

(2005) 08 CAL CK 0003

In the Calcutta High Court

Case No : C.R.R. NO. 1424 of 2005 and CRAN No. 1153 of 2005

Rita Paul Bagchi

APPELLANT

Vs

The State of West Bengal and others

RESPONDENT

Date of Decision : 19-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 354

Citation : (2005) 08 CAL CK 0003

Hon'ble Judges : Pravendu Narayan Sinha, J

Bench : Single Bench

Advocate : S.G. Mukherjee and Mr. Samir Kumar Chakraborty, for the Appellant; Ashis Kumar Sanyal and Mr. Samrat Das, for the Opp. Party Nos. 2 and 3; Mr. Rabi Sankar Chattopadhyay, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Pravendu Narayan Sinha, J.—This revisional application u/s 407 of the Code of Criminal Procedure (hereinafter called the Code) has been filed by the petitioner praying for transfer of Case No.G.R.249/2003 from the Court of the learned Judicial Magistrate, 2nd Court Raiganj to any Court of competent jurisdiction in the district of Malda.

2. By moving the revisional application on 19.5.2005 the petitioner obtained interim order of stay of further proceeding of the aforesaid G.R. case and after service of notice the opposite parties 2 and 3 appeared in this Court and filed an application, for vacating the interim order passed by this Court on 19.5.2005 and, the said application has been registered as CRAN No. 1153/2005. Both the revisional application and the application for vacating the interim order were taken up for hearing jointly and, I intend to dispose of the revisional application and the application being CRAN No. 1153/2005 by this order.

3. Mr.S.G.Mukherjee, learned Advocate for the petitioner submitted that Raiganj Police Station Case No. 119 of 2003 dated 28.5.2003 u/s 354 of the Indian Penal

Code (hereinafter called the Indian Penal Code) was started on the basis of First Information Report (F.I.R.) lodged by the petitioner against accused opposite parties 2 and 3. After completing investigation the police has submitted charge sheet against the accused opposite parties. The case is now pending for trial before the learned Judicial Magistrate, 2nd Court at Raiganj. The accused opposite parties outraged modesty of the petitioner within the office premises at Raiganj. She was posted at Raiganj at the relevant time but very recently she has been transferred to Malda. It would be difficult for her to go to Raiganj from Malda at a distance 75 km. to conduct her case. So long she was posted at Raiganj the charge sheet was not submitted nor the case reached the stage of trial. After submission of charge sheet when the case reached the stage of trial, she has been transferred to Malda. She, being a lady, it is difficult for her to go to Raiganj keeping her minor son at Malda house. The accused persons are staying at Raiganj and she apprehend further torture on her and humiliation. The accused persons would also try to create influence on other including witnesses and there would be no fair trial in the said case.

4. Mr.Mukherjee further submitted that the petitioner is receiving threatening from different quarters not to proceed with the case. The accused persons are threatening her through anti-socials in order to prevent her from prosecuting with this case. The interest of justice requires that the instant case should be - transferred from Raiganj Court to Malda Court so that she can prosecute her legal remedy without any fear of her life. Her modesty was outraged inside the office by her senior officials, who are the accused persons and in view of the threats meted out upon her and in view of the present circumstances, the said case should be transferred from Raiganj Court to Malda Court. In support of this contention Mr.Mukherjee cited the decision in Kanta Rani Vs. Savitri Devi and Others, .

5. Mr.Ashish Kumar Sanyal, learned Advocate appearing for the opposite parties submitted that Kaveri Mitra is the boss of the petitioner. Though a lady, the boss of petitioner wrote complaint against the petitioner. The petitioners" parental house is at Raiganj and she was born and brought up at Raiganj. Her father"s house is near to Raiganj Court, and naturally, she has more influence at Raiganj than the accused opposite parties as one of the accused parties is resident of Calcutta and the other is a resident of Kaliaganj. Malda is the matrimonial home of petitioner. Petitioner has other relatives at Raiganj living in her parental home and she has no difficulty at all to stay at Raiganj in her own father"s house. The petitioner is not appearing before the learned Magistrate in spite of receiving summons and the learned Magistrate, who is also a lady, had to issue warrant against the petitioner to secure her attendance in Court for the trial. The petitioner has made baseless allegations and her aim is to harass the accused opposite parties somehow. There is no convincing ground at all for transfer of the case from Raiganj Court to Malda Court.

6. Mr.Sanyal further submitted that on the basis of First Information Report

lodged by the petitioner the aforesaid G.R.Case was started. In a case based on police report the State Administration looks after conducting the case and the petitioner has no role at all to play in conducting the case. She has no duty at all to take steps for attendance o witnesses. State machinery will take steps for production of witnesses in Court at the time of trial on the basis of summons issued by the Court. The application for transfer of the case having no merit should be rejected. In support of his contention Mr.Sanyal referred to the decisions in Gurcharan Das Chadha Vs. State of Rajasthan, , Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani, , Ranjit Singh, Niranjana Singh and Karam Singh Vs. Popat Rambaji Sonavane and Others, , Smt.Rita Barua v. Siddhartha Barua, AIR 2000 SC 3514, Mihir Saha v. State & Ors., (2000)2 Cal LJ 25.

7. After hearing the submission of the learned Advocates of the parties and perusing the revisional application being C.R.R.No./1424 of 2005 and the application for vacating interim order being CRAN 1153/2005, I am of the opinion that the application for transfer of the G.R.Case No.249/2003 from the Court of learned Magistrate, Raiganj to any other Court of learned Magistrate at Malda Sadar has no merit. There cannot be transfer of any case on mere asking by a party. Citing of decisions also do not make out any case in favour of a party unless the principles of law pronounced through the reported decisions are applicable in the facts and circumstances of the present case.

8. It is true that First Information Report was lodged by this petitioner alleging outraging of her modesty inside her Sericulture Office at Raiganj. In the First Information Report, she has made two persons as accused, who are senior officials of same office. After lodging of First Information Report the investigation proceeded and ended in submission of charge sheet. The order sheet of the Court of learned Magistrate produced by the accused opposite parties and annexed in their application being CRAN No. 1153/ 2005 reveals that this petitioner being the main witness is not appearing before the learned Magistrate. The learned Magistrate even had to issue warrant by order dated 24.11.2004 against her for securing attendance so that trial may proceed. Thereafter this petitioner appeared before the learned Magistrate on 16.3.2005 and she was released on P.R.Bond of Rs. 100/-.

9. The learned Magistrate fixed 19.3.2005 as the date of evidence and on that date again this petitioner did not attend the Court. The next date was 6.4.2005 and on that date also the learned A.P.P. filed a petition praying for adjournment. On 6.4.2005 she filed a verified petition before the learned Magistrate expressing her intention to move this Court for transfer of the case from Raiganj to Malda but, strange she did not appear before the learned Magistrate for her evidence and the learned A.P.P. prayed for adjournment. This shows that conduct of the petitioner that she is interested in delaying the trial with some oblique motive.

10. Mr.Sanyal produced before me Voters" list from which it transpired that paternal house of petitioner is at Raiganj. She was born and brought up at

Raiganj. She has other relatives at Raiganj. She being a lady of Raiganj there is no apprehension of threat on her or failure of impartial trial. From the averments of CRAN 1153/2005 it is evident that accused opposite party No. 1 Apurba Chowdhury is a man of Kaliaganj and, the accused of No.2, Tarun Roy is a man of Netaji Nagar, Calcutta - 40. They are the outsiders at Raiganj and are staying at Raiganj for their service. The petitioner was transferred to Raiganj and recently she has been transferred to Malda which is her matrimonial home. In a police case the State Administration and the State machinery looks after the case relating to investigation and trial. The duty and responsibility of bringing witnesses to Court lies with State machinery. It is not a complaint case that the responsibility is of complainant to bring witnesses in Court. Therefore, the allegation of petitioner that it would be difficult for her to travel 75 k.m. away to Raiganj from Malda to conduct her case is not at all a reasonable and cogent ground for transfer of the case. She would be in no difficulty to keep her seven year minor son at her father's house in custody of other relatives at the time of going to Court to give her evidence.

11. Cases are transferred when the wife has to visit the area of husband where the Court is situated in a matter where the relation between the wife and husband is strained and the husband is influential person and has created such a situation where impartial trial is not possible. Cases are transferred where a lady has to reach the Court which is the place of residence of accused persons and she is an outsider and in such a matter the advancement of argument of threat on her can be accepted. In the instant matter no such ground exists in favour of the petitioner for transfer of the case. It has already been observed above that the petitioner was born and brought up at Raiganj. She has her father's house at Raiganj and she has elder brother and elder sister residing at father's house. She would be in comfort at her parental home at Raiganj than the accused persons who are not residents of Raiganj. Considering the entire circumstances this Court finds that petitioner is interested in delaying the trial and she has filed this application only on fanciful grounds which are not for the interest of justice. This Court finds that decisions cited by the learned Advocate for the parties require no elaborate discussion and decisions cited by the learned Advocates for the accused opposite parties are more applicable in this case which show that there is no ground for transfer of the case as prayed for by the petitioner.

12. The entire background and situation makes it clear that there is no reasonable apprehension on the part of petitioner that justice will not be done to her by the learned Magistrate at Raiganj or that, learned Magistrate will not render impartial and fair trial in the said case. Fair and impartial trial cannot be one sided and the Court has to see that both complainant and accused get equal treatment and fair trial. Merely that petitioner is a lady, she is not entitled to obtain any extra advantage from Court. Nothing has been produced before this Court to show that the petitioner was threatened by the accused opposite parties or that the accused opposite parties engaged anti-socials to threat her. There was no General diary to the police in respect of her threat nor she stated before

the learned Magistrate through any application that she was threatened by the accused opposite parties. There is no report of police also to substantiate her allegation that there was constant threat on her by the accused opposite parties to prevent her from prosecuting the case.

13. In view of the aforesaid discussion there is no plausible and convincing ground for transfer of the case and the application filed u/s 407 of the Code by the petitioner is accordingly dismissed. The learned Judicial Magistrate is directed to proceed with the trial as expeditiously as possible and to take coercive measure for securing attendance of this petitioner in Court for her evidence, if she does not appear before the learned Magistrate on the next date of evidence.

14. All interim orders passed earlier vacated. The application being CRAN No. 1153/ 2005 is accordingly disposed of.

15. Criminal section is directed to send copy of the order to the learned Judicial Magistrate, 2nd Court, Raiganj for information and necessary action.