
(2000) 08 GAU CK 0011

In the Gauhati High Court

Case No : TRP (Criminal) No"s. 1 (AP) and 7 of 2000

Naba Welly and Others

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 180, 181

Citation : (2001) 2 GLT 238

Hon'ble Judges : N.C. Jain, J

Bench : Single Bench

Advocate : None, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N.C. Jain, J.—This is an application u/s 407 of the Criminal Procedure Code (hereinafter referred to as "the Act") for transferring the case from Civil Judge (Senior Division) Sonitpur to District Magistrate, Seppa East Kameng (Arunachal Pradesh) on the ground that the accused and the complainant both reside within the jurisdiction of Arunachal Pradesh. Although the occurrence has taken place in this case within the Jurisdiction of Sessions Court, Sonitpur and in normal circumstances only that Court would have the jurisdiction to try the offence, yet Section 407 of the Code empowers the High Court to transfer cases and appeals when it is made to appear to the High Court that an order under the aforesaid section is required or would tend to the general convenience of the parties or witnesses or is expedient for the ends of justice. The relevant section is reproduced below: -

407. Power of High Court to transfer cases and appeals. -(1) Whenever it is made to appear to the High Court:

(a) & (b) . . .

(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.

May be - no decided case has been cited at the Bar. In the course of arguments, the wording of the section is very clear. In the present case not only the accused is wanting transfer but the complainant is also wanting the transfer of the case on the ground of residence or in other words convenience of the parties. If the factum of place of occurrence would have been the last word for trial of the case, Section 407 would become redundant. The purpose behind enacting Section 407 is to confer powers upon the High Court to order transfer of the case in certain situation. The object of the Parliament while making such a provision is manifest that in appropriate, the High Court should have sufficient powers to transfer the case to any other court which court in ordinary circumstances would not have jurisdiction to try the case. In the present case clause (C) reproduced above would apply as the trial in Arunachal would be for the convenience of the parties and it would otherwise be expedient for the ends of justice.

For the reasons recorded above the application is allowed. The case is ordered to be withdrawn from the Court of Civil Judge (Senior Division) Sonitpur and it is transferred to the Court of District Magistrate, Seppa, East Kameng, who would either try the case himself or entrust the matter to any other court of competent jurisdiction. The accused and the State through their counsel are directed to appear before the District Magistrate, Seppa, East Kameng on 25.9.2000.

A copy of the order be sent to the Civil Judge (Senior Division) Sonitpur so that he may forward the record of the case to the District Magistrate, Seppa.

A copy of the order also be sent by the Registry to the District Magistrate, Seppa. Let this exercise be undertaken by the Registry forthwith.

2. With the aforementioned observations and directions the case is allowed.