

(2018) 10 GAU CK 0039
In the Gauhati High Court
Case No : Transfer Petition (Crl.) 15 of 2018

**Nabam Eka And Ors @APPELLANT@Hash Central Bureau Of Investigation
(E)**

Date of Decision : 31-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 407, 407(1), 407(1)(c)
Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 325, 447
Arms Act, 1959 — Section 25(1)(a), 29

Citation : (2018) 10 GAU CK 0039

Hon'ble Judges : Mir Alfaz Ali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. In this petition u/s 407 Cr.P.C., the petitioners pray for transfer of Behali P.S. Case No. 8/2014, registered as Sessions Case No. 312/2017, under

Sections 147/148/149/447/325/307/302 IPC read with Section 25 (1) (a)/29 of the Arms Act, from the Court of learned Addl. Sessions Judge No. 2,

Kamrup (Metro), Guwahati to the Court of Sessions Judge, North Lakhimpur in the district of Lakhimpur.

2. The petitioners are the accused persons in the aforementioned sessions case. One Rajiv Gohain lodged an FIR on 30-01-2014 before the officer-in

charge of Behali Police Station alleging that a mob of 100 to 150 persons from Arunachal Pradesh armed with various weapons including guns, dao

etc, trespass into the village Chawalduwa near Assam-Arunachal border and attacked the villagers, which left ten persons dead and many injured. On

the basis of the said FIR, Behali P.S. Case No.8/2014 under Sections 147/148/149/447/325/307/302 IPC read with Section 25 (1) (a)/29 of the Arms

Act was registered. Subsequently, a number of FIRs were lodged by various persons of the village in connection with the said incident. The

investigation of the case was handed over to the CBI by the State Govt. After completion of investigation, the CBI submitted charge-sheet before the

Special Judicial Magistrate, Guwahati and eventually the learned Special Judicial Magistrate committed the case to the court of Sessions Judge,

Kamrup (Metro) and learned Sessions Judge made over the case to the court of learned Addl. Sessions Judge No. 2 for trial.

3. Though the occurrence took place within the territorial jurisdiction of the court of sessions at Biswanath Chariali, the learned Spl. Judicial

Magistrate, before whom the charge-sheet was laid by the CBI being subordinate to the learned Sessions Judge, Kamrup (Metro), the case was

committed to the court of sessions, Kamrup (Metro).

4. The case of the accused/petitioners is that the petitioners are permanent residents of the state of Arunachal Pradesh and since after commitment of

the case, they have been attending the court of sessions at Guwahati. The petitioners being basically farmers and labourers, it has become extremely

difficult for them to attend the court at Guwahati, which is far away from their residence, because of their poor financial condition. Therefore, the

petitioners pray for transfer of the case aforementioned to the court of learned Sessions Judge, Lakhimpur, which is nearer both to the place of

occurrence and also to the residence of the accused persons.

It has also been stated by the petitioners that out of the seventy seven witnesses cited by the prosecution, about sixty witnesses belong to various

places in the district of Biswanath and Itanagar and some of the witnesses belong to the district of Sonitpur, besides the official witnesses, being the

CBI officials, the doctors of the Gauhati Medical College & Hospital (GMC) and 2/3 witnesses from the district of Sivsagar and Dibrugarh. Since

most of the prosecution witnesses belong to the district of Biswanath, Sonitpur and the state of Arunachal Pradesh, it would be convenient for the

witnesses also to attend the court at Lakhimpur. Thus, the petitioners pray for transfer of the case to mitigate the inconvenience faced by both the

accused/petitioners and also the majority of the witnesses.

5. The petition for transfer of the case is resisted by the respondent/CBI by filing an affidavit-in- opposition basically on two grounds. Firstly, the

apprehension of the witnesses being influenced or gained over by the accused/petitioners, inasmuch, as most of the witnesses are very poor and hail

from rural area of Biswanath and Sonitpur. Secondly, the case is conducted by the CBI special crime branch, which is situated in Delhi and it would

be convenient for the CBI officials from Delhi to conduct the case at Guwahati than at North Lakhimpur.

6. Learned senior counsel Mr. K. Agarwal for the petitioners and Mr. S.C.Keyal, learned standing counsel for the CBI are heard.

7. What surfaced from the submission of the learned counsel for the both the sides is that the petitioners basically sought for transfer of the case on

the ground of convenience. Section 407 (1) Cr.P.C. providing with the power of the High Court to transfer the cases and appeals, reads as under :

â??Power of High Court to transfer cases and 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.â??

8. As per Clause (c) of Section 407(1), the convenience of the parties or witnesses is a valid ground for transfer of a criminal case. The provision of

Section 407(1) (c) makes it clear that convenience does necessarily mean the convenience of the petitioner alone who sought for transfer, rather,

convenience or the purpose of transfer means, convenience of all the parties or stake holders, i.e., prosecution, accused as well as the witnesses. The

Apex Court in *Murudul M. Damle and Anr.-VS- Central Bureau of Investigation,*

New Delhi reported in (2012) 5 SCC 70 relied by the learned senior counsel, Mr. K Agarwal for the petitioners observed that "no universal or hard-and-fast rule can be prescribed for deciding a transfer petition which is always to be decided on the basis of the facts of each case. Convenience of the parties, including the witnesses to be produced during 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 notion of apprehension. Convenience of the parties does not necessarily mean the convenience of the petitioners alone, who approaches the court. Convenience for the purpose of transfer means convenience of the prosecution, other accused, the witnesses and the larger interest of the society. In *Murudul M. Damle and Anr.*(supra), the case was sought to be transferred from the court of Ruhini to the court of Special Judge, CBI, Thane, Maharashtra, having jurisdiction. The apex court, while transferring the case from the court of Ruhini to the court at Thane, Maharashtra, observed in para 10, 16 and 19 as under :-

"10. The material facts relevant to the determination of the question of expediency are not in dispute inasmuch as the respondent do not dispute that the chargesheet enlists 92 witnesses, 88 out of whom are from outside Delhi and from different places in Maharashtra. It is also not in dispute that petitioner No.1 is a Chartered Accountant practicing in Thane, petitioner No.2 who is the only other accused in the case who is currently posted at Vapi in the State of Gujarat which is in comparison to Delhi closer to Thane. It is in the light of those admitted facts obvious that the trial in Rohini Court at Delhi would be inconvenient not only to the accused persons but also to almost all the witnesses cited by the prosecution except 4 who may be in or around Delhi. The case is even otherwise not Delhi centric in the true sense inasmuch as the only reason the FIR was registered in Delhi was the fact that petitioner No.2 was posted in Delhi during a part of the check period.

16. In the light of the above decisions and the fact that CBI is fully equipped with an office at Bombay and a Court handling CBI cases is established at Thane also, we see no reason why the transfer of the case would cause any hardship to the prosecution especially when searches which have been relied upon by the prosecution have been conducted at Thane in which the

prosecution claims to have discovered a part of the assets allegedly acquired by the petitioners.

19. There is no gainsaying that a trial at Delhi in which witnesses are expected to travel from Maharashtra is bound to linger on for years. Expeditious

disposal of the trial is also a facet of fairness of the trial and speedy trial is infact a fundamental right as observed by this court in Hussainara Khatoon

& Ors. v. Home Secretary, State of Bihar, Patna (1980) 1 SCC 81. When witnesses from distant places are sought to be summoned, early conclusion

of the trial becomes so much more difficult apart from the fact that the prosecution will have to bear additional burden by way of travelling expenses

of the official and non-official witnesses summoned to appear before the Court.

9. All the petitioners belong to Papumpare district of Arunachal Pradesh which is nearer to North Lakhimpur. The fact, that out of 77 witnesses cited

by the prosecution, nearly 60 witnesses are residents of Biswanath, Itanagar and neighbouring places, being nearer to the court of sessions at

Lakhimpur is also not in dispute. Admittedly the court of Lakhimpur is nearer to the place of residence of majority of the witnesses, the accused

petitioners and also the place of occurrence. When a large number of witnesses area to be examined, necessarily the trial would take long time. If the

trial is held at a place nearer to the residence of most of the witnesses and also the accused persons, it would obviously be convenient and less time

consuming, and as such, the ground of convenience as canvassed by the petitioners in the present case, cannot be brushed aside as convenience of the

petitioners alone. It is submitted by the learned counsel for the petitioners that if the case if transferred from Guwahati to Lakhimpur it will not only be

convenient for the petitioners but also for the witnesses as well as for the prosecution. Having regard to the place of occurrence and distance between

the court at Lakhimpur and the residence of the accused persons and most of prosecution witnesses, the contention of the learned counsel Mr.

Agarwal that, North Lakhimpur court would be more convenient for all the parties in comparison to the court at Guwahati appears to be

preponderous.

10. To resist the petition for transfer, the first point raised by the learned counsel for the respondent is that if the case is tried at Lakhimpur, there may

be apprehension of the witnesses being gained over or influenced by the

petitioners, as most of the witnesses are from rural background and financially not sound. Now the question is how far the apprehension expressed by the learned counsel for the CBI is reasonable and objective. The apprehension if found to be reasonable based on objectivity, such objection certainly needs consideration. But, mere apprehension without any reasonable ground or material to demonstrate the reasonableness of the apprehension does not suffice. The apex court in *Gurcharan Das Chadha-VS-State of Rajasthan*, (1966) 2 SCR 678, dealing with the reasonableness of the apprehension observed as under : -

“The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a

case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows

circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the

principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is

apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not.

To judge of the reasonableness of the apprehension the State of the mind of the person who entertains the apprehension is no doubt relevant but that is

not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

11. Apparently ten persons of a village died and a number of persons were injured in the incident and most of the witnesses are the near and dear

ones of the victim. Therefore, considering the nature of acrimony between the two groups and the nature of dispute, which was long standing one with

regard to land in the border area, it is difficult to accept the submission of the learned counsel for the respondent/CBI, that only because of the rural

background and financial weakness, the witnesses will be gained over by the accused persons. Because there is no material on record to suggest even

remotely that the petitioners have the potential to influence the witnesses, reason being that the accused/petitioners also belong to lower strata of the

society. Having regard to the nature of dispute, the relation between the parties, who belong to two different states and the socioeconomic condition of

the petitioners, the apprehension voiced by the learned counsel for the respondent/CBI that witnesses will be won over or influenced, if the case is tried at Lakhimpur, appears to be too nebulous in the facts and circumstances of the present case.

12. The second ground of objection raised by the learned counsel for the respondent that the CBI officials, in charge of the case, are all from Delhi and it would be convenient for them to attend the court at Guwahati than at North Lakhimpur, I do not find much force in this contention, inasmuch as, when the CBI officials, who are supposed to conduct the case, belong to Delhi, there may be hardly any difference on their part to travel from Delhi to Guwahati or to North Lakhimpur, inasmuch as, both the places are well connected with Delhi. Therefore, the objection raised by the respondent against transfer of the case, in my considered view, appears to be feeble, compared to the ground for transfer being convenience of the petitioners as well as the witnesses. The trial of the case at Lakhimpur will also reduce the burden of public exchequer and also cut the delay, reason being that the witnesses will be easily available before the court at Lakhimpur than at Guwahati which is far away from the residence of the witnesses.

13. When most of the witnesses belong to the places which are nearer to the court at Lakhimpur, where the case is sought to be transferred, it is obvious that trial of the case at North Lakhimpur Court would be convenient not only for the petitioners and the witnesses, but also for the prosecution in the sense, that trial would be expeditious and less expensive, when the witnesses are in close proximity of the court trying the case.

14. The present case from the facts and circumstances appears to be similar to that of Murudul M. Damle and Anr.-VS- Central Bureau of Investigation, New Delhi (supra), where the apex court transferred the case from Delhi to Thane, Maharashtra, taking into account the convenience of the witnesses, the accused and also the prosecution, in view of the fact that most of the witnesses and also the accused persons were from the place nearer to the court of Thane, where the case was transferred. Thus, having regard to the facts and circumstances of the present case and following the principles and guidelines of Murudul M. Damle's case , I am of the view, that it would not only be convenient for the petitioners and witnesses, if the case is transferred from Guwahati to North Lakhimpur, but also for expediting the trial of the case, which is a right of the accused

persons facing trial.

15. In view of what has been discussed hereinabove, the petition is allowed and Behali P.S. Case No. 8/2018 pending in the court of learned Addl.

Sessions Judge No. 2, Kamrup is transferred to the court of learned sessions Judge, North Lakhimpur at Lakhimpur.

16. The record of the case shall forthwith be transferred to the transferee court and the learned sessions judge, Lakhimpur shall make an endeavour to dispose of the case as expeditiously as possible.

17. Having taken note of the fact that the occurrence took place in the year 2014, the petitioners, who are accused persons in the aforementioned

case, shall appear before the learned Sessions Judge, Lakhimpur, North Lakhimpur on 15-12-2018 and no further summons or notices shall be served

on them. The registry shall communicate this order to the court of learned Addl. Sessions Judge No. 2, Kamrup (M) for sending the record of the case

immediately to the transferee court at Lakhimpur, so that the same is received by the transferee court before the date fixed, as above for appearance

of the petitioners.

18. The transfer petition stands allowed.