

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1679 of 2022

RabindraNath Acherjee@Acharya & Ors.

Vs

Biplab Mukherjee.

For the Petitioners : Mr. Atarup Banerjee,
Mr. Tapodip Gupta,
Mr. Rajdeep Pramanik.

For the Opposite Party : None.

Hearing concluded on : 06.03.2024

Judgment on : 21.03.2024

Shampa Dutt (Paul), J.:

1. The present revision is an application for transfer of the proceeding arising out of the complaint in connection with the Case no. C. Case No 209/2018 (T.R NO. 62/2018) dated 28.11.2018 under Sections 448/323/379/427/504/34 of the Indian Penal Code, pending before the Learned Judicial Magistrate. 1st Class, 3rd Court, Katwa, at Purba Bardhaman to the Learned Additional Chief Judicial Magistrate at Durgapur, Paschim Bardhaman or to any other appropriate Court having jurisdiction, in terms of Section 407 of the Criminal Procedure Code.
2. The petitioners submit that the petitioners no. 1, 2 and 3 are aged persons and petitioner no. 4 is the younger daughter of petitioner no. 1 and 2.
3. That, prior to the alleged complaint the wife (elder daughter of the petitioner no 1 & 2) of the complainant/opposite party herein had also filed an application under Section 12 of the Protection of women from Domestic Violence Act, 2005 for reliefs under Sections 17/18/19/20/21/22/23 of the Protection of Women from Domestic Violence Act, 2005, and the same was registered as being Misc. Case No. 406/2015, and the said case was contested by the complainant/opposite party herein. The opposite party also had preferred an Appeal being criminal Appeal No. 01/2017(06/17) challenging the order of the Learned Judicial Magistrate, 4th Court, at Durgapur and the Judge

Special cum Additional District and Sessions Judge, Durgapur had also affirmed the order passed by the Learned Judicial Magistrate in Misc. Case No. 406/2015.

4. That, prior to this alleged complaint, the wife (elder daughter of the petitioner no 1 & 2) of the complainant/opposite party herein had also filed a criminal case against the complainant and his family members under Sections 498A/354/354B/307/406/120B/34 of the Indian Penal Code and the same was registered as Durgapur Police Station Case no. 364/2017 dated 11.06.2017 and the same is pending before the Learned Chief Judicial Magistrate at Durgapur, Paschim Bardhaman and the complainant/opposite party herein is attending the said case at Durgapur.
5. That, the complainant/opposite party herein, had filed another application under Section 13(i) of the Hindu Marriage Act, 1955 being Matrimonial case no. 49 of 2019 against his wife and the same had been filed before the Learned Additional District, judge, at Katwa, Purba Bardhaman.
6. Thereafter, the wife (daughter of the petitioners no. 1 and 2) filed an application before this Hon'ble Court under Section 24 of the Code of Civil Procedure for transfer of the aforesaid Matrimonial Suit no. 49 of 2019, from Learned Additional District Judge at Durgapur, Paschim Bardhaman and **same was allowed by this Hon'ble Court.**

- 7.** The petitioners submit that the petitioners no. 1, 2 and 3 are aged persons and petitioner no. 4 is a newly married woman residing in her matrimonial house and are residents of Durgapur, Paschim Bardhaman, West Bengal, and Katwa Court is situated at a road distance of about 135 Kilometers via National Highway and State Highway from Benachity, Durgapur and takes more than four hours to reach Katwa Court.
- 8.** That the petitioners are facing great difficulty in attending Katwa Court, since the petitioners are resident of Benachity, Durgapur, West Bengal, and on the dates fixed before the Katwa Court, the petitioners are forced and/or bound to travel to Katwa court along with their elder daughter (wife of the complainant herein) and minor grandson aged about 8 (eight) years as the petitioners herein cannot travel alone due to their old age issues and thus it is very difficult for the petitioners either to travel all the way to Katwa Court with their minor grandson and daughter or to keep their minor grandson alone at their residence and travel to Katwa. It is further stated that the petitioner no. 4 has a newborn baby and she is also having great difficulty to travel.
- 9.** Hence the prayer for transfer.
- 10.** In spite of due service there is no representation on behalf of the opposite party.
- 11.** A list of cases pending between the parties (families) and the Courts where the proceedings are pending has been filed before this Court and the said list is reproduced here:-

Sl. No.	Case No.	Jurisdictional Court &	Remarks	Page
1.	406/2015/T.R. 9 of 2016 under Sections 12, 18, 19, 20, 22 & 23 of Protection of Women from Domestic Violence Act. At the instance of wife of the Biplab Mukherjee, husband/daughter of the petitioner herein.	Judicial Magistrate 4 th Court, Durgapur.	Interim Order passed on 20.02.2017.	33
2.	Durgapur P.S. Case No.364/17 dt. 11.06.2017 under Sections 498A/354/354B/406/120B/34 of the Indian Penal at the instance of wife/daughter of the petitioner herein.	A.C.J.M. Durgapur.	Pending.	
3.	Criminal Appeal No.1/2017 (6/17) challenging the order dated 20.02.2017 passed in 406/2015/TR9 of 2016 of D.V. Act at the instance of the husband i.e. Biplab Mukherjee.	Additional District and Sessions Judge, Durgapur.	Judgment assed on 03.10.2018.	44
4.	CRR No.3342 of 2018 challenging the order dated 03.10.2018 passed in Criminal Appeal No.1/2017 (6/17) at the instance of the husband i.e. Biplab Mukherjee.	Hon'ble High Court.	Dismissed on 22.03.2022.	47
5.	CRR No. 3471 of 2018 praying quashing of the Charge Sheet No.255/17 dated	Hon'ble High Court.	Disposed on 22.03.2022.	49

	24.07.2017 arising out of Durgapur P.S. Case No.364/97 at the instance of the husband/son in-law/ opposite party therein.			
6.	Act VIII Case No.04 of 2018 renumbered as Act VIII Case No.37 of 2019 at the instance of the husband/son in-law of the petitioner.	District Judge, Burdwan transferred to District Judge, Paschim Bardhaman.	Dismissed on 21.12.2019.	63
7.	Matrimonial Case No.49 of 2019 u/s. 13(1) of H.M. Act, 1955 at the instance of the husband/son in-law of the petitioner.	Additional District Judge, Katwa transferred to Additional District Judge, Durgapur order dated 26.04.2022 passed in C.O. 584 of 2022 by Hon'ble High Court.	Pending.	69-72
8.	Complaint Case No.209/18 (T.R. 62/2018) dated 25.11.2018 u/s. 448/323/379/427/50 4/34 of IPC at the instance of the husband/son in-law of the petitioner.	CRR 1679 of 2022 before this Hon'ble High Court.	Praying transfer to Learned Judicial Magistrate, 1 st Class, 3 rd Court, Katwa to the Ld. Additional Chief Judicial Magistrate, Durgapur.	

12. The petitioners are all residents of the Durgapur, Paschim Bardhaman.

The opposite party is a resident of Katwa, Purba Bardhaman.

13. The Supreme Court in **Umesh Kumar Sharma vs State of Uttarakhand & Ors., Transfer Petition (CRL.) Nos. 534-536 of 2019, on 16th October, 2020**, held:-

“17. In Captain Amrinder Singh Vs. Prakash Singh Badal & Ors.5, 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.

* * * *

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 5 (2009) 6 SCC 260 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.6, 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.” 6 (2011) 1 SCC 307

19. *On the same line is the decision in Harita Sunil Parab vs. State (NCT of Delhi) & ors⁷, 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.” 7 (2018) 6 SCC 358

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."

- 14.** Thus keeping with the guidelines of the Supreme Court, the petitioner has clearly made out a credible case for transfer of the trial to an alternative venue as prayed for.
- 15.** From the materials on record it appears that there is a matrimonial dispute between the petitioner no. 1 & 2's daughter and the opposite party.
- 16.** There are several cases pending as a result of such matrimonial dispute including a suit for divorce and a case for custody of the minor child, who now resides with his mother.

17. The nature of the proceedings initiated in this case also prima facie appears to be a fall out of the said matrimonial dispute.
18. Thus considering the age of the petitioners no. 1 and 2, the fact that the other petitioners have minor children and also the fact that rest of the proceedings are also pending before the Durgapur Court, Paschim Bardhaman, some of which have also been transferred from Katwa, Purba Bardhaman, the prayer of the petitioners for transfer is to be allowed in view of the guidelines of the Supreme Court in ***Umesh Kumar Sharma vs State of Uttarakhand & Ors., (Supra).***
19. In spite of due service the opposite party has not appeared. The opposite party herein being the son-in-law of the petitioner no. 1 and 2 is also a younger person and as such in the interest of justice, the prayer of the petitioners for transfer of the proceeding in this case is allowed.
20. **CRR 1679 of 2022 is allowed.**
21. The proceeding being C. Case No 209/2018 (T.R NO. 62/2018) dated 28.11.2018 under Sections 448/323/379/427/504/34 of the Indian Penal Code, pending before the Learned Judicial Magistrate. 1st Class, 3rd Court, Katwa, at Purba Bardhaman **is transferred** to the file of the Learned Additional Chief Judicial Magistrate at Durgapur, Paschim Bardhaman, through the respective learned District Judge's, who shall transfer the same to a competent Court for expeditious disposal.
22. All connected applications, if any, stand disposed of.
23. Interim order, if any, stands vacated.

- 24.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 25.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)