

24.04.2024

Sl. No.: 15

Court No.30
BM

CRR 2231 of 2019

**Banani Bose @ Ghosh
Vs.
State of West Bengal & Anr.**

Mr. Debabrata Sardar

... for the petitioner

1. Affidavit of service as directed by this court vide order dated 02.04.2024 is filed.
2. It appears that the service that has been returned unserved with the endorsement 'left'.
3. The present revisional application has been preferred praying for transfer of the proceeding in complaint case no.311 of 2019 under Section 12 of the D. V. Act, 2005 from the court of Judicial Magistrate, 2nd Court, Barasat, District-North 24 Parganas to Uluberia, District-Howrah.
4. **On perusal of the materials on record and the nature of proceeding in the present case, it appears that both the petitioner and the aggrieved opposite party are permanent resident of Uluberia, Howrah.**
5. The opposite party has failed to appear before this court, in spite of best efforts to serve upon her.
6. 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) & ors*⁷, 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.”

7. 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, the fact being that both the parties are resident of Uluberia, Howrah.
8. **CRR 2231 of 2019 is allowed.**
9. **The present complaint case being no. 311 of 2019 is transferred from the Court of Judicial Magistrate, 2nd Court, Barasat, District-North 24 Parganas to Uluberia Court, District-Howrah through the respective District Judges.**
10. All applications connected thereto stand disposed of.
11. Interim order, if any, stands vacated.
12. Let a copy of the order be sent to the learned trial court for compliance.
13. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)