

(2019) 04 CAL CK 0007

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 749 Of 2018

?Jibananda Ghosh & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 325, 326, 379, 427, 436, 448, 506, 1436
Explosives Act, 1884 — Section 9(B)
Code Of Criminal Procedure, 1973 — Section 408

Citation : (2019) 04 CAL CK 0007

Hon'ble Judges : Subhasis Dasgupta, J

Bench : Single Bench

Advocate : Subhrajyoti Dey, Anusua Sinha, Jayanta Samanta, Karunamoyee Samanta

Final Decision : Disposed Off

Judgement

Subhasis Dasgupta, J

This is an application for transfer of proceedings being G.R. Case No. 866 of 2015 arising out of Sonamukhi Police Station Case No. 155 of 2015 dated 08.10.2015 under Sections 147/148/149/448/379/427/1436/506 of the Indian Penal Code read with Section 9(B) of the Indian Explosives Act, now pending before the learned Additional Sessions Judge, Bishnupur, Bankura so that the instant case, now proposed to be transferred, may be heard one after another with Sessions Case No. 05(10)17 pending before the learned Additional Sessions Judge, Bishnupur Bankura.

Admittedly the revisionist initiated a prayer for transfer of instant pending proceeding, referred hereinabove, by filing an application under 408 of the Code of Criminal Procedure, which was disposed of by the learned Sessions Judge at Bankura in Criminal Misc Case No. 09 of 2017, rejecting the prayer under Section 408 Cr. P.C.

Learned advocate for the revisionist submitted that the instant case being GR. Case No. 866 of 2015 now pending before the learned Additional Chief Judicial Magistrate, Bishnupur, Bankura arose out of Sonamukhi Police Station Case No. 155 of 2015 dated 08.10.2015 under Section 147/148/149/448/379/427/1436/506 of the Indian Penal Code, and it was nothing but a counter case of Sonamukhi Police Station Case No. 154 of 2015 dated 07.10.2015 under Sections 147/148/149/325/326/302/379 of the Indian Penal Code, giving rise Sessions Case No. 05(10)17, now pending before the learned Additional Sessions Judge, Bishnupur Bankura for trial.

The contention raised by revisionist, seeking transfer is that the instant case being a counter case involving self-same parties and having occurred on the self-same date of incident, it is expedient in the interest of justice, to transfer the instant proceedings to the Court of learned Additional Sessions Judge conducting the trial in connection with Session Case No. 05(10)17 arising out of Sonamukhi Police Case No.05(10)17 dated 07.10.15 under Sections 147/148/149/325/326/302/379 IPC, so that the instant case may be heard by the same Court one after another in order to prevent conflicting decision to come over the alleged incident.

Learned advocate for the private opposite parties repelling the contention raised by the revisionist submitted with all humility that though the instant proceeding, sought to be transferred, was described to be a counter case to Sessions Case No.5(10)17 arising out of Sonamukhi Police Station Case NO. 154 of 2015 but it was not a counter case in true sense of term for identity of accused persons involved in either of the two cases, the place of occurrence, and also the time of occurrence being different, than claimed. According to private opposite parties, learned Sessions Judge Bankura by his order dated 22.02.18 rejecting the prayer for transfer in connection with Criminal Misc Case No. 09 of 2017 committed no illegality doing perfect appreciation of the facts and circumstances involved in both the cases, and as such there left nothing to be interfered with.

Learned advocate representing the State supporting the stand taken by the private opposite parties contended that the case sought to be transferred could not be described to be a counter case, though by stretch of unimagination it might be a counter productive. Thus according to State, the accused persons involved in this case are not at all same and identical, the place of occurrence is also not same and further the time of occurrence is different. The identity of items i.e. place of occurrence and time of commission of crime being conspicuously different, the instant case proposed to be transferred, can hardly be regarded to be a counter case, as alleged.

Admittedly Sonamukhi Police Station Case No. 154 of 2015 dated 07.10.2015 giving rise to Sessions Case No. 05(10)17 involved an incident which was held on 6.10.2015 at about 16.00 hours in the afternoon implicating as many as 16 accused persons therein with an allegation of having committed offence punishable under Section 147/148/149/325/326/302/379 IPC, while the

Sonamukhi Police Case No. 155 dated 08.10.18 involved an incident, occurred on 06.10.15 at about 16.00 hours to 16.30 hours in the afternoon implicating as many as 38 accused persons with an allegation of having committed offence punishable under Sections 147/148/149/448/379/427/436/506 IPC.

The Sonamukhi Police Station Case No. 154 of 2015 giving rise to Sessions Case No. 5(10)17 is now pending for trial before the learned Additional Session Judge Bankura Fast Track Court, pursuant to the order of the learned Sessions Judge Bankura transferring the case from Bishnupur to Bankura, as it was revealed from the submission of learned advocate for the revisionist/petitioner. According to learned advocate for the State, police had ready submitted supplementary chargesheet and next date had been fixed on 20th June, 2019 for commitment by the learned ACJM Bishnupur, Bankura upon due compliance of the formalities.

The FIR of Sonamukhi P.S Case No. 154 of 2015 made out a case of having committed death of one Swarnakanti Mondal by accused persons, shown in FIR, with use of deadly weapons, when deceased Swarnakanti Mondal with three (3) others was returning to their village riding on a motorcycle from Bishnupur Court. The FIR of Sonamukhi P.S Case No. 155 depicted a version of setting the house of de facto complainant with his near relatives on fire after looting away valuable articles from the house of de facto complaint and others doing criminal trespass in the house of de facto complaint and others for the purpose.

Learned Sessions Judge, Bankura by the impugned order dated 22.08.18 rejected the prayer for transfer subscribing his finding that the case, sought to be transferred, was not a counter case for there being no identity of accused persons, place of occurrence and time of commission of offence. Both the incidents were admittedly held on 6th October, 2015. Therefore, with regard to the date of commission of the offence, it is common in either of the two cases. Place of occurrence involved in either of the two cases is indeed different. There is shown margin of time difference in either of the two cases. Number of persons chargesheeted in both the cases are tangible different. The place of occurrence involved in Sonamukhi PS Case No. 155 dated 08.10.17 being different and not identical with that of the place of occurrence involved in Sonamukhi PS Case No. 154 dated 07.10.15 together with the apparent discrepancy found as regards the time of commission of the alleged offence in both the cases, it cannot be concluded with all certainty that the instant case, sought to be transferred, is a counter case requiring trial by self same Court one after another. It cannot be lost sight of that Sessions Case No. 5(10)17 arising out of Sonamukhi PS Case No. 154 of 2015 implicating the petitioners and some others as accused persons therein is now pending for trial before the learned Additional District Judge Fast Track Court Bankura. The said trial is in the midst of collection of evidence. Some of the witnesses involved therein might be made accused, though not necessarily, in Sonamukhi PS Case No.155 of 2015 dated 08.10.17. Likewise the some of the witnesses proposed to be examined in the instant case might be made accused in Sonamukhi PS Case No. 154, though not necessarily. Since

there being no same and identity as regards the place of occurrence, the time of alleged commission of the offence, involved in either of the two cases, the basic ingredients necessary to describe a case to be a counter case fall short of.

It is trite law that whenever it is made to appear that it will tend to general convenience of the parties or witnesses, an order of transfer may be made in a case, where it is expedient for the ends of justice. When the petitioners have to face the trial in connection with Sessions Case No. 5(10)17 by ensuring their appearance on the scheduled date before the learned Additional District Judge Fast Track Court, Bankura, it will be a matter of convenience to either of the parties/witnesses involved in both the cases, if the present case is transferred to learned ADJ 3rd Court, Bankura for holding trial, and such order will not cause any sort of prejudice to either of the parties to this case, and it is further expedient for the ends of justice not to transfer the present case to learned Additional District Judge First Tract Court Bankura where Sessions Case No. 5(10)17 is under trial for the alleged commission of offence under Sections 147/148/149/325/326/302/379 IPC, but to another Court of learned A.D.J, as mentioned hereinabove.

The revisional application succeeds.

The impugned order dated 22.02.18 passed by the learned Sessions Judge, Bankura in Criminal Misc Case No. 09 of 2017 rejecting the application under Section 408 Cr. P.C. is set aside.

Learned ACJM Bishnupur, Bankura is directed to expedite the process of commitment upon due compliance of all formalities and commit the case to the court of learned Sessions Judge Bankura.

Learned Sessions Judge Bankura, after the commitment of the case, shall transfer the case to the Court of learned ADJ 3rd Court, Bankura for conducting the trial of Sonamukhi PS Case No. 155 of 2015 dated 08.10.15 under Sections 147/148/149/448/379/427/436/506 IPC read with Section 9(B) of the Indian Explosives Act.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.