
(1990) 04 AHC CK 0059

In the Allahabad High Court

Case No : Criminal Miscellaneous Transfer Application No. 7388 of 1989

Shamsul Qamar and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-04-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407

Citation : (1990) 1 AWC 717

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : S.P. Singh Raghav, for the Appellant; V.S. Saxena, A.B.L. Gaur and Viresh Misra, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—Shamsul Qamar and others have applied for the transfer of S.T. No. 245 of 1989, State v. Shamsul Qamar and Ors., pending in the Court of Sessions Judge, Bulandshahr to some other nearby Sessions Division.

2. Smt. Farmoodan Begum, who died in Delhi, had made an oral will prior to her death that her dead body was to be cremated in the family grave-yard in village Sakhini P.S. Jahangirabad district Bulandshahr. The dead body of Smt. Farmoodan Begum was brought to village Sakhini for burial on 1-2-1989. Because the family members of Smt. Farmoodan Begum had enmity with the party of Shamsul Qamar, a report was made at P.S. Jahangirabad with the request to provide police protection to the family members of Smt. Farmoodan Begum at the time of burial of the dead body. Consequently, some police personnel were deputed and had accompanied the dead body. While preparation for burial was being made in family graveyard in village Sakhini, the case of the prosecution is, the accused persons armed with fire-arms came there and started firing upon the family members of the deceased. The occurrence did take place in which 10 persons from the side of the first informant and one person from the side of the accused are said to have perished. A report of the occurrence was

lodged and after routine investigation, a charge-sheet was submitted against Shamsul Qamar and 21 others.

3. The allegations of the applicants are that the occurrence was a sensational one and was flashed in news-papers and had generated a lot of interest in the neighbouring area. Because the occurrence took place in presence of Police Armed Guard, the District Administration has now made it a prestige point and they are out to see that the conviction is made in the case. The Pairokars of the applicants are harassed almost on every date fixed in the case and no local lawyer worth the name is willing to appear on behalf of the applicants. The Investigating Officer i.e. Sri. K.N. Shukla, who is still posted in Police Station Jahangirabad as Station Officer, is out to liquidate the applicants and an attempt in this regard was made by him when he sought the presence of the accused persons in the Court of the Sessions Judge on 8-8-1989 although the case was not listed for hearing on that date.

4. On the other hand, the contentions of the complainant are that the applicants are adopting delaying tactics and they are making every effort to prolong the case. There is no danger to the lives of the applicants and it was absolutely false to say that the Pairokars of the applicants were being harassed. A number of Advocates have been engaged by the applicants in Bulandshahr Courts and there was no ground to transfer the case from Bulandshahr Courts.

5. Affidavit, counter affidavit and rejoinder affidavits have been filed in the case.

6. I have heard the learned Counsel (for the applicants Shri. S.P.S. Raghav, learned Additional Government Advocate and Shri. S.N. Misra, assisted by two other Advocates for the complainant.

7. The powers of the High Court u/s 407 Code of Criminal Procedure are to be exercised with caution. Very often recourse to the provisions of Section 407 Code of Criminal Procedure is taken with a view to delay a particular case or harass the opponent and not for the reason that the applicant had some reasonable apprehension that he would not get justice from a particular Court. Transfer of a Sessions Trial outside the Sessions Division should not be done unless there are compelling reasons and interest of justice and fair play demand that the case should not be tried by the Court which had territorial jurisdiction to try the same. Normally, the ordinary process of the trial should be allowed to continue and this includes the place of trial as well.

8. A report from the Sessions Judge, Bulandshahr, was called vide order dated 19-1-1990 on some points. The report of the learned Sessions Judge reveals that five Advocates i.e. Shri Abdul Hakeem, Sri. Sarver Khan, Shri Arjun Singh, Shri R.N. Endley and Shri Gajendra Singh, have filed their letters of engagement on behalf of the applicants during the course of hearing of bail application in the Court of Sessions Judge, Bulandshahr. The report further shows that none of the above five Advocates engaged on behalf of the accused persons has moved any application showing his unwillingness to proceed on behalf of the applicant-

accused persons. The copy of the order sheet of S.T. No. 245 of 1989 shows that on every date on which the case was taken up for hearing, the applicants were represented by Shri Abdul Hakeem. It is no doubt true that in case an accused person is finding it impossible to get the services of a local lawyer in a Sessions Trial, he may have a genuine ground for the transfer of the case outside the Sessions Division, but in the present case it is not the position, inasmuch as five Advocates are still there, who have filed their letters of engagement in the Court of the Sessions Judge, Bulandshahr.

9. It is also true that when eleven persons lost their lives in an occurrence in presence of the Armed Police, the news of the occurrence was bound to be sensational. Local press must have played the news item for days, but the mere fact that the incident was a sensational one would not be the basis for transferring the case relating to an incident from the Sessions Division in which the incident had taken place.

10. It has been strenuously contended that the Pairokars of the applicants were harassed almost on every date and there was danger to the lives of the applicants. This ground can also remain even if the case is transferred outside Bulandshahr. In case some one is harassing the Pairokar, he can continue his alleged activity in that district also where the case may be transferred. Thus, this ground is also not available to the applicants. This is the law and order problem and the applicants can very well approach the higher Police and Executive authorities or even the high ups in the State Government requesting for their safety and to make arrangement that their Pairokars are not harassed. The applicants can also approach the learned Sessions Judge to see that the Pairokars are not harassed in any way when they come to Court on the date fixed.

11. It was also contended from the side of the applicants that Shri K.N. Shukla wanted to eliminate the applicants when he made an effort to secure their presence in the Court compound on 8-8-1989 although no such date was fixed in the case. It is true that 8-8-1989 was not fixed in the case and Shri K.N. Shukla had sent a wireless to Police Line, Bulandshahr to arrange escort for these applicants so that they may appear in Court on 8-8-1989. Shri K.N. Shukla has filed an affidavit denying the allegations of the applicants. He admitted that he had sent a wireless under mistaken belief that 8-8-1989 was fixed in the case. He has stated in his affidavit that 4-8-1989 was fixed in the case for two purposes i.e. hearing on framing of charge as well as for the disposal of bail application. The case was verbally adjourned to 8-8-1989, but subsequently final date was fixed for 21-8-1989. Shri K.N. Shukla, who was present in Court, got the impression that the date was 8-8-1989 and it was for this reason that a wireless was sent to Police Line, Bulandshahr to arrange escort for the applicants so that they may come to Court on 8-8-1989. He has categorically stated that his superior officers had asked him to arrange for the security of the applicants and it was for this reason that he had sent the wireless to Police Line so that armed

escort could be arranged for the applicants. It is also contended from the side of the State that on every previous and future dates armed escort was provided to the applicants for their safety and security. When the applicants were to be provided an armed escort by the Police, it was highly unlikely that Shri K.N. Shukla would have taken any step to liquidate them when the applicants were under Police custody and security itself. Any way, even if the applicants had any grievance against Shri K.N. Shukla's activities as S.O. Jahangirabad, I may point out, that subsequent to the moving of this application for transfer of the case, Shri K.N. Shukla has been transferred from the post of S.O. Jahangirabad. The applicants contend that he has been attached to Police Line while the complainant contends that Shri K.N. Shukla has been placed under suspension. So, whatever may be the present state of Sri. K.N. Shukla, whether he has been attached to Police Line or is under suspension, he has no control over Police Station and he cannot wield any influence whatsoever for the purposes of harassing the Pairokars of the applicants in case the fears of the applicants in this regard were well founded.

12. Before parting with the case, I may also point out that the case was fixed for 7-6-1989 in the Court of Sessions Judge, Bulandshahr and thereafter a number of dates were fixed in the case. On two dates the Presiding Officer was on leave and on three dates the Advocates were on strike. On one date the case could not be taken, as the Presiding Officer was not left with any time due to hearing of the bail application connected with this case. On at least five dates the case was adjourned on the request of the applicants on one or the other ground. The report of the learned Sessions Judge indicates that when the case came up for hearing on 21-9-1989, learned Counsel for the applicants moved an application for adjournment on the ground that he was going out for his personal work and the case may be adjourned to some other date after 28-9-1989. This application was allowed and the case was listed for 3-10-1989. Again on 3-10-1989, learned Counsel for the applicants moved an application that as he had just returned from Bombay, the case may be adjourned for a short time- Consequently, the case was adjourned to 5-10-1989. On 5-10-1989, an application was moved on behalf of the applicant Shamsul Qamar on the ground that he would bring a Counsel from outside the district. Consequently, the case was adjourned to 23-10-1989 and on 23-10-1989 the stay order obtained from this Court was produced before the learned Sessions Judge, In this background, it is quite clear that the contention of the learned Counsel for the complainant that the main object of the applicants was to delay the proceedings was not without force.

13. I, therefore, conclude that no ground for the transfer of the case outside Bulandshahr district has been made out. The application for transfer is rejected and the stay order dated 20-10-1989 is vacated.