

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 353 of 2023

**Itu Ranu Ghosh and Ors..
-Vs.-
The State of West Bengal and Ors.**

For the De Facto Complainant	: Mr. Subhasish Misra Mr. Satyajit Paul Mr. Shreya Sarkar
For the Opposite Party	: Mr. Aniruddha Biswas Mr. Kanak Misra Mr. Monaj Saha
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Sourav Ganguly
Hearing concluded on	: 23.07.2025
Judgment on	: 28.07.2025

Uday Kumar, J.:-

1. This criminal revision application, C.R.R. No. 353 of 2023, has been preferred by the petitioners, primarily the paternal family of the deceased Lipika Ghosh, seeking the transfer of Sessions Case No. 138/2014 from the court of the Additional District Judge, 4th Court, Jalpaiguri, to any Additional District and Sessions Judge in Siliguri, falling within the sessions division of Darjeeling. The essence of their prayer is founded on grounds of ensuring a fair trial, facilitating the convenience of parties and witnesses, and ultimately upholding the ends of justice.

- 2.** The genesis of the Sessions Case lies in the tragic demise of Lipika Ghosh on February 27, 2011, who was found hanged in her matrimonial home. Lipika, daughter of Petitioner No. 1, Smt. Itu Rani Ghosh, and Petitioner No. 2, Kalachand Ghosh, was married to Nitai Ghosh (Opposite Party No. 2) in 2008. The petitioners allege that a significant dowry was provided at the time of marriage, followed by continuous physical and mental torture over further dowry demands from her husband and in-laws (Opposite Party Nos. 2 to 7), reportedly leading to multiple hospitalizations. Consequently, an FIR (No. 162/11) was initially lodged under Sections 498A, 302, and 34 of the Indian Penal Code (IPC). Subsequently, the chargesheet (No. 504/2012 dated March 26, 2012) altered the charge from murder (Section 302 IPC) to abetment of suicide (Section 306 IPC), while retaining Sections 498A/34 IPC and adding Sections 3 and 4 of the Dowry Prohibition Act.
- 3.** The case was committed to the Sessions Court on April 30, 2014, with charges framed on August 13, 2018. However, despite the passage of over a decade since the chargesheet, and nearly seven years since charges were framed, only four out of eighteen prosecution witnesses have been examined. These include PW1, Smt. Itu Rani Ghosh (examined on June 28, 2023), PW2 Amal Ghosh and PW3 Dinabandhu Ghosh (examined on July 20, 2023), and PW4 Rana Ghosh (examined on August 09, 2023). The petitioners attribute this protracted delay and slow progress to several impediments, necessitating the present application for transfer.

4. In support of their plea, Mr. Subhashish Misra, Learned Advocate for the petitioners, presented compelling arguments. Foremost among these is the contention that the accused and their agents have repeatedly threatened the unexamined witnesses, who are close family members of the deceased. These threats, as alleged, include chilling warnings of "dire consequences" and facing the "same incident" as Lipika Ghosh. Furthermore, it is asserted that the petitioners' initial advocate was also intimidated into withdrawing from the case, a circumstance which, if proven, severely impacts their right to legal representation. The petitioners have appended documentary evidence, namely "Copy of the said Complaints, postal receipts, and track reports" (Annexure P1), to substantiate their attempts to report these threats to the authorities.
5. Beyond the grave issue of witness safety, Mr. Misra highlighted significant logistical hardships. The five key charge-sheeted witnesses, including the petitioners themselves, reside in Darjeeling District, approximately 100 km from the trial court in Jalpaiguri. This necessitates an arduous 200 km round trip for each court appearance, causing considerable inconvenience, exacerbated by frequent adjournments. This burden is particularly acute for two crucial witnesses, Kalachand Ghosh (over 60) and Parimal Ghosh (over 70), who reportedly suffer from age-related health issues, rendering such a journey practically impossible. Concomitantly, serious allegations were labelled against the Public Prosecutor, asserting a lack of impartiality manifested through "friendly behavior" towards the accused, granting

"undue advantages" without objection, and a general lack of "full efforts" during the trial, suggesting potential dereliction of duty. Mr. Misra contended that these factors, taken collectively, demonstrate that a fair and impartial trial cannot be guaranteed in the current court in Jalpaiguri, and thus, a transfer to Siliguri, merely 10 km from their residence, would enable witnesses to depose freely, ensuring proper adjudication and serving the "ends of justice" under Section 407 Cr.P.C.

6. Conversely, Mr. Aditi Shankar Chakraborty, Learned Advocate for the State, and Mr. Aniruddha Biswas, Learned Advocate for the private Opposite Parties, vehemently opposed the application. They characterized it as a "delaying tactic" by the petitioners, whom they perceived as "not interested and willing to proceed with their case," citing the slow trial progress as indicative of the petitioners' lack of inclination towards expeditious disposal. Regarding the allegations of threat, Mr. Chakraborty contended these were only "completely false and fabricated allegation" lacking substantiation by formal FIRs or medical certificates for the ailing witnesses. While acknowledging the petitioners' submission of "complaints, postal receipts, and track reports," he argued these merely confirmed complaints were made, without proving the veracity of the threats. It is, however, pertinent to note his curious concession that if these complaints were indeed ignored by the police, it would "further substantiate the petitioners' claim of a hostile environment and potential systemic issues in reporting threats." They further argued that the Jalpaiguri court possesses proper jurisdiction, the trial is proceeding

fairly, and a transfer would unduly inconvenience the Opposite Parties and their witnesses.

7. The core question before this Court is whether the Sessions Case warrants transfer from the Jalpaiguri Sessions Division to the Darjeeling Sessions Division based on the grounds pleaded by the petitioners, namely, alleged threats, distance-related inconvenience, old age and illness of key witnesses, and perceived lack of diligence by the Public Prosecutor, to ensure a fair and impartial trial. This determination hinges on the judicious exercise of powers under Section 407 Cr.P.C., read with Sections 401, 397, and 482 Cr.P.C.
8. To answer this question, it is pertinent to consider upon the legal provision of Section 407 of Cr.P.C.

“407. Power of High Court to transfer cases and appeals.—

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or that some question of law of unusual difficulty is likely to arise, or

(b) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a

Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the applications unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of Justice,

order that, pending the disposal of the application the proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit to impose: Provided that such stay shall not affect the Subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

9. Section 407 Cr.P.C. vests broad discretionary powers in this Court to transfer cases where a "fair and impartial inquiry or trial cannot be had" [Section 407(1)(a)], or where such an order "will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice" [Section 407(1)(c)]. The Hon'ble Supreme Court, in *K. Ambarasu v. State of T.N. (2020)*, has consistently held that the paramount consideration for transfer is to secure the "ends of justice," a principle that encapsulates the need for a fair trial, witness protection, and convenience of participants. In this context, Section 407(1)(a) Cr.P.C. ensures a fair and impartial inquiry or trial, which is a fundamental principle in criminal jurisprudence: justice must not only be done but

must also appear to be done. If there is a "reasonable apprehension" that a fair trial is unlikely, as elucidated in *Abdul Nazar Madani v. State of T.N. (2000)*, the High Court is empowered to intervene. The specific allegations of threats to witnesses and the advocate in this case are strong indicators of a hostile atmosphere, directly impacting the fairness and impartiality of the trial. Furthermore, the allegations concerning the Public Prosecutor's conduct are deeply troubling. The Public Prosecutor is not merely a prosecuting agency's tool but a "Minister of Justice," duty-bound to assist the court impartially, as underscored by the Supreme Court in *Shiv Kumar v. Hukam Chand (1999)*. A perceived lack of diligence or bias can significantly undermine the victim's family's confidence in the justice delivery system and directly impact the "ends of justice."

- 10.** In respect of convenience, Section 407(1)(c) Cr.P.C. explicitly recognizes it as a valid consideration. While inconvenience alone may not be the sole ground for transfer, it gains considerable significance when compounded by other factors. The undisputed 100 km distance for a one-way journey (200 km round trip) presents a considerable logistical burden, particularly for repeated court appearances over a protracted trial, and especially for elderly and infirm witnesses such as Kalachand Ghosh and Parimal Ghosh. The proximity of Siliguri (10 km) serves to drastically mitigate this hardship. Moreover, the protracted delay in the trial, with only 4 out of 18 witnesses examined in nearly a decade, implicates the fundamental right to a speedy trial under Article 21 of the

Constitution. If the conditions in Jalpaiguri—intimidation, inconvenience, and alleged prosecutorial issues are contributing to this delay, then transfer becomes expedient to ensure the trial moves forward effectively. In such exceptional circumstances, this Court, through its inherent powers under Section 482 Cr.P.C., can intervene to prevent abuse of process and secure justice.

- 11.** On meticulous consideration of the facts and the applicable legal principles, a strong *prima facie* case exists for the transfer of Sessions Case No. 138/2014. The cumulative effect of the serious allegations concerning witness intimidation, the alleged partiality of the Public Prosecutor, and the undeniable logistical hardships faced by the petitioners and their elderly witnesses, compels to conclude that a fair and impartial trial in Jalpaiguri is gravely compromised. The apprehension articulated by the petitioners appears to be reasonable and well-founded, not merely a ruse to delay proceedings. Upholding the principles of natural justice and ensuring confidence in the administration of criminal justice unequivocally demands a conducive environment for the trial.
- 12.** In view of foregoing, Criminal Revision Application No. 353 of 2023 is hereby allowed.
- 13.** Sessions Case No. 138 of 2014, currently pending before the Learned Additional District Judge, 4th Court, Jalpaiguri, is hereby transferred to the court of the Learned Additional District and Sessions Judge, Siliguri, within the sessions division of Darjeeling.

- 14.** The Learned Additional District Judge, 4th Court, Jalpaiguri, is directed to transmit the entire case record forthwith to the Learned District and Sessions Judge, Darjeeling, who shall thereafter transfer the same to the court of a competent Additional District and Sessions Judge in Siliguri for expeditious trial and disposal in accordance with law.
- 15.** All concerned parties are directed to cooperate fully with the transferee court to ensure the swift and fair conclusion of the trial.
- 16.** Let a copy of this judgment be sent to the Learned Additional District Judge, 4th Court, Jalpaiguri, and to the Learned District and Sessions Judge, Darjeeling, for immediate necessary action.
- 17.** The Registrar of this Circuit Bench to communicate this order to the respective Sessions Divisions for compliance.
- 18.** There shall be no order as to costs.
- 19.** The interim order/orders, if any, granted earlier, stands vacated.
- 20.** The Trial Court Records (TCR), if any, shall be sent down to the Learned Trial Court at once.
- 21.** The Case Diary, if any, be returned forthwith.
- 22.** Urgent Photostat certified copy of this order, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)