
(2011) 07 CHH CK 0024
In the Chhattisgarh High Court
Case No : Tr. Pet (Cri.) No. 6 of 2011

Smt. Rakhi Sharma

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 302, 407

Citation : (2012) 1 CGLJ 154

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Somnath Verma, for the Appellant; Avinash K. Mishra, Panel Lawyer, for the State and Shri Shashank Thakur, Advocate, for the Respondents No. 2 to 8, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Shri Prashant Kumar Mishra, J.—This is an application u/s 407 of Cr.P.C. for transfer of Criminal Case No. 6/2011 pending in the Court of Judicial Magistrate First Class, Raipur to a Court of competent jurisdiction at Pendra or Bilaspur. The applicant is the wife of respondent No. 2 Viprav Sharma, their marriage took place on 06/02/2010, however on account of marital dispute and alleged commission of cruelty an F.I.R. was lodged on Crime No. 355/2010 with Police Station Purani Basti, Raipur. On completion of investigation charge-sheet has been submitted and the above said trial is pending.

2. Learned counsel for the applicant would submit that the respondent No. 2/ husband is a practicing Advocate and one of the accused namely Smt. Simpal Sharma, the respondent No. 7, is posted as A.D.P.O. at Raipur. Dr. Nagendra Sharma is a practicing Advocate at Durg and Mrs. Shilpa Sharma is a Professor in law faculty at Chhattisgarh College. Her husband is a Professor with D.P. Vipra College, Raipur and as such all the accused persons are influential person and are in a position to influence the trial. The following statement has been made in para 1 of the application:-

(1).....All the non-applicants are influential persons. They have high approach among the Government and authorities as well as in judiciary also".

3. In para 8 yet again statement has been made that the accused persons told the applicant that the judiciary, prosecution department and the police of Raipur division are under their influence. With these balled statement the applicant apprehends that she may not get fair trial in the Court at Raipur.

4. On the other hand, learned State counsel as well as learned counsel for respondents No. 2 to 8 have opposed the prayer for transfer on submission that the apprehension is ill founded, imaginary and fanciful. They would submit that allegations have been made against every establishment without elaborating or providing necessary ingredients and details of such allegation. Learned counsel for respondents No. 2 to 8 has further submitted that by an order passed on 4th July, 2011 the trial Magistrate has allowed prayer made by the applicant u/s 302 of Cr.P.C. to assist the prosecution and two Advocates of her choice have been permitted to appear in course of trial and assist the prosecution. Thus, learned counsel would submit that the apprehension regarding dilution of the case of the prosecution by the District Prosecution Office, Raipur no longer subsists because the Lawyer engaged by the applicant would always be attending the hearing and pointing out any leniency shown by the prosecution agency.

5. Learned counsel for the applicant has relied on judgment reported in the matter of Chidipirala Narayana Reddy Vs. State of A.P. 2003 Cr.L.J. 1642 and Ku. Bhawna and another Vs. State of M.P. 1998 Cr.L.J. 3256 in support of his submission.

6. This Court has heard learned counsel for the parties at length and has perused the papers available on the record of the Court. On perusal of the application it appears that only balled, half baked and laconic statement/ allegation about the accused persons being influential and in a position to approach the authorities including the judiciary, have been made. Allegation of threat extended by the accused persons have also been made however, it has not been disclosed as to whether any police complaint in this regard has been made by the applicant.

7. In the matter of Ratan Das Vs. State of West Bengal, it has been held that a party either complainant or the accused cannot be allowed to have forum of his choice and a transfer application cannot make unfounded charges.

8. In the matter of Sukh Das and Others Vs. State of Rajasthan and Another, it has been held that transfer of a case from one Court to another indirectly impinges on the competence and integrity of the Judge from whom the case is sought to be transferred and that mere presumption or possible apprehension are not sufficient therefor and further that only good and sufficient grounds, clearly set out in order, may justify the transfer.

9. In view of the above legal position and keeping in view the fact that the allegation made by the applicant in the transfer application do not divulge

apprehension in detail and are not substantiated with particulars, it appears mere apprehension and more so when no complaint has been lodged by the applicant regarding threat let out to her by the other side. It is also to be seen that on the application of the applicant u/s 302 of Cr.P.C., an order has already been passed allowing two Advocates of her choice to assist the prosecution and thus even the apprehension do not survive for consideration. For all the above reasons, this Court is not inclined to grant the prayer for transfer of case from Raipur to Pendra or Bilaspur. The application is accordingly dismissed.