
(2003) 05 RAJ CK 0101

In the Rajasthan High Court

Case No : Criminal Miscellaneous Transfer Petition No. 10 of 2002

Pankaj Khapra and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 29-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 180, 181
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2003) 3 WLN 167

Hon'ble Judges : D.N. Joshi, J

Bench : Single Bench

Judgement

D.N. Joshi, J.—Heard learned counsel for the petitioners, learned counsel for non-petitioner No 2, Smt. Sunita and learned Public Prosecutor.

2. The instant transfer petition has been preferred requesting that Criminal Case No. 366/2001 arising out of FIR No. 478/2000 of Police Station, Pratapgarh under Sections 498A & 406, IPC and u/s 4 of the Dowry Prohibition Act, 1961, pending in the Court of Additional Chief Judicial Magistrate, Pratapgarh, District Chittorgarh, Rajasthan be transferred to Alwar/Jaipur or any other place near to Delhi in the State of Rajasthan.

3. Learned counsel for the petitioners states that looking to the convenience of the parties as narrated in Ground B of the petition, the case may be transferred from Pratapgarh. It was argued that no proper legal assistance is available to the accused-petitioners on that place as the case relates to the daughter of an advocate practicing at Pratapgarh. It was further argued that looking to the grounds mentioned in the application (page No. 6 of the petition), there is a reasonable apprehension that the petitioners would not get a fair trial at that place. Justice should not only be done but should appear to be done. No advocate at Pratapgarh is prepared to take brief on behalf of accused-petitioners. It was further argued that State has not filed the reply of the petition, therefore,

it is to be presumed that it has no objection in the transfer of the case from Pratapgarh, though non-petitioner No. 2 has filed reply objecting to transfer of the case.

4. It was further argued that counsel for the non-petitioner No. 2 has no locus standi to oppose the application u/s 301 of the Code of Criminal Procedure. Therefore, looking to the circumstances of the case, the application for transfer of the case be accepted and the case be transferred from Pratapgarh to any other Court having jurisdiction in Rajasthan.

5. The application was opposed by the learned counsel for the non-petitioner No. 2 and the learned Public Prosecutor. It was argued that Sunita being a complainant and has been made a party to the petition, she has a right to defend her case and oppose the transfer application and also has a locus standi to oppose the same. It was argued that there is no material to imagine or assume or presume that the accused-petitioners would not get a fair trial at Pratapgarh. Non-petitioner No. 2 Sunita is residing at Pratapgarh and she resides there permanently. Therefore, if the case is transferred to any other place from Pratapgarh, it would cause great inconvenience to her.

6. Learned counsel for the non-petitioner No. 2 has relied upon an order of the Supreme Court passed in transfer petition (Civil) No. 676 of 2002, Manisha & Meeta Prithviraj Purohit v. Arvind Rajpurohit, decided on January 27, 2003. He also relied upon judgment rendered in Bhanwar Lal Mishra v. State of Rajasthan and Ors. 1999 CriLR (Raj.) 561.

7. To appreciate the rival contentions, Sections 301 and 407 of the Code of Criminal Procedure are reproduced here-in-below:

Section. 301: Appearance by Public Prosecutors.--(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal,

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

Section 407: 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.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under Sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under Sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand u/s 309.

(7) Where an application for an order under Sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has

opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under Sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government u/s 197.

As far as the objection regarding locus standi of non-petitioner No. 2 to oppose the petition is concerned, it is liable to be rejected and is hereby rejected. Non-petitioner No. 2 Sunita being a prosecutrix and aggrieved person has a locus standi to oppose the transfer petition. In Radhesh Chandra Vs. State of Rajasthan and Others, it has been held that brother of the deceased woman has locus standi to file such an application. Sunita is interested in result of the case, therefore, she has locus standi to oppose the petition. Though, the State has not chosen to file reply.

8. Further it has been held by the Hon'ble Supreme Court in Manohar Lal Vs. Vinesh Anand and Others, , Manohar Lal Vs. Vinesh Anand and Others, that:

To pursue an offender in the event of commission of an offence is to Sub-serve a social need-Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus - the doctrine of locus-standi is totally foreign to criminal jurisprudence.

As per Section 407 of the Code of Criminal Procedure, any case whenever it is made to appear to the High Court 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 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. In the present case, request has not been made to transfer the case from one Criminal Court to another Criminal Court in the same sessions division and, therefore, proviso to Sub-section 2 of Section 407 and the judgment rendered in Manindra Kumar Vs. The State of Rajasthan and Another, does not apply.

9. Residing of large number of witnesses within jurisdiction of Delhi cannot be a valid ground for transfer of the petition in view of the judgment in Baljit Singh and Another Vs. State of Jammu and Kashmir and Others, therefore, argument in this respect is hereby rejected. Though, non-availability of an advocate of his own choice is also not a ground for the transfer of a case but, as per judgment of the Hon'ble Apex Court, legal aid is a fundamental right of the accused-petitioner and he has a right to defend an advocate of his own choice. As per

averments in the application supported by an affidavit, no Advocate at Pratapgarh is prepared to defend the case of the accused persons (though it has been opposed in reply of the non-petitioner No. 2), therefore, keeping in view the principle that justice should not only be done but should appear to be done and no-one should be condemned unheard, it is expedient to transfer the case from Pratapgarh to any other subordinate Criminal Court in Rajasthan and in doing so, the convenience of both the parties is to be looking into and balance is to be maintained.

10. Keeping in view all the circumstances of the case and after hearing counsel for both the parties and learned Public Prosecutor, I am of the opinion that it is expedient to transfer the criminal case from A.C.J.M. Pratapgarh to A.C.J.M. No. 1, Chittorgarh, within same Sessions Division to decide the case in accordance with law.

11. Accordingly, the Criminal Mics. Transfer Petition is hereby allowed in part. The Criminal Case No. 366/2001, arising out of FIR No. 478/2000 of Police Station, Pratapgarh, pending in the Court of A.C.J.M. Pratapgarh is hereby withdrawn from that Court and is transferred to A.C.J.M. Court No. 1, Chittorgarh to proceed in accordance with law. Looking to the distance to be covered by the prosecutrix and the witnesses, it is further ordered that whenever Sunita appears in the case, she will be paid expenses on that very Peshi by the accused-petitioners till she is examined as a prosecution witness. It was agreed by the learned counsel for the accused-petitioners Shri Pradeep Shah that accused-petitioner No. 1 will pay the amount incurred by Sunita in coming over to Chittorgarh. The said TA/DA amount is fixed Rs. 500/- per Peshi up to her examination in the case. The other witnesses will be paid their TA/DA as per rules. Both the parties are directed to appear before the Court of A.C.J.M. No. 1, Chittorgarh on 23.6.2003.

12. No order as to costs.