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**(2007) 02 AHC CK 0016**  
**In the Allahabad High Court**  
**Case No : Criminal M.T.A. No. 308 of 2006**

Kali Charan and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 15-02-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 446, 82, 83  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

**Citation :** (2007) 2 ACR 1688

**Hon'ble Judges :** Poonam Srivastava, J

**Bench :** Single Bench

**Advocate :** Rajesh Kumar Srivastava and Anoop Trivedi, for the Appellant; Y.S. Bohra and Parmendra Kumar and A.G.A., for the Respondent

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## Judgement

Poonam Srivastava, J.—Heard Sri Anoop Trivedi, learned Counsel for the applicants, Sri Y. S. Bohra advocate for the opposite party No. 2 and learned A.G.A. for the State.

2. This is transfer application for transferring the Sessions Trial No. 1144 of 2001, arising out of Case Crime No. 493 of 1999, under Sections 147, 148, 149 and 302 I.P.C., State v. Kali Charan and others, to some other adjoining district.

3. The submission is that two persons namely Jagpal son of Desh Raj and Satyapal son of Jagpal have lost their life. The case was committed to the Court of Sessions. It appears that both the parties have a long standing enmity. Another first information report was lodged on 3.11.2000 by Chandra Pal against the applicant Kali Charan and Pappu alias Autar at Police Station Sikandrabad at Case Crime No. 666 of 2000 u/s 302, I.P.C. The brother of first informant Jagpal was murdered. Another first information report was lodged by Ravindri wife of Jai Singh against Suman, Bitto, Harendra, Ravindra, Chandra Pal and Narendra on the same day, i.e., 3.11.2000, which was registered as cross case at Case Crime No. 666A of 2000, in which four persons namely Rajviri wife of applicant Kali Charan, Smt. Sundari wife of Pappu alias Autar and two children of Smt. Sundari

namely Kartik aged about 2 years and Laxmi aged about 4 years were murdered. An application was moved by the complainant for change of investigation regarding, Case Crime No. 666 of 2000 since the statements of the witnesses were not being recorded by the Investigating Officer. A transfer application was moved at the instance of the applicants, which was numbered as Transfer Application No. 359 of 2002, Kali Charan and Anr. v. State of U.P. Transfer Application No. 359 of 2002, which was disposed of by this Court. The Court while disposing of the transfer application observed that there is great animosity between the two parties, consequently adequate protection may be given to the parties till the conclusion of the trial. When the trial was fixed on 20.5.2006, the applicant No. 2 while going to attend the case, the opposite party No. 2 opened fire upon him causing injuries. A first information report was registered u/s 307, I.P.C. at Case Crime No. 143 of 2006. A copy of the first information report is annexed as Annexure-14 to the affidavit filed in support of the transfer application. The applicant No. 2 Autar alias Pappu was medically examined on 20.5.2006 in B.B.D.G. Hospital, Bulandshahr. A copy of the order sheet of the said date is annexed as Annexure-18 to the affidavit, to show that the applicants were not provided any security and they are not able to attend the Court on the date fixed in the trial. As a consequence, non-bailable warrant has been issued against them and the trial is proceeding.

4. Sri Anoop Trivedi has filed Criminal Misc. Application against the order issuing non-bailable warrant to keep the non-bailable warrant in abeyance and not to compel their attendance in the Court till the stage of Section 313, Cr. P.C. Annexure-2 to the Misc. Application is an order dated 18.7.2006, passed by this Court in the present transfer application permitting the accused not to appear personally before the trial court on the date fixed. Thereafter another order was passed on 11.8.2006. The Senior Superintendent of Police, Bulandshahr was directed to file an affidavit in reply to the averments made in the affidavit filed in support of the transfer application fixing 4.9.2006. It is averred in the affidavit filed in support of the Misc. Application dated 24.1.2007, that though the court below was apprised about the order of this Court despite the fact that the applicants were not required to be present in the Court, order has been passed on 29.8.2006 on different time at short intervals. One order was passed prior to 12 Noon, subsequent order was passed at 12 O'clock then again at 2.30 and last order at 3 O'clock issuing notices to the sureties and also initiating proceedings u/s 446, Cr. P.C.

5. Sri Y. S. Bohra appearing for the opposite party No. 2 has emphatically disputed the assertions made by the counsel for the applicants and has stated that even the counsel did not appear despite time was allowed by the Court and the case was taken up on a number of occasions on the same day at short intervals. An application with a prayer not to give effect to the order issuing non-bailable warrant was rejected as no one was present to press the application. Counter-affidavit has been filed by Sub-Inspector but no counter-affidavit is on record pursuant to the order passed by this Court on 11.8.2006, directing the

Senior Superintendent of Police, Bulandshahr to file counter-affidavit. Counter-affidavit filed by Sub-Inspector mentions that the proceeding u/s 82/83 has been initiated against the applicants and also denied the averments of the affidavit filed in support of the transfer application.

6. After hearing the counsel for the respective parties at length and taking into consideration the entire facts and circumstances and also the series of crime by both the sides as a result of long standing enmity, I am of the considered view that the trial should be held somewhere else to ensure that it is completed expeditiously. The various orders passed by this Court are sufficient to come to a conclusion that if the trial is permitted to continue at Bulandshahr, the danger of repetition of the offences on either side will continue to loom large.

7. In the circumstances, it is appropriate in the interest of justice that the Session Trial No. 1144 of 2001 be transferred to Ghaziabad. The District Judge, Bulandshahr is directed to remit the record of Session Trial No. 1144 of 2001, State v. Kali Charan and others Session Trial No. 1144 of 2001, to Ghaziabad. The District Judge, Ghaziabad, shall ensure that the Session Trial is posted to a court of competent jurisdiction who shall complete the trial expeditiously.

8. With the aforesaid directions, this transfer application stands allowed.