

(2013) 05 AHC CK 0385
In the Allahabad High Court

Case No : Criminal Miscellaneous Transfer Application No. 106 of 2013

Smt. Kasmun Nisan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 82 ALLCC 642

Hon'ble Judges : Kalimullah Khan, J

Bench : Single Bench

Advocate : Saurabh Sachan and A.K. Sachan, for the Appellant; Shashank Tripathi, for the Respondent

Final Decision : Disposed Of

Judgement

Kalimullah Khan, J.—Heard learned Counsel for the parties and perused the record, including counter and rejoinder-affidavits, already exchanged. This transfer application has been filed u/s 407 Cr.P.C. to transfer the Case No. 184 of 2012 (State v. Gulam Muhiuddin and others) pending in the Court of Judicial Magistrate, Kanpur Dehat arising out of Case Crime No. 76 of 2009, under sections 498-A, 323, 504, 506, 324 IPC and 3/4 D.P. Act, P.S. Rajpur, District Kanpur Dehat to some other neighbouring district.

2. The ground of transfer in nutshell is that opposite party Nos. 2 to 11 are the accused in criminal proceeding under sections 498-A, 323, 504, 506, 324 IPC and 3/4 D.P. Act, P.S. Rajpur, District Kanpur Dehat pending before the Court of Judicial Magistrate, Kanpur Dehat. The applicant's contention is that prosecution witness could not be produced due to terror of the accused/respondent Nos. 2 to 11 and applicant and her father were threatened for dire consequences. Applicant has given application for protection by police to the Judicial Magistrate 1st, Kanpur Dehat but no action has been taken and police has also not provided any protection to the applicant and her family.

3. The counter-affidavit has been filed denying the aforesaid allegations of

threatening etc. and submitted that applicant by misleading the Hon''ble Court filed the present application which is liable to be dismissed.

4. From the perusal of record it transpires that the relation of applicant wife and her husband-accused opposite party No. 2 is strained and both the parties are resident of Kanpur Nagar. Accused Party is said to mount undue pressure upon the applicant to withdraw the criminal trial in question and threatens her. Complaints made by her to authorities have turned futile.

5. Without making any observation or without expressing any opinion on the truthfulness or otherwise of the allegations and cross allegations made by the parties against each other in the aforesaid facts and circumstances of the case it is in the ends of justice to transfer the aforesaid criminal case from judgeship Kanpur Dehat to some other adjoining district because fair and impartial enquiry or trial cannot be had in this case in judgeship Kanpur Dehat where opposite parties may be in a position to mount pressure upon the applicant through their men and in several other manner. In the affidavit filed by opposite parties in support of their interim stay vacation application they have deposed that if the case is transferred to some other neighbouring district other than district Auraya they would have no objection because the applicant and her father have strong man power in district Auraya and it would be inconvenient for them to appear there.

6. To my mind the concerned criminal trial should not be allowed to prolonge which should be decided at an early date by a Court where neither of the parties may exercise man power in the proceedings in the Court premises. It would be convenient for the parties also that the case may be sent to such a place where the parties may conveniently appear. To my mind, Sessions Division, Fatehpur is on main route of train where parties may reach conveniently from Kanpur Nagar. Let proceeding of 184 of 2012 (State v. Gulam Muhiuddin and others) pending in the Court of Judicial Magistrate, Kanpur Dehat arising out of Case Crime No. 76 of 2009, under sections 498-A, 323, 504, 506, 324 IPC and 3/4 D.P. Act, P.S. Rajpur, District Kanpur Dehat be transferred to the Court of CJM, district Fatehpur who shall dispose of the matter finally in accordance with law.