

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3667 of 2023

Smt. Madhurima Roy (Roychoudhury)
Vs
Shri Saikat Roy & Anr.

For the Petitioner : Mr. Srinjay Sengupta,
Mr. Saurav Roy,
Mr. Narattam Acharyya,
Mr. Ankush Ghosh.

For the Opposite Party No. 1 : None.

For the State : Mr. Arijit Ganguly.

Hearing concluded on : 07.01.2025

Judgment on : 07.01.2025

Shampa Dutt (Paul), J.:

1. Affidavit-of-service filed by the petitioner shows service upon the State, who is already present. The State has also filed a report showing that service has been effected upon the de facto complainant by the local Police Station but none appears for the de facto complainant. Let the report be kept with the record.

2. The present revisional application has been preferred praying for transfer of Complaint Case No. 529 of 2022 from the Court of the learned Additional Chief Judicial Magistrate, Second Court, Kalyani, Nadia to the Court of the learned Additional Chief Judicial Magistrate, Alipore or any other Court at Alipore having competent jurisdiction or Chief Metropolitan Magistrate Court, Kolkata.
3. The petitioner's case is that the present case has been initiated by her husband/the opposite party herein in the Court of the learned Additional Chief Judicial Magistrate, 2nd Court, Kalyani, Nadia.
4. The petitioner after leaving her matrimonial home is staying with her parents at Netaji Nagar. The matrimonial suit initiated by her husband has also been transferred by the High Court from Serampore to Sealdah.
5. It is further submitted by the learned counsel for the petitioner that a proceeding under the Domestic Violence Act is pending before the Alipore Court.
6. It is further submitted that the petitioner has two minor children and being separated from her husband is facing severe financial and physical difficulty in attending the Court at Kalyani and, as such, has prayed that the present proceeding in the present revision be transferred to any Court at Alipore having jurisdiction.
7. It appears that in spite of being served through the State the opposite party/husband has chosen not to appear before this Court.
8. 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.”

9. 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.
10. Considering the said fact and the materials on record, the present revisional application being **CRR 3667 of 2023 is allowed.**
11. The complaint case being No. 529 of 2022 pending before the Court of the learned Additional Chief Judicial Magistrate, 2nd Court, Kalyani, Nadia, be transferred to the Court of the learned Additional Chief Judicial Magistrate at Alipore, 24 Parganas (South), who shall either retain the record or transfer the same for disposal to any other competent Court at Alipore, having jurisdiction, as he deems fit and proper.
12. There will be no order as to costs.
13. All connected applications, if any, stand disposed of.
14. Interim order, if any, stands vacated.
15. Let a copy of this judgment be sent to the Court of learned ACJM, 2nd Court, Kalyani/ACJM, Alipore/District Judge Alipore and District Judge Nadia.
16. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)