

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1511 of 2020

With

CRAN 2 of 2024

Pinaki Singha

Vs

Mousumi Besra & Anr.

For the Petitioner : Mr. Kunal Ganguly.

For the Opposite Party No. 1 : None.

For the State : Mr. Manoranjan Mahata.

Hearing concluded on : 29.01.2024

Judgment on : 22.02.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for transfer of the proceedings in Sessions (Spl.) Case No. 37/2019 pending before the learned Additional District and Sessions Judge, Raghunathpur, Purulia to any other Court in Asansol. The Sessions (Spl.) Case No. 37/2019 against the petitioner is registered under Section 8 of the POCSO Act, 2012 and Section 3(xi) of the SC & ST (Prevention of Atrocities) Amendment Act, 2015 in Neturia P.S. Case No. 92/2019 dated 27.07.2019. The case is fixed for evidence.
2. There are 9 witnesses including the victim.
3. The petitioner/accused's (in Sessions Case) wife has registered the present case being no. 135/2019 dated 17.11.2019 under Sections 341/147/148/323/325/379 of IPC against the victim's (in Sessions Case) father and others alleging assault and receiving bleeding injuries and theft of his personal belonging.
4. **Thus apprehending further attack** the petitioner has preferred the present revision.
5. **Injury report** at page 42 of the case diary in Neturia P.S. Case No. 135/2019 dated 17.11.2019 is in respect of an incident dated 27.07.2019. Neturia P.S. Case No. 92/2019 (Sessions Case) in which the petitioner is an accused, is also dated 27.07.2019.

6. The said injury report is dated **21.02.2020** (six months after the alleged incident), in respect of an alleged incident on 27.07.2019.

7. The said report relating to the incident dated 27.07.2019 states:-

“No weapon used”. On examination the doctor found “Alcoholic smell from mouth C multiple abrasion over Rt side of forehead, chin, chest (left side), Nail scratch mark over chest (left side)”.

[Type of injury:- Simple].

8. The written complaint in Neturia P.S. Case No. 135/19 dated 17.11.2019 (present case) is also in respect of the incident (Sessions Case) which occurred on 27.07.2019.

9. **Thus it is a case of case and a counter case.**

10. **But the counter case has been filed after almost four months.**

11. **The injury report (page 42 of case diary) is dated 21.02.2020 i.e. 6 months after the alleged incident and 3 months after registration of the case on 17.11.2019.**

12. Thus the apprehension of the petitioner praying for transfer is totally unfounded, as there is no such incident (subsequent) to support the apprehension of the petitioner.

13. The petitioner has prayed for transfer of trial to the district of which he is a resident.

14. 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."

15. 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.
16. **No apprehension as alleged has been even prima facie made out. There has been no untoward incident after the incident on 27.07.2019 which gave rise to both the cases (case and counter case).**
17. The case filed by the petitioner's wife has been filed 4 months after the alleged incident. The injury report is dated three months after the registration of the case relating to the incident which occurred six months prior to the issuance of the injury report.
18. **CRR 1511 of 2020 is thus dismissed.**
19. **Trial Court to proceed with the trial expeditiously.**

- 20.** All connected applications, if any, stand disposed of.
- 21.** Interim order, if any, stands vacated.
- 22.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 23.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)