

(2020) 02 RAJ CK 0281

In the Rajasthan High Court

Case No : Criminal Miscellaneous Transfer Petition No. 5 Of 2018 & Criminal Miscellaneous Transfer Petition No. 6 Of 2018

Geeta Faroda

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107, 116(3), 125, 406, 407

Citation : (2020) 02 RAJ CK 0281

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : C. P. Soni, Dr. Manjula Choudhary

Final Decision : Dismissed

Judgement

The present criminal transfer petition has been filed with the following prayer :-

It is, therefore, prayed that this Hon'ble Court after calling for the entire record related to the present matter and perusing the same would be

pleased to transfer the Criminal Case No.9/2017 under Section 125 of Cr.P.C. titled as Smt. Geeta Firauda V/s Dr. Tejpal pending before the Family

Court No.1, Jodhpur to Family Court, Jaipur in the largest interest.

Any other order or direction which this Hon'ble Court may deem fit and proper looking to the facts and circumstances of the case may also kindly

be passed in favour of the complainant-petitioner.

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that the present petitioner is staying at Jaipur with her daughter and, therefore, travelling on each date for

attending the Court proceedings at Jodhpur is not only difficult but impossible for

her. He further submits that there is eminent danger to her life at the hands of the respondent No.2. Considering the threat perception, the petitioner filed the complaint under Sections 107 and 116 (3) of the Cr.P.C.

before the Police Commissioner, Jodhpur on 17.01.2017. He further submits that the respondent No.2 is an influential person and, therefore, attending

the Court proceedings at Jodhpur is very difficult for the petitioner. He submits that the respondent No.2 is a doctor and a rich person, therefore, he

can attend the Court proceedings at Jaipur if the matter is transferred from Jodhpur to Jaipur. Learned counsel relies upon the judgment of the

Supreme Court in Criminal Appeal No.241/2007 (Arising out of SLP (Crl.)No.6154/2006) (Satish jaggi V/s State of Chhattisgarh & Ors.) wherein it

has been held as under :-

6. It was further held by this Court in Mrs. Maneka Sanjay Gandhi and Anr. V. Miss Rani Jethmalani (AIR 1979 SC 468) that 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 availability of legal services or any like grievance. Something more substantial, more compelling,

more imperiling, 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. This Court, in the facts and circumstances of the

case, said that the grounds for the transfer have to be tested 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 where the case against him should be tried. It further said that even so, the

process of justice should not harass the parties and from that angle the court may weigh the circumstances.

7. In Abdul Nazar Madani V. State of Tamil Nadu, (AIR 2000 SC 2293) this Court stated that the purpose of the criminal trial is to dispense fair and

impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously

undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Code.

The apprehension of not getting a fair and impartial inquiry or trial is required to

be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any Court or even at any place, the appropriate Court may transfer the case to another Court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, if any, the witnesses and the larger interest of the society.

8. In *G.X.Francis V. Banke Bihari Singh* (AIR 1958 SC 309) this Court felt that where public confidence in the fairness of the trial is likely to be seriously undermined under the circumstances of the case, transfer petition could be allowed. On finding that "there is uniformity of testimony from both sides about the nature of surcharged communal tension in that area," the Court found that the local atmosphere was not conducive to a fair and impartial trial which was a good ground for transfer.

The court rejected the contention of the petitioner therein regarding the wild allegations made to the effect that no court in the State of M.P. would be unbiased or impartial for dispensing justice. In the peculiar facts and circumstances of the case, the trial was transferred to an adjoining court. The mere existence of a surcharged atmosphere without there being proof of inability for holding fair and impartial trial cannot be made a ground for transfer of a case. Alleged communally surcharged atmosphere has to be considered in the light of the accusations made and the nature of the crime committed by the accused seeking transfer of his case. It will be unsafe to hold that as and when accusations are made regarding the existence of a surcharged communal atmosphere, the case should be transferred from the area where existence of such surcharged atmosphere is alleged.

In the light of the submissions made above, learned counsel for the petitioner submits that there is no chance of petitioner getting a fair and impartial

trail at Jodhpur, therefore, the present Criminal Case No.9/2017 under Section 125 of Cr.P.C. titled as Smt. Geeta Firauda V/s Dr. Tejpal pending

before the Family Court No.1, Jodhpur to Family Court, Jaipur should be transferred from Jodhpur to any other competent Court at Jaipur.

Per contra, learned counsel for the respondent No.2 submits that the respondent No.2 is ready and willing to settle the dispute with the petitioner on any terms and conditions proposed by her.

An opportunity was also granted to the petitioner and for the purpose, the mediation proceedings were held at Jaipur and out of three sittings held at

Jaipur for mediation, the petitioner came on one occasion and left the Mediation Centre without deliberating the issues and on other occasions, the

petitioner did not attend the mediation proceedings. She further submits that as far as the proceedings under Sections 107 & 116(3) of the Cr.P.C. are

concerned, the petitioner has just filed a complaint before the Police Commissioner, and, thereafter, did not even bothered to come forward to get her

statement recorded and therefore, those proceedings lapsed after a period of six months. She further submits that mother of the respondent No.2 is 80

years old and there is no one in his family to look after his mother, therefore attending the Court proceedings at Jaipur will be very difficult for him.

She further submits that except making a bald allegation of threatening, there is nothing on record which shows and suggests that respondent No.2 or

anybody from the side of the respondent has ever threatened the petitioner.

Having considered the submissions made at the Bar, prima-facie, I am of the view that the grounds raised for transferring the present case by the

petitioner are bereft of any merit as neither there is any concrete proof in support of threatening calls nor threatening made at the behest of

respondent No.2. Mere filing of the proceedings under Section 107 & 116(3) of the Cr.P.C. before the Police Commissioner, Jodhpur is not sufficient

which indicates that the petitioner is under an eminent threat or danger at the hands of respondent No.2 more particularly, when after filing of the

proceedings, the petitioner has not cared and bothered in prosecuting her case and no order as such was passed in those proceedings. As far as

attending the Court proceedings at Jodhpur by the petitioner is concerned, this Court has to see the fact of inconvenience to both the sides as the

petitioner had to travel with her small kid from Jaipur to Jodhpur but at the same

time, this Court cannot loose sight of the fact that the mother of the respondent No.2 is bedridden and there is no one in his family to look after her well being. The judgment relied upon by the learned counsel for the petitioner is also not applicable in the facts and circumstances of the present case as apprehension of threat to the petitioner being caused at the hands of respondent No.2 is mere imaginary and not reliable. It is further noticed that since most of the witnesses in the present case are located and situated in Jodhpur, therefore, transferring the present matter out of Jodhpur will cause lot of inconvenience to the prosecution and other witnesses to come forward for recording their testimony before the Court situated out of Jodhpur. Considering the facts aforesaid, this Court is of the considered view that the petitioner has failed to make out any ground for transferring the matter pending before the Court at Jodhpur to Jaipur, in view of the settled provisions of Section 407 of the Cr.P.C.

Section 407 Cr.P.C. which read as follows :-

â??407. Power of High Court to transfer cases & 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

(b). that some question of law of unusual difficulty is likely to arise, or

(c). 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 copy of the

grounds on which it is made; and no order shall be made on of the merits of the application 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 interests 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.â??

In view of the discussion made above, this Court is of the opinion that the apprehension of the petitioner of not getting a fair and impartial inquiry or

trial in the present case at Jodhpur is conspicuously missing.

Accordingly, the present criminal transfer petition fails and the same is hereby dismissed.