
(2007) 04 CAL CK 0061
In the Calcutta High Court
Case No : C.R.R. No. 3933 of 2006

Ratanlal Gupta

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 227

Criminal Procedure Code, 1973 (CrPC) — Section 194, 407, 482, 9(6)

Citation : (2007) 3 CALLT 119

Hon'ble Judges : Pravendu Narayan Sinha, J

Bench : Single Bench

Advocate : Sekhar Basu, Subhasis Roy and Ranabir Roy Chowdhury, for the Appellant; Debabrata Roy, for the Respondent

Final Decision : Dismissed

Judgement

Pravendu Narayan Sinha, J.—This revisional application u/s 482 of the Code of Criminal Procedure (in short the Code) has been preferred by the petitioner assailing the order dated 9.8.05 passed by the learned Judge, IXth Bench, City Civil and Sessions Court, Calcutta by transferring the Sessions Case No. 16 of 1999 [Sessions Trial No. 1(2) of 2001] to the Court of the learned Additional Sessions Judge, 8th Fast Track Court, Bichar Bhawan, Calcutta on the strength of order No. 473 dated 8.8.05 passed by the learned Chief Judge, City Civil and Sessions Court, Calcutta.

2. Mr. Sekhar Basu, the learned senior counsel appearing for the petitioner submitted that in the aforesaid sessions trial charge was framed and the petitioner pleaded not guilty to the charges. Thereafter, the learned Chief Judge, City Civil and Sessions Court directed that the aforesaid sessions trial which was pending before the learned Judge, IXth Bench, City Sessions Court, Calcutta be transferred to the Court of the Additional Sessions Judge, 8th Fast Track Court, Bichar Bhawan, Calcutta and accordingly the learned Judge, IXth Bench, City Sessions Court transferred the said case to the learned Judge of Fast Track Court

No. 8, Bichar Bhawan, Calcutta. After framing of charge a sessions case cannot be transferred in such a manner by the order of the learned Chief Judge, City Civil and Sessions Court, Calcutta. It appears that the learned Chief Judge, City Sessions Court, Calcutta transferred huge number of cases from City Sessions Court, Calcutta to the newly constructed Fast Track Courts at Bichar Bhawan. En masse transfer of cases without valid ground or without necessary approval of the High Court cannot be done.

3. Mr. Basu next contended that after framing of charge a sessions case can be transferred only by the judicial order or for administrative purpose under Article 227 of the Constitution by the High Court. The learned Chief Judge has no administrative as well as judicial power to transfer a sessions case in which charges were framed. The government notifications as well as the High Court notification do not empower the learned Chief Judge to transfer sessions cases in such a manner. The notifications only indicate mere change of building or venue of trial but, such notifications do not empower the learned Chief Judge to exercise administrative and judicial power to transfer sessions cases from Judges of City Court to the Fast Track Court Judges of Bichar Bhawan in respect of cases where charges were framed or where evidence were already taken. Section 9(6) of the Code does not empower transfer of cases in such a manner and both the notifications of the government and the High Court de hors Section 9(6) of the Code. The order passed by the learned Chief Judge dated 8.8.05 and the subsequent order dated 9.8.05 passed by the learned Judge, IXth Bench, City Sessions Court, Calcutta in respect of transfer of the aforesaid sessions trial were illegal and erroneous and such orders should be set aside.

4. Mr. Debabrata Roy, the learned advocate appearing for the State submitted that the notification issued by the Government of West Bengal, Judicial Department dated 29th November, 2004 and the High Court notification dated 11th August, 2005 published in the Calcutta Gazette, Extra Ordinary dated 6th October, 2005 empowered the learned Chief Judge, City Civil and Sessions Court, Calcutta to pass direction for transfer of the sessions cases pending in the City Civil Court building to the learned Sessions Judges of Bichar Bhawan. The learned Chief Judge passed such a direction with the consent of this Court and this Court under its administrative power passed direction to the learned Chief Judge to transfer those cases. The transfer of the sessions cases from the building of the City Court to Bichar Bhawan were made for the administration of justice and for providing speedy relief to the accused persons and particularly to the persons who are in custody. There was no illegality in the impugned order passed by the learned Chief Judge, City Civil and Sessions Court, Calcutta and also the order passed by the learned Judge, 9th Bench, City Sessions Court, Calcutta.

5. I have duly considered the submissions of the learned advocates for the parties. The contention of Mr. Basu for the petitioner is that, transfer of the sessions case after framing of charge could not have been done without judicial

order and such a judicial order could have been passed by the High Court only u/s 407 of the Code. As the transfer was made by the learned Judge, IXth Bench, City Civil Court, Calcutta pursuant to the direction of the learned Chief Judge, City Civil and Sessions Court, Calcutta the said order of the learned Judge of the IXth Bench, City Sessions Court, Calcutta was illegal and erroneous. I do agree with the views of Mr. Basu in this respect. It is true that in view of the provisions of the Code particularly Section 9(6) and Section 194, the High Court can direct a particular Sessions Court to try a sessions case. In this case, there was no need of judicial order for transfer of the Sessions Case No. 16 of 1999 u/s 407 of the Code. The main purpose behind such transfer of the case cannot be ignored and this Court cannot remain oblivious of the fact that for the smooth running of administration of criminal justice and speedy disposal of sessions cases, the jurisdiction of the City Civil and City Sessions Courts were bifurcated by notification No. 14785-J of the Judicial Department, Government of West Bengal dated 29th November, 2004 and a separate Court of the Chief Judge, City Sessions Court was established in consultation with the High Court of Calcutta to be housed at newly constructed "Bichar Bhawan", Calcutta. The other notification was published in the Calcutta Gazette, Extra Ordinary dated October 6, 2005 and that was the notification of the High Court at Calcutta. The said notification also reveals that in exercise of the power conferred by Sub-section (6) of Section 9 of the Code, the High Court is pleased to specify that the City Sessions Court, Calcutta shall ordinarily hold its sitting at Bichar Bhawan, Calcutta. The High Court exercises both judicial power and administrative power. It takes a lengthy measure and time consuming factor in matters of judicial order as procedural formalities would have required hearing of all the parties and it would have delayed the trial causing more agony to the accused.

6. Sub-section (6) of Section 9 lays down that the Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify. The Government as well as High Court decided to bifurcate the jurisdiction of the City Civil and Sessions Court and to establish a completely separate building for the disposal of sessions cases and creation of posts of Sessions Judges to be housed at Bichar Bhawan under newly created Court of Chief Judge, City Sessions Court. Both the Government and the High Court for the said purpose published notifications in the Calcutta Gazette. After publication of such notifications by the order of this Court, the learned Registrar General of this Court directed the learned Chief Judge, City Civil and Sessions Court that records of all criminal cases including Sessions Cases pending in the Court of the City Civil and Sessions Court be transferred to the Court of the learned Chief Judge, City Sessions Court. The learned Registrar General merely carried out the direction of this Court. Whenever, any direction of this Court is conveyed to the subordinate Courts either on the strength of judicial order of this Court or administrative order of this Court, the directions of this Court are conveyed to the subordinate Courts by the learned Registrar General. After receiving such direction, which was the direction of this Court, the learned Chief Judge, City

Civil and City Sessions Court by his order dated 8.8.05 directed different Benches of the City Sessions Court, Calcutta to transfer sessions cases to different Courts of the newly constructed City Sessions Court building, After receiving the order of the learned Chief Judge, City Civil and City Sessions Court, Calcutta learned respective Judges of the concerned Benches of the City Civil and Sessions Courts, Calcutta transferred the pending sessions cases to the newly constructed City Sessions Court building and, in that process the present sessions case was transferred from the bench of the learned IXth Judge, City Sessions Court, Calcutta to the Court of the learned Additional Sessions Judge, 8th Fast Track Court at Bichar Bhawan. Transfer was made for the sake of interest of the under trial prisoners as well as for the interest of administration of justice and for speedy disposal of the long pending sessions cases. The High Court exercises administrative power also under Article 227 of the Constitution to transfer any sessions case from one sessions division to another sessions division and, such power of transfer can be exercised under administrative capacity and exercise of judicial power u/s 407 of the Code is not always necessary.

7. In this connection, I place reliance on a decision of the Hon"ble Apex Court in Ranbir Yadav Vs. State of Bihar, . The facts of the reported decision was to some extent different, but principle laid down by the Hon"ble Apex Court are squarely applicable in the present matter. In the reported decision the Patna High Court had exercised the power of transfer in the context of the petition filed by some of the accused persons from the jail complaining that they could not be accommodated in the Court room as a result of which some of them had to remain outside. After transfer of the sessions case by the order of the Patna High Court on the strength of such application of some accused persons from jail the trial proceeded in the transferee Court. It is undisputed that there was no judicial order u/s 407 of the Code for transfer of the sessions case from one Court to the other Court. After conviction, the appellants preferred appeal which went up to the Hon"ble Apex Court and, in the Hon"ble Apex Court on behalf of the appellants a point was raised challenging the order of transfer of the sessions case from the previous Court to the Court which ultimately concluded the trial. It was contended before the Hon"ble Apex Court that transfer of a sessions case could not have been done by the High Court except judicial order u/s 407 of the Code. The Hon"ble Apex Court did not accept such contention, and held that, the transfer order was passed by the High Court in its administrative jurisdiction. The Supreme Court thereafter observed that, "Under Article 227 of the Constitution of India every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and its trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case it appears that the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not accommodated in the Court room as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the Court was so

crowded that even clerks of the lawyers were not being allowed to enter the Court room to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which, we assume had a bigger and better arrangement to accommodate the accused, lawyers and others connected with the trial no exception can be taken to the same, particularly by those at those instance and for whose benefit the power was exercised."

8. The Supreme Court further observed that, "So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstances they co-exist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but thereafter incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers the High Court not only redressed the grievances of the accused and other connected with the trial but did it with utmost dispatch." The principle laid down by the Hon"ble Apex Court provides light in this matter.

9. The learned Judges of City Civil and Sessions Court before bifurcation were extremely overburdened and the learned Judges could not afford sufficient time for disposal of sessions cases. They were busy with trial of civil suits, hearing of temporary injunction petitions and other interlocutory petitions and they had to discharge many other functions. It resulted into staggering of sessions cases in the City Court for which the under trial prisoners who were in custody suffered a lot. It is needless to mention that sessions trials require speedy disposal as right to life and liberty of accused becomes prime consideration during pendency of the trial. For the smooth running of administration of justice, for the expedient of justice and for speedy disposal of the long pending sessions cases and to provide quick relief to the under trial prisoners, who were in custody for a long time, both the Government and the High Court decided to bifurcate the jurisdiction of the City Civil and Sessions Court. It was decided by both the authorities that a separate building should be constructed where the Chief Judge, City Sessions Court would be housed creating a new post and in the said building other judges having power to try sessions cases would also be housed for the disposal of the pending sessions cases. In order to fulfil such aim for the interest of administrative of justice, the Bichar Bhawan was constructed where the new post of the Chief Judge, City Sessions Court and post of other judges having sessions power were created and they were housed therein, and thereafter, the sessions

cases were transferred.

10. The order of the learned Chief Judge, City Civil and Sessions Court dated 8.8.05 directing transfer of the sessions cases from the old City Civil Court building to the newly constructed Bichar Bhawan only for the purpose of sessions cases and criminal matters indicate that old sessions cases even of the years 1985, 1986, 1989 and onwards were pending. If judicial power u/s 407 of the Code was exercised for transfer of such sessions cases due to the construction of the new building namely, Bichar Bhawan and the decision of the High Court to transfer sessions cases to the learned Sessions Judges of the Bichar Bhawan it would have consumed several years to transfer those cases. At the time of exercise of judicial power for transfer of those sessions cases, the High Court had to issue notice to all the parties and it would have consumed long time and would have delayed trial in all the cases. To avoid delay in transfer of cases and for the interest of administration of justice and for speedy disposal of the long pending sessions cases and to provide some relief to the under trial prisoners in custody, there was direction by the High Court for transfer of the sessions cases and the learned Chief Judge, City Civil and Sessions Court, Calcutta merely carried out the direction of this Court which was conveyed to him by the learned Registrar General of this Court. In view of the aforesaid decision of the Hon'ble Apex Court in *Ranbir Yadav v. State of Bihar* (supra) the High Court having its power of superintendence over all Courts instead of judicial power rightly exercised administrative power by directing transfer of such cases which was done to redress the grievances of the under trial prisoners and for the ends of administration of justice and for speedy disposal of cases which is now-a-days hue and cry throughout the India. Throughout India now-a-days there is hue and cry concerning pendency of criminal cases including sessions cases and if we read the newspapers we would found anxiety of the Hon'ble Supreme Court and the Central Government on pendency of huge number of criminal cases. The Hon'ble The Chief Justice of this Court on 12.8.05 passed necessary direction for transfer of the criminal cases including sessions cases to the Court of the learned Chief Judge, City Sessions Court. Pursuant to the direction of the Hon'ble The Chief Justice, the Registrar General of this Court by his letter dated 16th August, 2005 conveyed the direction of this Court to the Chief Judge, City Civil and Sessions Court for transfer of the criminal cases including sessions cases to the Court of the Chief Judge, City Sessions Court. In the instant matter, the measure was adopted by the High Court and Government only to provide speedy trial to the accused persons including accused persons who are in custody. Article 21 of the Constitution also guarantees right to speedy trial. What has been done relating to transfer of the sessions case was in fact, the direction of the High Court under its administrative capacity and the High Court for the interest of administration of justice can pass such order.

11. In view of the discussions made above, this Court does not find any merit in the revisional application. The aforesaid discussions make it clear that there were valid grounds for transfer of the sessions case. The revisional application

accordingly having no merit fails and is dismissed. 12. The learned Judge, Fast Track Court No. 8, City Sessions Court, Bichar Bhawan, Calcutta is directed to proceed with the trial of sessions trial No. 1(2) of 2001 (Sessions Case No. 60 of 1999) as expeditiously as possible without granting undue adjournments to either of the parties since this is an old sessions case of 1999.

All interim orders passed earlier stand vacated.

Criminal section is directed to forward a copy of this order to the learned Additional Sessions Judge, Fast Track Court No. 8, Calcutta for information and necessary action.