

02.04.2024

Sl. No.: 10

Court No. 30
BM

CRR 1231 of 2019

Minati Sarkar

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Satadru Lahiri,
Ms. Pampa Dey Dhabal.

For the State : Mr. Rana Mukherjee,
Ms. Sayanti Santra.

For the Opposite Party No. 2 : Mr. Koustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar.

1. The present criminal revisional application has been preferred praying for transfer of proceeding being G.R. Case No.3566 of 2010 (State vs. Sankar Sarkar & Ors.) arising out of Khardah Police Station Case No.500 of 2010 dated 14.09.2010 under Sections 498A/323/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 3rd Court, Barrackpore to the Court of learned Chief Judicial Magistrate, Alipur, Kolkata-700 027.
2. Heard learned counsel for the petitioner and the opposite parties including the State who has placed a report showing the present status of the proceedings before the trial court.
3. It appears from the said report that the trial in the proceeding before the trial court has not yet commenced.
4. **Learned counsel for the petitioner** submits that the present case was initiated by the petitioner on 14.09.2010 giving rise to Khardah Police Station Case No.500 of 2010 under Sections 498A/323/34 of the Indian Penal Code.

5. The investigation in the said case is complete and charge sheet was filed before the trial court on 30.04.2013. The case was then fixed for evidence before the trial court.
6. It is the case of the petitioner that she suffers from several ailments and as she now resides at Haltu, Police Station, Garfa, Kolkata-700 078, she prays that the said proceeding be transferred from Barrackpore court to Alipore Court.
7. Learned counsel for the petitioner had relied upon the **judgment of Chhatishgarh High Court in *Purvi Jain Bohra vs. Ritesh Kumar Bohra*, passed on 15th July, 2022**, which it is submitted was passed on considering the judgments of the Supreme Court.
8. It appears from the said judgment that the court had directed Police protection for the petitioner to appear before the trial court but did not transfer the said case which was also a proceeding under Section 498A/34 of the Indian Penal Code.
9. **Learned counsel for the opposite party** has brought the notice of this court to the affidavit sworn by the petitioner in CRAN 2 of 2024, filed in this case **on 5th February, 2024**, from which it can be seen that the petitioner herein has given her address, as **Panihati (m) North 24 Parganas, West Bengal which is within the jurisdiction of Barrackpore Court**.
10. It is thus, submitted that the petitioner only to harass the opposite party has given her address in the revisional application filed on the basis of an affidavit dated 22nd April, 2019 that she resides at Garfa, Kolkata, whereas the affidavit

in the CRAN application clearly shows that she still resides within the jurisdiction of Barrackpore Court.

11. From the said conduct it becomes prima facie clear to the court that the petitioner's intention is prima facie to harass the opposite parties who are all residents of Khardah within the jurisdiction of Barrackpore court.

12. In ***Jyoti Mishra vs. Dhananjaya Mishra, (2010) 8 SCC 803, decided on August 27, 2010,*** the Supreme Court held:-

*“6. Otherwise also, we are not inclined to transfer a criminal case from one State to another solely on the ground that it would be more convenient for the complainant (wife) to prosecute the matter there. **It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings.***

*7. **But a criminal case is on a somewhat different footing.** The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic. **Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife.***

8. For all these reasons, we are not inclined to accept the prayer for transfer in these cases.”

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 failed to make out a credible case for transfer of the trial to an alternative venue.
15. **CRR 1231 of 2019 is thus dismissed.**
16. **Trial Court to proceed with 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 Trial Court.

(Shampa Dutt (Paul), J.)