
(2015) 02 AHC CK 0089

In the Allahabad High Court

Case No : Criminal Misc. Application No. 2307 of 2015

Irfan and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 408, 482
Penal Code, 1860 (IPC) — Section 302, 397, 506

Citation : (2015) 89 ALLCC 548

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : A.P. Singh Raghav, for the Appellant; Ankil Saran, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Sinha, J.

1. Sri Ankit Saran, Advocate has filed his power on behalf of opposite party No. 2 which is taken on record. Heard Sri A.P. Singh Raghav, learned Counsel the applicants, Sri Ankit Saran, learned Counsel for the opposite party No. 2 and Sri P.K. Srivastava, learned A.G.A. for the State and perused the record.

2. The present 482 Cr.P.C. petition has been filed for quashing the impugned order dated 21.1.2015 in Transfer Application No. 13 of 2015 pertaining to S.T. No. 557, 575, 576 of 2012 under section 302, 397, 506 IPC, P.S. Khurja Nagar District Bulandshahr.

3. The brief facts of the case are that the applicants are facing trial in S.T. No. 557, 575, 576 of 2012 under section 302, 397, 506 IPC in the Court of Additional Sessions Judge, Khurja. On 18.7.2014, a Transfer Application was moved by the applicants being Transfer Application No. 158 of 2014 before the District and Sessions Judge, Bulandshahr which was allowed on 18.7.2014 and the Sessions Trial No. 557/2012 State v. Irfan and others, pending in the Court of Addl.

Sessions Judge, Khurja was transferred to the Court of Addl. District and Sessions Judge. Court No. 9, Bulandshahr for disposal according to law. The opposite party No. 2 Abdul Majeed (hereinafter referred to as the informant) preferred another Transfer Application before the District and Sessions Judge, Bulandshahr being Transfer Application No. 13 of 2015 for transferring Sessions Trial No. 557 of 2012, 575 of 2012 and 576 of 2012 from the Court of Addl. Sessions Judge, Court No. 9 Bulandshahr to the Court of Addl. Sessions Judge, Khurja on the ground that evidence of seven witnesses have been recorded by the Additional Sessions Judge, Khurja and the applicants had earlier got the Transfer Application filed and allowed by the then District and Sessions Judge for the said cases being transferred to the Court of Additional Sessions Judge, Court No. 9 Bulandshahr was based on incorrect facts. The said Transfer Application filed by opposite party No. 2 on 22.12.2014 was allowed by the District and Sessions Judge, Bulandshahr vide order dated 21.1.2015 and the said three Sessions Trial were transferred from the Court of Additional Sessions Judge, Court No. 9, Bulandshahr to the Court of Additional Sessions Judge, Khurja.

4. Aggrieved by the said order dated 21.1.2015, the applicants have preferred the present application.

5. It has been submitted by learned Counsel for the applicants that the earlier Transfer Application which was filed by the then Sessions Judge on 18.7.2014 transferring the Sessions Trial No. 557 of 2012 State v. Irfan and others, in the Court of Additional District and Sessions Judge, Khurja to the Court of Additional District and Sessions Judge, Court No. 9, Bulandshahr without the said order being recalled or set-aside by the Sessions Judge, the impugned order transferring the said Sessions Trial along with two other Sessions Trial is against the provisions of law, hence should be set-aside.

6. Sri Ankit Saran, learned Counsel for the opposite party No. 2 vehemently opposed the argument of learned Counsel for the applicants and submitted that the transfer application preferred by the applicants being Transfer Application No. 158 of 2014 and was allowed on 18.7.2014 by the then Sessions Judge, the informant was not heard and the said order was passed on the same very day on which the Transfer Application was filed by the applicants, hence opposite party No. 2 who is the informant of the case Abdul Majeed had preferred Transfer Application No. 141 of 2014 Abdul Majeed v. State of U.P. and others, before this Court and after hearing both the parties, the informant who had withdrawn the said Transfer Application with liberty to file another Transfer Application before the competent Court. Hence the said Transfer Application was dismissed on this ground by this Court on 8.9.2014, a photocopy of the order dated 8.9.2014 passed by this Court is taken on record. He further submitted that the informant had preferred the present Transfer Application being Transfer Application No. 13 of 2015 before the Sessions Judge, copy of which is annexed as Annexure No. 2 to the accompanying affidavit and after hearing the Counsel for the parties, the Transfer Application was allowed by the In-charge Sessions Judge on 21.1.2015

transferring all the three sessions trial i.e. 557 of 2012, 575 of 2012 and 576 of 2012 to the Court of Additional Sessions Judge, Khurja from the Court of Additional Sessions Judge, Court No. 9, Bulandshahr. He submitted that as the earlier Transfer Application which was filed by the accused persons, the informant was not heard and the same was allowed ex-parte. Hence the impugned order which has been passed after hearing both the parties should not be interfered with by this Court and as the evidence of seven witnesses have already been recorded by the Additional Sessions Judge, Khurja, he has been conversant with the demeanour of the prosecution witnesses, hence it is in the interest of justice that the present trial should be allowed to proceed in the Court of Additional Sessions Judge, Khurja simply because in one of the Sessions trial i.e. 557/2012 Counsel of the accused is an old person stated to be aged about 70 years and is unable to come to Khurja from Bulandshahr cannot be a ground for transferring the said case to the Court of Addl. Sessions Judge, Court No. 9, Bulandshahr and the present application be dismissed.

7. Considered the submissions advanced by learned Counsel for the parties. From the record it is apparent that it is an admitted fact that the Transfer Application which was moved by the applicants being Transfer Application No. 158 of 2014 which was allowed by the then Sessions Judge on 18.7.2014 on the ground that the Counsel who was appearing on behalf of the accused persons in S.T. No. 557 of 2012 was an old and could not travel to Khurja from district Bulandshahr cannot be taken a good ground for transferring of the said Sessions Trial from Khurja to district Bulandshahr. Moreover the informant was also not heard by the Court which was allowed on the same very day on which it was filed by the accused persons. The contention of learned Counsel for the applicants that the impugned order dated 18.7.2014 which was passed allowing the transfer application of the applicants by the then Sessions Judge has not been recalled by the Sessions Judge while passing the impugned order dated 21.1.2015 hence the order for transferring the said Sessions trial from the Court of Additional Sessions Judge, Court No. 9 Bulandshahr to Additional Sessions Judge, Khurja is liable to be set-aside on this ground alone has no substance as it is always open for the Sessions Judge in view of section 408 Cr.P.C. to transfer any case within the same Sessions Division for the ends of justice for one Criminal Court to another Criminal Court in his division. Moreover, there also appears to be no grievance to either parties against any of the two Presiding Officers from whose Court the trial has been transferred to another Court. Hence the order passed by the Sessions Judge dated 21.1.2015 does not call for any interference by this Court and the present transfer application lacks merit and is accordingly dismissed.

8. As the Trial pertains to the year 2012 and it is stated that seven witnesses of fact have already been examined by the Additional Sessions Judge, Court No. 7, Khurja, the Trial Court is directed to expedite the trial and conclude the same on day to day basis within a period of six months strictly in compliance of section 309 Cr.P.C., if there is no legal impediment. Office is directed to send a certified copy of this order to the Trial Court concerned for immediate compliance.