

(2007) 05 CAL CK 0028
In the Calcutta High Court
Case No : C.R.R. No. 1584 of 2007

Ratan Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 07-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 231, 407, 482

Citation : (2009) 1 CALLT 272 : (2007) 4 CHN 1059 : (2007) CriLJ 3307

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Bijoy Adhikary and Biswarup Chodhury, for the Appellant; M.A. Rahaman, Habibur Rahaman, Chittaranjan Ghosh and Swapan Mallick, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—This petition is the fourth episode of a seemingly unending saga. The petitioner's wife applied u/s 156(3) of the Criminal Procedure Code, 1973 (the Code) alleging that the petitioner had committed rape on her. After commitment the matter was set down for trial in the Court of the Additional Sessions Judge, Diamond Harbour. The petitioner applied u/s 407 read with Section 482 of the Code before this Court. The proceedings were not quashed in exercise of powers u/s 482 of the Code but "the matter was transferred to the Court of Additional District and Sessions Judge, Fast Track Court at Baruipur. Such order came to be made on the petitioner claiming that it would be inconvenient for him to attend the distant Diamond Harbour Court and on the basis of his apprehension for his security in Diamond Harbour. By the order of transfer of February 13, 2007, this Court required the recording of evidence to be taken up on March 17, 2007.

2. On April 2, 2007, the petitioner applied, again u/s 407 read with Section 482 of the Code, alleging misconduct on the part of the presiding officer at the time

that the matter was taken up on March 17, 2007. The petitioner complained of the manner in which evidence was received by the trial Court and of the petitioner's application u/s 231 of the Code, for deferring the cross-examination of his wife, not being considered. The petitioner referred to acrimonious exchanges in Court on March 17, 2007 and March 19, 2007 and expressed lack of confidence in the presiding officer and his apprehension that he would be denied a fair trial. The petitioner claimed that the petitioner was directed by the presiding officer to be sent to the Court lockup on March 19, 2007 and in the process was assaulted. On such grounds the petitioner sought transfer of the case from the Baruipur Court. That application, CRR No. 1254 of 2007, was disposed of by an order of April 9, 2007 refusing to transfer the case but requiring the trial Court to dispose of the petitioner's application u/s 231 of the Code. In rejecting the petitioner's plea for transfer, it was held in such order, inter alia, as follows:

When an allegation is made against a Court as to the Court being unfair or not being impartial, fullest particulars must be disclosed. There is an underlying suggestion that the petitioner, being a lawyer was entitled to better courtesy than an ordinary accused and that the petitioner was entitled to be exempted from the ordinary humiliation that an accused suffers. There is no reason to accord such exalted status to an accused by reason of his calling. There is nothing that our criminal law recognises, at least as to the conduct of trial, to be based on the status of the accused.

Undoubtedly the High Court has discretion in the matter but such discretion, particularly when the complaint is of unfair trial, has to be based on cogent grounds with fullest particulars. It is also of some significance that this is the second, in what may be a series of attempts, to seek transfer. The proceedings had originally been transferred from the Diamond Harbour Court to the Baruipur Court.

...on the face of the allegations contained in the petition, no case of transfer has been made out which could require either the State or the opposite party to proffer any explanation. It is, however, necessary to observe that if an application u/s 231 of the Code has been made or is made by the petitioner, the learned trial Judge should take up the same and deal with the same on merits. This is not to be construed as a charter given to the petitioner to make as many applications that the petitioner may choose so that the trial can be deferred. This liberty is limited to the application u/s 231 of the code, a copy whereof has been annexed to the petition. As to the subsequent conduct of the proceedings, the learned trial Judge will be free to exercise his discretion and best judgment in the matter.

The petition is, thus, disposed of with the observations as above. The learned trial judge is encouraged to conclude the proceedings as expeditiously as possible.

3. A further application was made by the petitioner on April 11, 2007, again under Sections 407 and 482 of the Code, repeating the allegations against the trial Judge which formed part of the petition that was disposed of by the order of April 9, 2007. To emphasise the charges levelled against the trial Judge, he was impleaded as opposite party No. 1. That further application being CRR No. 1432 of 2007 was dismissed on April 19, 2007 on the following lines:

The name of the opposite party No. 1 is deleted accordingly from the array of the opposite parties.

This is the third in the sequel of attempts by the petitioner to have the proceedings transferred. On the last application u/s 407 of the Code of Criminal Procedure, 1973, a direction had been issued requiring the learned Court below to take up the petitioner's application u/s 231 of the Code and to dispose of the same.

It does not appear from the averments made in this petition that a copy of the order passed on the last application (CRR 1254 of 2007) was placed before the learned Court below. In fact the plain copy of the order that the petitioner was permitted to obtain was obtained subsequent to the making of this application. This application is, therefore, not entertained despite copies thereof having been required to be served on the de-facto complainant and the State. The petitioner will produce the order passed on the last application u/s 407 being CRR No. 1254 of 2007 and also make over a copy of this order to the learned Court below. As required by the earlier order, the learned Court below would do best to conclude the trial as expeditiously as possible.

Learned counsel appearing for the de-facto complainant submits that in respect of matters covered by this petition, a writ petition has been instituted and a copy thereof has been served on some of the respondents therein. It is undesirable that a litigant indulges in such multifariousness.

This petition is dismissed. The order of dismissal should not be construed as a pronouncement on the grounds urged in the petition for transfer. This will also not preclude the petitioner from applying again for transfer if the grounds therefore are made.

4. This petition was filed on April 23, 2007 with the allegations as to what transpired before the trial Court on March 17, 2007 and March 19, 2007 reproduced almost verbatim from the two immediate preceding applications. In addition, an order of April 21, 2007 was sought to be assailed without a certified copy thereof.

5. More than the intemperate conduct of counsel and the harsh words used against the presiding officer of a judicial forum, the sections invoked in these proceedings and the reliefs claimed betray the petitioner's indignation; how dare he, a lawyer of this Court no less, be not permitted to choose the forum and dictate the procedure to be adopted at his trial. The petitioner not so much prays

as demands, that the charges against him brought by his estranged wife be tried at a time and place of his convenience.

6. The underlying submission of counsel and the unstated theme of the petition is that by reason of his calling, the petitioner should be exempted from the humiliation of a criminal trial in respect of a trumped-up charge of rape brought by his wife. It is the petitioner's understanding that as a lawyer conducting his own defence, he is entitled to more privileges than accorded him at the Court of the Additional District and Sessions Judge, Fast Track Court, 1st Court, Baruipur, 24-Parganas (South). He claims that the robes that he otherwise dons, entitled him to be spared of being put in the dock as an ordinary accused. He asserts that his exalted position demands that the co-accused, his kin, be also extended preferential treatment. Since the trial Court failed to see his point, he proclaims that the trial must travel elsewhere and to a Court that is more reverential.

7. This time around the petitioner has invoked Article 227 of the Constitution of India in addition to Sections 407 and 482 of the Code in seeking the following order:

Under the circumstances it is prayed that Lordships would graciously be pleased to grant leave to file the instant petition without certified copy and issue a rule upon the Opposite party calling upon them to show cause as to why the impugned order dated 21-4-2007 and impugned unfair trial dated 17-3-2007 to 26-3-2007 passed by the Learned Additional District & Sessions Judge, Fast Track Court, 1st Court, Baruipore, Rabindra Nath Samanta in connection with Kakdwip Police Station Case No. 93 of 2005 corresponding to GR No. 892 of 2005, ST No. 4(3) 2007, issuing W/A against the petitioner and other accused persons, shall not be set aside and be pleased to make the Rule absolute and/or pass such further order or orders as Your Lordships may deem fit and proper.

And

Pending hearing of the Rule it is further prayed that Your Lordships would be pleased to transfer the Kakdwip Police Station Case No. 93 of 2005 corresponding to GR No. 892 of 2005, S.T. No. 4(3) of 2007 pending before the Learned Trial Judge-Rabindra Nath Samanta-Additional District & Sessions Judge, Fast Track Court, 1st Court, Baruipore to any other Court at city civil Court at Calcutta or any other Court at Calcutta for disposal and fair trial.

And

Appointment of any other Public Prosecutor instead of present one namely Pankaj Mondal.

And

Ad-interim order of stay of W/A illegally issued on 21 -4-2007 by Learned Trial Judge Rabindra Nath Samanta Additional District & Sessions Judge, Fast Track Court, 1st Court, Baruipore till the disposal of instant application and all further

proceedings of Kakdwip Police Station Case No. 93 of 2005 corresponding to GR No. 892 of 2005, ST No. 4(3) of 2007 pending before the Learned Trial Judge Rabindra Nath Samanta, Additional District & Sessions Judge, Fast Track Court, 1st Court, Baruipore till the disposal of instant revisional application.

And to pass such further order/orders, as Your Lordship may deem fit and proper for the interest of Justice.

8. Counsel for the petitioner has not pressed for quashing the proceedings and the petition has been prosecuted as if it were one for transfer of the criminal trial out of the Court of the trial Judge. But, there is no relief claimed in the petition for transfer and the interim prayer for transfer is misconceived. The principal relief sought cannot be considered in the absence of a certified copy of the order being appended to the petition and, in course of submission on behalf of the petitioner what has been sought is the transfer of the trial and of the transferred proceedings to be resumed from the stage reached before the present trial Court. Implicit in such submission is the acceptance of both the procedure followed and the orders made. Without being overtly technical about the form of the prayer found in the petition, it is necessary to appreciate the grounds that the petitioner urges in support of his apprehension of being unfairly treated by the trial Judge. It is in such context that the repetitive charges relating to the happenings of March 17 and March 19, 2007 may be looked into to ascertain whether there has been continued oppression of the petitioner in course of the trial that may justify his apprehension of unfair trial.

9. The petitioner alleges that the trial Judge had observed before the trial commenced that the acrimony between the husband and the wife should be attempted to be resolved rather than being vented in course of a criminal trial. If, indeed, such observation was made, the trial Judge cannot be faulted therefor. If at all, any person were to be aggrieved by such observation, it could have only been the wife who could find an underlying suggestion of disbelief as to the seriousness of the charge brought by her.

10. The petitioner next suggests that the examination-in-chief of the wife was conducted in a manner which was unfair to the petitioner and that rather than the trial Judge requiring the public prosecutor to not supply thoughts that the de-facto complainant would echo, the public prosecutor was permitted to proceed "in all illegal ways and manners not permissible in law with full cooperation of the trial Judge. These are vague words of indeterminable nature and woefully short on content. A charge brought against a trial Judge of unfair treatment to an accused or an unnecessary courtesy shown to the complainant, requires better particulars than what the petitioner here offers. Every accused will find the questions put in course of examination or the answers thereto, to be inconvenient. If a complainant were required to restrict the statements made in course of examination only to those found in the complaint, there would be no need for the complainant, or the alleged victim in respect of a case of the present nature, to be examined. The petitioner suggests that the examination is

confined to a reassertion of the original complaint. If that were so, the complainant, or the alleged victim in a case of the present nature, would merely have to climb the box and nod in approval of the complaint for the examination to be concluded. Examination-in-chief of the complainant, or a victim in a case of the present nature, is not as the petitioner suggests.

11. Examination permits amplification of the complaint and a complete account of the incident complained of and what was suffered by the alleged victim in course of the acts complained of.

12. The petitioner next alleges that in course of the in-camera proceedings on March 17 and March 19, 2007, the trial Judge refused to entertain a clutch of petitions moved by the petitioner and the other co-accused and required the trial to be proceeded with. The petitioner, through his tadbirkar who has verified the affidavit in support of the present petition, has complained of being assaulted in course of being taken to the Court lockup upon an order in that regard being made by the trial Judge on March 19, 2007. The allegations as to the happenings of March 17 and March 19, 2007 had been considered and the petitioner's prayer for transfer based thereon was not found to be deserving by the order of April 9, 2007. The additional grounds urged in the subsequent application disposed of on April 19, 2007 were not considered, as the petitioner had not obtained a copy of the order passed on April 9, 2007 before the further application was made. As such, it was observed that the grounds urged had not been considered. What were not considered were the grounds in addition to those that had formed part of the earlier application. It was not as if the grounds which formed part of CRR No. 1254 of 2007 and had been found to be underselling, stood revived by the order passed in CRR No. 1432 of 2007 on April 19, 2007.

13. It is the further case of the petitioner that the trial proceeded on March 20, 21, 22 and 23, 2007 "like that of 19th day of March, 2007 (and) the learned trial Judge continued the trial without observing the basic fairness of the criminal trial. The learned trial Judge in association with the prosecutrix and others who (were) all along overzealous and was not acting in requisite manner and always eager enough to frustrate the important questions very vital for eliciting the truth and also find out the inconsistency and infirmity in the evidence of the prosecutrix which may render her deposition incredible and to bring out to doubt her veracity through the cross-examination of the prosecutrix ...continuing the surcharged and tense atmosphere and made the whole cross-examination a mockery by writing down not exact answers given by the prosecutrix...but learned trial Judge wrote down the answers in such way and manner so that the prosecutrix gets full benefit of such cross-examination to peril of the defence to build up an illegal platform for sure conviction of the accused persons...." The petitioner recounts that such alleged unfair recording of evidence continued till March 23, 2007 and the petitioner sought an adjournment thereafter following which the matter was fixed for April 9 to April 13, 2007.

14. On the first day of the next block of dates, the trial could not proceed as an

ad-interim order was passed on April 5, 2007 by this Court in CRR No. 1254 of 2007 which was ultimately disposed of on April 9, 2007 requiring the trial to be concluded expeditiously. The petitioner, thus, evaded April 9, 2007 and, on April 10, 2007, he cited illness on the basis of a certificate issued by a medical practitioner on April 9, 2007 to the following effect:

This is to certify that Sri Ratan Das has been suffering from kidney problems and he is under my treatment. He is advised to take rest in bed for 15 days....

15. On the same day, the other accused cited the death of a relative and relied on a certificate issued by a Gram Panchayat to seek adjournment. Incidentally, before the trial Court, the petitioner has been conducting his own defence and counsel representing the petitioner in the present petition has been engaged to defend the other accused, being the petitioner's parents, brother and brother's wife and sister. It is the petitioner's case that the trial Judge was apparently infuriated by such turn of events. The conduct of the trial Judge complained of is not such as would be inconsistent with the understandable anguish of any Court upon receiving frivolous grounds for a matter to be deferred.

16. It is the petitioner's version that the trial Judge required all the accused to appear on April 13, 2007 and such order of April 10, 2007. according to the petitioner, was the basis of CRR No. 1432 of 2007 which was dismissed on April 19, 2007. The petitioner then complains that upon the accused not being present on a subsequent date, on April 21, 2007, warrants of arrest were issued against the accused except one Champa Das, who is pregnant. Such order is challenged in the petition though not much was made of it in course of submission and only a persistent demand for transfer of the trial was made.

17. Even though the grounds contained in CRR No. 1254 of 2007 (the first application for transfer of the trial from the present trial Court) were found to be unworthy, they could have been looked into if in a subsequent application for transfer some other grounds were found which warranted a fresh look at the manner in which the trial had been conducted from the beginning. But the petitioner has not been able to make out any case for transfer on the basis of allegations relating to the conduct of the trial after March 19, 2007. The same vague allegations have been made, of the trial Judge aiding the alleged victim in recording answers to question posed to her. Apart from such sweeping and vague allegations, the order of April 21, 2007 has been complained of in support" of the plea for transfer. Such order came to be passed upon the trial Judge being obviously dissatisfied with the excuses given for frustrating the progress of the trial after April 9, 2007 and upon the accused persons not presenting themselves despite being so required. If this petition could be treated as one challenging the order of April 21, 2007, the considerations may have been different. But in the absence of the certified copy of such order and in the absence of submission being directed against the legality of such order, the order has to be considered only as a further peg to support the petitioner's case for transfer. There is nothing found in the order that can justify the petitioner's pretended

apprehension of an unfair trial. The cumulative effect of the entirety of the allegations found in the person would also not justify such apprehension.

18. The petitioner has referred to the judgments reported at Hemanta Kumar Sarkar and Another Vs. Nanda Kumar Singh, AIR 1951 Hyderabad 50 (Mohamed Abdul Raoof v. State of Hyderabad); Abdul Nazar Madani Vs. State of Tamil Nadu and Another, ; K. Anbazhagan Vs. The Superintendent of Police and Others Etc., and Jayendra Saraswathy Swamigal, Tamil Nadu Vs. State of Tamil Nadu and Others, without citing such authorities, in support of the proposition that the apprehension that a transfer applicant has to establish is not one of bias or of unfair treatment, but of a likelihood of unfair trial. Counsel for the petitioner asserts that in the wake of the acrimonious exchanges between the accused and their advocates on the one hand and the trial Judge on the other, the accused can scarcely-expect fair treatment in his hands. Counsel refers to the nature of the allegations made by the petitioner to suggest that the trial Judge would harbour a sense of resentment and his judgment could be tinged by the weight of the charges, even if unsubstantiated, brought against him. It would be unwise, counsel exhorts, to subject the petitioner and his relatives to a trial presided over by a person in whom the petitioner had repeatedly demonstrated a lack of faith.

19. Counsel submits that apart from the three applications, effectively for transfer of the proceedings from the present trial Court, a public interest litigation has been filed against the trial Judge and a petition under Article 226 of the Constitution has also been instituted. It is suggested that the petitioner and the trial Judge are adversaries and, in the circumstances, an order for transfer of the trial is required to be made even if grounds required u/s 407 of the Code were not found to have been met.

20. The Court has to guard against a litigant's attempt to subvert the judicial process. Petition upon failed petition for the same effective order would not add weight to grounds already found to be undeserving. Repetition is no virtue and that a failed plea for transfer u/s 407 of the Code would not preclude a further prayer of similar import, cannot be permitted to be misused in the manner this petitioner has. The principles are as have been briefly noticed in the order of April 9, 2007. A litigant can neither seek special treatment by reason of his calling or social status nor can he choose the Court at which a criminal charge brought against him ought to be tried. If the procedure adopted in course of his trial is a departure from what is acceptable, the ultimate decision rendered is, to such extent, undermined and he may challenge it on such grounds. If the procedure is clearly unfair, an accused may complain of it to the Court exercising superintendence, subject to legal requirements therefore being met. Such second case has not been made out by the petitioner.

21. The conduct of this petitioner needs examination. There has been an attempt from the very inception of the proceedings to try and stultify the same. Upon the Diamond Harbour Court having been found to be inconvenient to him, the trial was shifted to the Baruipur Court. At the very opening of the trial, the petitioner

found some cause to run back to this Court and seek a further transfer. The trial Court was flooded with a barrage of applications to impede the progress of trial. It is not necessary that every unmeritorious application followed by a frivolous plea requires a detailed order of dismissal. The trial Court has to be permitted the latitude of judging whether successive applications made on behalf of an accused are only to stall the trial.

22. The petitioner did not restrict himself only to his demand for the choice of a trial Court of his convenience. Upon this petition being moved, counsel for the petitioner demanded that the matter be released by this Court. It is not necessary to go into what happened thereafter as ultimately such demand was found to be baseless.

23. In none of the decisions referred to by the petitioner, has the proposition urged by the petitioner been found acceptable. A transfer applicant cannot make unfounded charges and cite such unfounded grounds to obtain transfer when such grounds, in the first place would not permit his prayer. If it were to be so, every accused in a tight spot would run to the High Court and make some frivolous charge and insist that the fact that he had made some charge, never mind the justification thereof, is enough to obtain transfer. That would lead to an anarchy of cataclysmic proportions.

24. The petition, the grounds urged therein and submissions made in support thereof are unmeritorious. The petition is dismissed.

25. The trial Judge is again encouraged to conclude the trial as expeditiously as possible.

26. Let an authenticated photostat copy of this order be made available at the earliest by the Criminal Department to the petitioner upon the petitioner complying with the requisite formalities therefor.