
- 2.** The State has filed a report dated 07.03.2024. The same be taken on record.
- 3.** The present revisional application has been preferred against an order dated 10.09.2021 passed by the learned Sessions Judge, Paschim Bardhaman, in Misc. Case No. 838 of 2019. The Sessions case filed by the petitioner be transferred from the learned Additional District and Sessions Judge, 1st Court, Durgapur, Paschim Bardhaman to any Sessions

Court in Asansol, as the petitioner apprehends serious threat to her and her daughter's life.

- 4.** It is submitted that her husband was murdered and the said sessions case is related to the said murder of the petitioner's husband. The petitioner submits that she and her daughter fear for their life.
- 5.** The learned Sessions Judge in spite of considering the said facts and circumstances, rejected the prayer of transfer on the ground that the trial had already commenced.
- 6.** It appears from the record that the petitioner herself is a resident of Durgapur. In spite of being a resident of Durgapur, she had prayed for transfer of the case to Asansol Court.
- 7.** From the report filed by the police it appears that the opposite party no. 2 is in jail custody.
- 8.** It appears that the learned Sessions Judge could not transfer the case in spite of being satisfied as the trial had already commenced, as such, the order of the learned Sessions Judge does not suffer from any illegality.
- 9.** Thus, considering the present facts and circumstances of the case and in the interest of justice, this Court is of the view that the prayer of the petitioner should be allowed.
- 10.** The report submitted by the State be made part of the record.

11. The Hon'ble Supreme Court in *Umesh Kumar Sharma vs State of Uttarakhand & Ors., Transfer Petition (Crl.) Nos. 534-536 of 2019, decided on 16 October, 2020*, held:-

“17. In Captain Amrinder Singh Vs. Prakash Singh Badal & Ors., Justice P. Sathasivam, as he then was, speaking for the three judge Bench, on the issue of transfer of criminal cases, observed as follows: -

“48. The analysis of all the materials, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter.

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51. We have already pointed out that a mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, we are of the opinion that in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding the nature of the accusations made against them.

In the case on hand, the apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.”

18. *Let us now examine another precedent on transfer of criminal cases. In Nahar Singh Yadav & Others vs. Union of India & Ors., Justice D.K. Jain writing for the three Judge Bench discussed the scope of transfer under Section 406 CrPC in the following terms: -*

“22. It is, however, the trite law that power under Section 406 CrPC has to be construed strictly and is to be exercised sparingly and with

great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well.”

19. *On the same line is the decision in Harita Sunil Parab vs. State(NCT of Delhi) & ors, where Justice Navin Sinha, enunciated the law on transfer jurisdiction in the following terms:-*

“8. The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard-and-fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. The charge-sheet in FIR No. 351 of 2016 reveals that of the 40 witnesses, the petitioner alone is from Mumbai, two are from Ghaziabad, and one is from Noida. The charge-sheet of FIR No. 1742 of 2016 is not on record. A reasonable presumption can be drawn that the position would be similar in the same also.”

20. *The above legal enunciations make it amply clear that transfer power under section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible.*

Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises.

21. *While assurance of a fair trial needs to be respected, the plea for transfer of case should not be entertained on mere apprehension of a hyper sensitive person. In his pleadings and arguments, the petitioner in my assessment has failed to demonstrate that because of what he endured in 2018, it is not possible for the courts in the state to dispense justice objectively and without any bias. It can't also be overlooked that the petitioner is involved in several cases and this year itself has generated few on his own in the state of Uttarakhand. Therefore, it is difficult to accept that justice for the petitioner can only be ensured by transfer of three cases mentioned in these petitions.*

22. While considering a plea for transfer, the convenience of parties would be a relevant consideration. *It can't just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution besides the larger issue of trial being conducted under the jurisdictional Court. When relative convenience and difficulties of all the parties involved in the process are taken into account, it is clear that the petitioner has failed to make out a credible case for transfer of trial to alternative venues outside the State."*

- 12.** Considering the said materials on record, let the proceedings being Misc. Case No. 838 of 2019 (Sessions Case No. 190 of 2018), be transferred from the learned Additional District and Sessions Judge, 1st Court, Durgapur, Paschim Bardhaman to any Court competent in Asansol. Durgapur and Asansol are both under district Paschim Bardhaman.
- 13.** Accordingly, let the records be placed before the learned District Judge, Paschim Bardhaman who

shall transfer the records to any competent Court in Asansol for disposal of the case.

- 14. The revisional application being CRR 47 of 2022 is accordingly allowed.**
- 15.** Learned District Judge, Paschim Bardhaman, shall act expeditiously.
- 16.** All endeavour should be made to complete the trial expeditiously.
- 17.** All connected applications, if any, stand disposed of.
- 18.** Interim order, if any, stands vacated.
- 19.** Copy of this order be sent to the learned District Judge, Paschim Bardhaman forthwith for necessary compliance.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)