

01.07.2026
Ct. No. 30
Sl. No.52
skg

CRR 1900 of 2026

Dr. Deepak Shankar Ray
Vs.
The State of West Bengal & Ors.

Mrs. Malabika Saha, Adv.
...for the petitioners

Mr. Romit Dutta, Adv.
...for the opposite parties

- 1.** The supplementary affidavit filed by the petitioner be kept with the record.
- 2.** The revisional application has been preferred praying for transfer the proceedings in Chatterjeehat FIR 86 of 2024 dated 04.08.2024 from the Court of Learned CJM Howrah to the Court of Learned CMM Court, Kolkata.
- 3.** It appears that the parties in the present case are at loggerheads and several cases have been filed by both the parties. The petitioner/accused no. 1 is a permanent resident of Tamil Nadu State.
- 4.** The opposite party/de facto complainant and her husband are practicing lawyers and are residents of Howrah.
- 5.** The accused/petitioners herein submits that the prayer for transfer is being made, as they apprehend that the de facto complainant and her husband being residents of Howrah are influential in Howrah Court and as such the petitioners fear for their life and also their chances to get justice. It is further

stated that as there are other proceedings pending before the CMM Court at Kolkata, the present case be also transferred to the Court of learned CMM, Kolkata.

6. The de facto complainant being represented by her husband as her counsel, strongly object to the said prayer for transfer, but admits that other proceedings are pending before the CMM Court.

7. In ***M/s Shri Sendhur Agro & Oil Industries vs Kotak Mahindra Bank Ltd., in Transfer Petition (Crl.) No. 608 of 2024, March 6th, 2025***, the Supreme Court held:-

“32. In Kaushik Chatterjee v. State of Haryana and Ors. reported in (2020) 10 SCC 92, this Court, in an identical situation like the one on hand, held as under:

“8. Thus, in effect, transfer is sought primarily on two grounds, namely, (i) lack of territorial jurisdiction and **(ii) apprehension of bias.**

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43. In the case of **United States v. National City Lines**, reported in **337 U.S. 78**, the U.S. district court of the southern district of California observed thus:

“The Discretionary Power to Transfer:

There remains the question: Do the facts warrant the granting of the motion?

A Conditions for Transfer

Before answering this question by reference to the facts, we consider briefly the meaning of the transfer provision.

The wording of the clause is different from that of the corresponding provision in the criminal rules. The latter calls for a transfer "if the court is satisfied that in the **interest of justice** the proceeding should be transferred." The section under consideration provides for transfer "for the convenience of parties and witnesses in the interest of justice" While both sections use the identical phrase "in the interest of justice" as a criterion, the civil transfer rule uses the phrase in juxtaposition with the convenience

requirement. But the meaning of the phrase is the same in both instances:

"It implies conditions which assist, or are in aid of or in the furtherance of, justice. Both call for the doing of things which bring about the type of justice which results when law is correctly applied and administered. They import the exercise of discretion which considers both the interests of the defendant and those of society. When commanded by a statute, they do not attempt to determine, in advance, the type of judicial action to be taken."

In the case in which the phrase just quoted occurs, I considered the convenience of parties and witnesses as one of the criteria in determining whether a transfer should be made. And in the present case, I took into account the same element in considering the application of the doctrine of forum non conveniens. In so doing, I did not weigh the convenience of the defendants only, but that of the Government also. The conclusion was arrived at after a balancing of conveniences. This is of the very essence of the judicial process in any matter which calls for the exercise of discretion. Indeed, I wrote:

"A court of equity should aim to balance societal and individual interest and to [41] maintain the proper equilibrium between private rights and public weal."

**743 The transfer provision which concerns us here depends on discretion for its application, as do the kindred provision in the criminal cases and the doctrine of inconvenient forum.*

B Should the Discretion be Exercised?

Having determined that the transfer provision is applicable to this litigation, our next inquiry is whether the discretion should be exercised under the facts in the case.

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744 I need not repeat the summary of the affidavits given in the two previous opinions." Having re-examined them, and having considered the additional affidavits and facts in the record to which my attention has been called by both parties, I am of the view **that the convenience of the parties and witnesses require the transfer of this case in the interest of justice.*

Anticipating that such conclusion might be based on a balancing of conveniences, counsel for the Government intimated at the hearing that no resort could be had to such method in resolving the

conflicting contentions. I agree that when the section speaks of the convenience "of parties and witnesses, it means that the convenience of both sides must be examined. But I know of no way of applying the requirement to a particular situation than by viewing the facts from both standpoints and giving preference to those which, in the court's opinion, preponderate to such an extent as to make the choice in the interest of justice. Unless the right to choose between conflicting facts or assertions exists, the court could never determine a motion under this section on the facts. For if the mere assertion by the Government of its own convenience and the convenience of its witnesses were sufficient to stay action, we would be confronted with a power to paralyze judicial discretion, beside which the devastating effect of the historic liberum veto ("Nie Pozwalan" "I don't permit") of the Polish nobles in their Diet (1572-1697) would dim into insignificance. As I cannot so interpret the meaning of the section, I conclude that the showing in this case warrants transfer to the Northern District of Illinois, Eastern Division."

(Emphasis supplied)

44. In **Bhiaru Ram & Ors. v. Central Bureau of Investigation & Ors** reported in **(2010) 7 SCC 799** this Court observed thus:

"7. Section 406 of the Code of Criminal Procedure empowers this Court to transfer any case or appeal from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court. We are concerned about sub-section (1) of Section 406 which reads as under:

"406. Power of Supreme Court to transfer cases and appeals. —(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court."

8. It is clear from the abovesaid provision that for the ends of justice, this Court can transfer any criminal case or appeal to any place. In order to transfer a case from one State to another or from one place to another, there must be "reasonable apprehension" on the part of the party to a case that justice may not be done. Mere allegation that there is apprehension that justice will not be done, cannot be the basis of

transfer. In fact, in the case on hand, it is not the claim of the petitioners that they may not get fair justice at Special Court, CBI, Greater Mumbai but they are seeking transfer mainly on the basis of convenience stating that all of them are hailing from Rajasthan and majority of the witnesses going to be examined are from Jaipur, Rajasthan.

9. In a recent judgment pronounced on 23-7-2010 in *D.A.V. Boys Sr. Sec. School v. D.A.V. College Managing Committee* [(2010) 8 SCC 401], this Court while considering the power of this Court to transfer suits, appeals, etc. on the civil side under Section 25 of the Civil Procedure Code has held that:

“Section 25 of the Code itself makes it clear that if any application is made for transfer, after notice to the parties, if the Court is satisfied that an order of transfer is expedient for the ends of justice necessary direction may be issued for transfer of any suit, appeal or other proceedings from a High Court or other civil court in one State to another High Court or other civil court in any other State. In order to maintain fair trial, this Court can exercise this power and transfer the proceedings to an appropriate court. The mere convenience of the parties may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Further illustrations are, balance of convenience or inconvenience to the plaintiff or the defendant or witnesses and reasonable apprehension in the mind of the litigant that he might not get justice in the court in which suit is pending. The abovementioned instances are only illustrative in nature. In the interest of justice and to adherence of fair trial, this Court exercises its discretion and order transfer in a suit or appeal or other proceedings.”

From the above, it is clear that the abovementioned principles have to be kept in mind while dealing with transfer petitions.

49.Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the

prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability in holding a fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere, either directly or indirectly, with the course of justice. [See: **Nahar Singh Yadav & Anr. v. Union of India & Ors., (2011) 1 SCC 307**]

50. The above-mentioned factors are not exhaustive in nature and are illustrative of the requirements of a fair trial. It is clear as a noon day that ensuring a fair trial is the predominant consideration for a court to rule on a motion for transfer of a case. This Court in **Maneka Sanjay Gandhi v. Rani Jethmalani, reported in (1979) 4 SCC 167** has held thus:

“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when- the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

(Emphasis supplied)

52.The import of the expression “ends of justice” has been discussed by this Court in **Yakub Abdul Razak Memon v. State of Maharashtra, reported in (2013) 13 SCC 1** wherein it has been held that:

“1551. While dealing with such an issue, the court must not lose sight of the fact that meaning of “ends of justice” essentially refers to justice to all the parties. This phrase refers to the best interest of the

public within the four corners of the statute. In fact, it means preservation of proper balance between the Constitutional/statutory rights of an individual and rights of the people at large to have the law enforced. The “ends of justice” does not mean vague and indeterminate notions of justice, but justice according to the law of the land.”

(Emphasis supplied)

53. The expression “ends of justice” has been more elaborately elucidated in context of procedural law in the decision of this Court in **Mahadev Govind Gharge v. LAO**, reported in **(2011) 6 SCC 321**, wherein it was held that:

“29. Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold. We have already noticed that there is no indefeasible divestment of right of the crossobjector in case of a delay and his rights to file crossobjections are protected even at a belated stage by the discretion vested in the courts. But at the same time, the court cannot lose sight of the fact that the meaning of “ends of justice” essentially refers to justice for all the parties involved in the litigation. It will be unfair to give an interpretation to a provision to vest a party with a right at the cost of the other, particularly, when statutory provisions do not so specifically or even impliedly provide for the same.

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34. The consistent view taken by this Court is that the provisions of a statute are normally construed to achieve the ends of justice, advance the interest of public and to avoid multiplicity of litigation. In *Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy* [(2001) 8 SCC 115] this Court expressed similar view in relation to amendment of pleadings. The principles stated in that judgment may aptly be applied generally in relation to the interpretation of provisions of the Code. Strict construction of a procedural law is called for where there is complete extinguishment of rights, as opposed to the cases where discretion is vested in the courts to balance the equities between the parties to meet the ends of justice which would invite liberal construction. (...)”

(Emphasis supplied)

8. Considering the arguments of both the parties and also considering the fact that the de facto complainant and her husband both lawyers by profession are both residents of Howrah and the distance between Howrah Court and the CMM Court being only 4 kilometers and also considering the fact that there are other cases pending before the CMM Court and no prima facie prejudice will be caused to the de facto complainant, if the proceeding in Chatterjeehat Police Station case no. 86 of 2024 dated 04.08.2024 is transferred to the court of Learned CMM, Kolkata, the revisional application is hereby allowed.
9. Thus in the interest of justice, Chatterjeehat Police Station case no. 86 of 2024 is hereby withdrawn from the Court of learned CJM Howrah and transferred to the Court of learned CMM, Kolkata.
10. Learned CMM, Kolkata shall proceed with the case in accordance with law upon due notice to both the parties.
11. **CRR 1900 of 2026** is disposed of.
12. Parties to act on the server copy of this order.
13. Let a copy of this order be sent to the concerned Courts for immediate compliance.

[Shampa Dutt (Paul), J.]