

(2016) 04 KL CK 0046

In the High Court Of Kerala

Case No : M.F.A. No. 88 of 2015. (Against The Order/judgment In Tr. P (Crl.) 65 of 2015 of High Court of Kerala, Dated 01.09.2015).

Sreejith and Others

APPELLANT

Vs

State of Kerala Represented By The Public Prosecutor.

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407, 407(2)
Kerala High Court Act, 1958 — Section 5(i)

Citation : (2016) 3 ILRKerala 181 : (2016) 2 KerLJ 641 : (2016) 3 KHC 98 : (2016) 2 KLT 682

Hon'ble Judges : P.R. Ramachandra Menon;Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : P.B. Ajoy, Advocate, for the Appellant; Kochumol Koduvath, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J. - The interesting question involved is whether an appeal is maintainable in terms of Section 5(i) of the Kerala High Court Act, against an order of a single Judge, dismissing the petition filed under Section 407 of the Cr.P.C. seeking for transfer of a criminal case pending before a Magistrate's Court to another Magistrate's court in a different district. It is contended as maintainable with reference to the law declared by a Full Bench of this Court reported in 2005(4)KLT 865 (Balan v. Sivagiri Sree Narayana Dharma Sanghom Trust) holding that, appeal is maintainable in respect of an order passed by a Single Judge in exercise of the powers under Section 24 of the CPC (similar power for transfer), which principle is sought to be applied in the given case as well.

2. The basic facts required for effective adjudication of this case are that, the appellants were proceeded against by the police, registering as many as 27 crimes in different police stations in the five northern districts of Kerala-namely

Kasaragodu, Kannur, Wynad, Kozhikode and Malappuram, involving the offence of theft under Section 379 IPC read with Section 34 therein. The case of the appellants is that they are totally innocent and are working in various capacities as bus drivers, bus conductors and door checkers in the buses plying in the routes Ernakulam-Thodupuzha and Ernakulam-Idukki; and that they find it extremely difficult to appear before the concerned courts in connection with each case on different dates, seriously affecting their livelihood; besides causing such other hardships. In the said circumstance, they filed petitions for transfer of the concerned cases pending before the Judicial First Class Magistrate's Court, Koothuparamba to the Chief Judicial Magistrate's Court Ernakulam or Chief Judicial Magistrate's Court, Thodupzha, by way of different Transfer Petitions (Crl.). In the instant case, it was in respect of C.C.No.1793 of 2013 (arising from Crime No.737 of 2013 of Koothuparamba Police station). The above petition, along with similar petitions, such as Tr. P. (Crl.) Nos. 66 and 68 of 2015(in respect of different cases/crimes) were considered together and the learned single Judge, vide order dated 01.09.2015 declined interference, holding that it would not be just and convenient in the interest of justice to allow the relief. Accordingly, the Transfer Petitions were dismissed; however leaving it open to the petitioners to move the concerned court for the benefit of Section 219(1) of the Cr.P.C., i.e. to club three crimes together, if they have arisen within the preceding 12 months, as specified. The said order is under challenge in this appeal, mainly contending that the actual facts and circumstances have not been adverted to by the learned single Judge and that no reason has been stated in the order, which hence is liable to be intercepted by this Court.

3. Before examining the merits of the case, it has become necessary to consider whether the appeal itself is maintainable in view of the doubt expressed by the Registry noting the defects. The appeal was directed to be numbered as per the order dated 30.11.2015 in view of the ruling of the Full Bench cited on behalf of the appellants in the decision reported in (2005 (4) KLT 865) (cited supra), however making it clear that all issues including the maintainability will be considered in the due course.

4. Heard the learned Counsel for the appellants as well as the learned Public Prosecutor at length, both on the question of law and on facts/merits.

5. The learned counsel for the appellants points out that Section 5(i) of the Kerala High Court Act confers general power of appeal against the verdict passed by a learned Single Judge in its original jurisdiction. The transfer petitions filed by the appellants/petitioners is of such nature, as the power to transfer a criminal case pending before a Magistrates' Court in a district to another Magistrate's Court in a different district is exclusively conferred upon the High Court. As such, the power being exercised by the learned Single Judge in the said circumstance in a Transfer Petition is the power of "Original" Jurisdiction, which is not of "supervisory" or "revisional" in nature. Similar power under Section 407 of the Cr.P.C. is stated as available under the CPC as well, by virtue

of Section 24 and it was after considering the said provision, that a Full Bench of this court (as per the decision cited supra) has held that an order passed by the Single Judge in a Transfer Petition preferred under Section 24 of the CPC is an order in exercise of "original jurisdiction" and hence is appealable under Section 5(i) of the Kerala High Court Act. There is absolutely no difference between the exercise of the power by the learned Single Judge, when it comes to a criminal case under Section 407 Cr.P.C., and hence, the principles laid down by the Full Bench as above are to be applied in the present case as well; which forms the crux of the contentions.

6. The learned Counsel for the appellants submits that there is no bar or prohibition against any such appeals in the Cr.P.C. and that a Division Bench of this Court as per the decision reported in 2000 (3) KLT 301 (Narayana Reddiar v. Rugmini Ammal) has held that an appeal will lie to the Division Bench under Section 5(i) of the Kerala High court Act, even against an interim order passed by a single Bench, under Section 340 of the Cr.P.C. directing initiation of the proceedings. The Bench has observed that even though the right of appeal conferred under Section 341 of Cr.P.C. does not provide for appeals, it cannot be said that the appeal does not lie under Section 5 of the Kerala High Court Act, i.e. when an alternative provision is available under a different statute. Reference is also made to the verdict passed by another Division Bench, reported in 1971 KLJ 421 (Karakkat Kumaran Raman alias Kavalappara Kottarathil Kunhikuttan Unni alias Mooppil Nair v. Sathyanathan Unni Nair and ors.), holding that a petition under Article 228 of the Constitution of India for withdrawing a proceeding from a lower court to the file of the High Court is an "original proceeding" falling within Section 5 of the Kerala High Court Act for the purposes of appeal to a Division Bench.

7. The relief sought for is vehemently opposed by the learned Public Prosecutor, pointing out that the idea and understanding of the appellants as to the scope of the relevant provisions of law and the ratio of the decisions mentioned above is thoroughly wrong and misconceived. Referring to a decision rendered by a Division Bench of this Court in 1957 KLT 1221 (Ouseph v. Pylee) explaining the meaning of the words "in exercise of original jurisdiction" as to the scope of appeal and that of another Division Bench reported in 1968 KLT 485 (Manual v. Revenue Inspector) and yet another Division Bench in 1970 KLT 941 (Sreedhara v. Jawala Prasad Gupta and others) and still another Division Bench reported in 1972 KLT 7 (S. Narayanaswami v. Padma), it is contended that an order of the nature as involved herein passed by the learned Single Judge is not an order in exercise of "original" jurisdiction, but a "supervisory" one; and hence that no appeal is maintainable under Section 5(i) of the Kerala High court Act. Reliance is also sought to be placed on some observations made by a Constitution Bench of the Supreme Court reported in AIR 1988 SC 1531(I) (A.R. Antulay v. R.S. Nayak and another).

8. So as to resolve the issue, reference to the relevant provisions of law, both

under the Cr.P.C. and CPC is necessary, which hence are extracted below:

Section 24 of the CPC:

"24. General power of transfer and withdrawal-(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, -

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this Section from a Court which has no jurisdiction to try it."

Section 407 of the Cr.P.C.

"407. Power of High Court to transfer cases and appeals:

(1) Whenever it is made to appear to the High Court

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

- (b) that some question of law of unusual difficulty is likely to arise; or
- (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-
- (i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;
- (ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;
- (iii) that any particular case be committed for trial to a Court of Session or
- (iv) that any particular case or appeal be transferred to and tried before itself.
- (2) The High Court may act either on the report of the lower Court or on the application of a party interested, or on its own initiative; Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.
- (3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.
- (4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7)
- (5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.
- (6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose: Provided that such stay shall not affect the subordinate Court's power of remand under Section 309.
- (7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may

consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

9. After considering the scope of Section 24 of the CPC and after analysing the same in the light of various judicial precedents, a Full Bench of this Court, as per the decision cited supra, has held that an order of transfer could be made under Section 24 CPC under two circumstances, i.e. "on application" of the party as well as "suo motu". The Bench held that, if it is based on an application of the party, it is essential that notice of hearing has to be given to both the sides; whereas in the latter case, i.e. if suo motu, no such notice is necessary. It was accordingly held that, in the case of an order passed on an application of a party, it is to be regarded as an order passed in exercise of "original" jurisdiction, which could be pursued further in appeal; whereas in the latter case, i.e. in a suo motu proceedings, it is in exercise of the "supervisory" power, where appeal is not maintainable.

10. If the above reasoning is applicable to the case in hand, prima facie it may appear that the present order under challenge, though under Section 407 of the Cr.P.C., having been passed "on application" of the party, is to be regarded as an order passed in exercise of the original jurisdiction; upon which appeal is maintainable under Section 5(i). The question is whether the dictum laid down by the Full Bench as such is applicable to the case in hand. Here comes the distinctive nature of the provisions under Section 407 of the Cr.P.C.

11. As evident from Section 407 Cr.P.C, it can be seen that the power can be exercised by a single Judge of this Court under three different circumstances:

i) on the basis of the report of the subordinate courts;

ii) on application of the parties suo motu.

There is no dispute to the fact that, in a case involving an order based on the report of the subordinate court or if it is suo motu, it is in exercise of the "supervisory" power and as such, no appeal is maintainable, even if the dictum laid down by the Full Bench is held as applicable. Then the point is, whether it will fit into the slot, if it is based on the application by any of the parties concerned.

12. On comparing the provisions both under the CPC and the Cr.P.C. (i.e. Section 24 of the CPC and 407 Cr.P.C), it is quite evident that the provisions are not in pari materia; though the power conferred is to facilitate transfer in the given facts and circumstances. It is true that power is conferred both on the District

Court/Sessions Court and High Court in respect of civil proceedings and criminal proceedings to the effect that, if the transfer is sought within the district, it is to be exercised by the District Judge/Sessions Judge and if it is inter district, it has to be made by the High Court.

13. Section 407 of the Cr.P.C. consists of sub sections (1) to (9) with provisos, which deals with different turn of proceedings, so as to meet the circumstances as envisaged therein. The "proviso" to sub-section (2) of Section 407 Cr.P.C., clearly stipulates that, no such petition can be entertained by the High court, unless the party who makes an application to transfer a case from one Magistrate's court to another in a given Sessions Division has approached the concerned Sessions Court and obtained an order of rejection. Under such circumstance, an order, if at all to be passed by the High Court in exercise of the powers under section 407 Cr.P.C. can only be "supervisory". It may appear to be in the nature of original proceedings only in the left over circumstances, i.e., if the transfer is sought for from a Magistrate's Court in one district to another Magistrate's court in a different district, which power can be exercised only by the High Court. The power that is being exercised by the High Court under Section 407 Cr.P.C. is the same under both the circumstances and considering the scheme of the provisions, even though the proceedings in the latter case may appear to be of original in nature, it can only be regarded as supervisory in nature, as there is no difference between the power that is being exercised, applying the same provision in the two different contexts. The said stipulation under the "proviso" to sub-section (2) of Section 407 Cr.P.C., insisting to file necessary proceedings before the concerned District Court/Sessions Court is not available or exists under Section 24 C.P.C.

14. Coming to the case laws, as mentioned already, with reference to the provisions of the High Court Act, 1125 (TC) meaning of the words "in exercise of the original jurisdiction" and the scope of its insertion have been examined by a Division Bench of this Court. As per the verdict in 1957 KLT 1221 (Ouseph v. Pylee), it was held by the Bench that the said words were inserted for restricting the appeals to orders passed by the High Court, in the matters of which it is seized as a court of first instance. The contention raised by the appellants was that the section speaks of orders passed in exercise of original jurisdiction, to signify nothing more than the original orders as distinguished from the appellate orders; and in that view, an order granting an adjournment or awarding cost in an appeal also would be an order passed in exercise of original jurisdiction. The said proposition was repelled and the scope of the provision was explained as contained in paragraph 3 of the said verdict, as extracted below:

"The term, "original jurisdiction", is well-understood and comprises those matters of which the court takes cognizance as a court of first instance. The cause in which the order how sought to be assailed was passed, viz., the appeal, was a cause of which this court took cognizance in exercise of its appellate and not of its original jurisdiction. and it seems to us apparent that an interlocutory order

passed in such a cause is an order passed in exercise of appellate and not of original jurisdiction. It is Section 107 (2) of the Civil Procedure Code that enables a court seized of an appeal to pass orders of this nature, and a perusal of that section which says that the appellate court shall have the same powers as conferred by the Code on courts of original jurisdiction in respect of suits instituted therein, will make it clear that it is in exercise of appellate and not of original jurisdiction that an appellate court makes such an order. Then, if we turn to Section 106 of the Code, we find that it provides for an appeal to the High Court from an order of this nature made by a court (not being an High Court) in exercise of appellate jurisdiction. Under Section 104 (2), no appeal lies from an appellate order, and the provision made in Section 106 can only be in respect of orders like the present order, viz., what might be called an original order made in an appeal. Such an order is there described as an order made in the exercise of appellate jurisdiction; and it must have been for the specific purpose of excluding such an order passed by a Single Judge of the High Court from the scope of an appeal to a Division Bench, that Section 21 (ii) (b) of the High Court Act restricts the appeal to orders made in exercise of original jurisdiction. It will be noticed that under Section 104 (2) of the Civil Procedure Code no appeal lies from an appellate order so that the words, "in exercise of original jurisdiction", were unnecessary for the purpose of excluding appeals from appellate orders. On the other hand, under Section 106 of the Code, no forum is prescribed for an appeal from an original order made by a High Court in an appeal before it, and it is obvious that the words in question were inserted for the purpose of restricting appeals to orders passed by the High Court in matters of which it is seized as a court of first instance-so far as this High Court is concerned in exercise of what is usually called its extraordinary Original jurisdiction."

15. A similar issue as involved in the present case, i.e. as to whether any appeal is maintainable to a Division Bench from an order passed by a Single Bench, in an application for transfer of a criminal case had come up for consideration before a Bench of this Court and as per the decision in 1972 KLT 7(S. Narayanaswami v. Padma), it was held that no such appeal would be maintainable under Section 5(i) of the Kerala High Court Act. The said finding was rendered, also after making a reference to the decision of the Division Bench in 1957 KLT 1221 (cited supra) and observing that, as held in the latter case, the term "original jurisdiction" is well understood and comprises those matters, of which the court takes cognizance as a court of first instance.

16. The scope of appeal before a Division Bench, from the judgment of a single judge in exercise of the appellate jurisdiction, in respect of a decree or order made in exercise of original jurisdiction by a subordinate court as envisaged under Section 5(ii) of the Kerala High Court Act was considered by a Division Bench of this Court as per the decision reported in 1968 KLT 485 (Manual v. Revenue Inspector) and observed that the amendment made to Section 5, as per Act 6 of 1966, had to be considered for proper appreciation. After quoting the provision, which was in existence prior to the amendment, the Bench observed

that, from the context it would appear that the word "order" in sub-section(ii) of Section 5 of the Kerala High Court Act was intended to include only an order passed in a suit or civil proceeding and that collocation of the words "decree or order " lends support to this construction.

17. Applying the rule in Heyden's case, as approved by the Apex Court in AIR 1955 SC 661 (Bengal Immunity Co. v. State of Bihar), the reason for making the amendment to understand the meaning of the word "order" in the sub-section, it was observed that the amendment was made to remove the anomaly existed in the pre-amended provision, where there was no provision for an appeal in respect of a decree or order made by a subordinate court in exercise of its original jurisdiction and the existing provision was to provide appeal to Division Bench of two Judges from a judgment of a single judge, in exercise of appellate jurisdiction in respect of a decree or order made in the appellate jurisdiction by a subordinate court, where the judge who passed the judgment declared that the case was fit one for appeal. It was accordingly held that there was no right of appeal under Section 5(ii) of the Kerala High Court Act to a Division Bench. But since the said decision was rendered with reference to Section 5(ii) of the Kerala High Court Act and since the provision sought to be relied on in the present case is Section 5(i) i.e. in respect of an order passed by a single Judge of this Court in exercise of its original jurisdiction, the dictum in 1968 KLT 485 cited by the learned Prosecutor is not having much application as such.

18. An issue had come up for consideration before this Court way back in 1970, as to whether Section 5(i) of the Kerala High court Act could be invoked to sustain an appeal against the verdict passed by a single Judge in exercise of the power under Section 561A of the Cr.PC. The said provision, as it then existed, is equivalent to the present provision available under Section 482 of the present Cr.P.C. The Bench, as per the decision reported in 1970 KLT 941 (cited supra), has held that the power under Section 561A Cr.P.C is in the nature of a revisional power and an order made by a single Judge in exercise of such power is not an order in exercise of original jurisdiction, so as to attract an appeal to a Bench of two Judges under Section 5(i) of the Kerala High Court Act.

19. The observation of the Bench in 1970 KLT 941 as to the nature of the power under Section 561 A (then existing) came up for consideration before another Bench of this Court in S. Narayana Swami v. Padma (1972 KLT 7), when scope of appeal under Section 5(i) of the Kerala High Court Act in relation to application for transfer of a criminal case was considered. As per the said decision reported in 1972 KLT 7(cited supra), the Bench made a reference to 1957 KLT 1221, (cited supra) and explained the meaning of the term "in exercise of original jurisdiction". With regard to the dictum in 1970 KLT 941, it was observed as not necessary for the Bench to express any opinion on the observation and finding of the Bench in the previous case that the power under Section 561A Cr.P.C., was in the nature of revisional power, adding that said observation might be too wide, because inherent power of the High Court may consist of original, appellate,

revisional or supervisory powers and not merely revisional powers. Reliance was sought to be placed on the verdict of the Supreme Court in AIR 1971 SC 218 (*Amitava Das Gupta v. Nath Bank Ltd.*). After making it clear that the correctness of the decision /observation made by the Bench in the previous case i.e. 1970 KLT 941 was not being scrutinised by the Bench, it was held that, for the purpose of the case in hand, it was enough to hold that the power of the High Court to transfer a case from the file of one Magistrate to the file of another Magistrate was not a power exercised by the High Court in its original jurisdiction; even if it may be a power in the nature of an original power exercised by the High Court in its appellate or revisional jurisdiction (though nothing was asserted with regard to the latter part as mentioned therein). In the said case, an application was filed by the party before the High Court for transferring a criminal case pending against him from the file of the court of the District Magistrate, Thrissur to the court of District Magistrate, Kollam, which was considered and dismissed by a learned single Judge, in turn giving rise to an appeal preferred under Section 5(i) of the Kerala High court Act. Thus, the dictum is that, even if the power was exercised by the single Judge "on an application" (not confining the same to an order "suo motu" or an order based on the report of the subordinate court), it was not an order in exercise of the original jurisdiction of the High Court and that no appeal would lie under Section 5(i) of the Kerala High Court Act.

20. As mentioned already, another Bench of this Court, as per the decision reported in 1994 (2) KLT 987 (*Abubacker Kunju v. Thulasidas*), has held that no appeal will lie to a Division Bench under Section 5(i) of the Kerala High Court Act against an order passed by a Single Judge under Section 482 of the Cr.P.C. It was held that there was no reason to dissent from the view taken by the earlier Division Bench in 1970 KLT 941 (*Sreedhara v. Jawala Prasad Gupta and others*) and held that inherent power of the High Court under Section 482 of the Cr.P.C. was "supervisory" in nature . Yet another Division Bench of this Court in *Vysali Pharmaceuticals Ltd. v. S.G.S. Mediom(P) Ltd.* (2001(1)KLT 317) held that, an order refusing anticipatory bail under Section 438 of the Cr.P.C. passed by a single Judge is not appealable under Section 5(i) of the High Court Act. The distinctive character of the provisions of the Cr.P.C. was explained with reference to 1972 KLT 7 and 1968 KLT 485. The judgment was authored by the very same learned Judge, who authored the judgment of the Full Bench in 2005 (4) KLT 865 in relation to the position under Section 24 of the CPC and the right of appeal available under Section 5(i) of the Kerala High Court Act.

21. The gist of the above discussion is that there is black and white difference between the schemes of Section 24 of the CPC and Section 407 of the Cr.P.C. . The decision rendered by the Full Bench in 2005(4)KLT 865 holding that appeal is maintainable under Section 5(i) of the Kerala High Court Act in respect of an order passed by a learned single Judge, invoking power under Section 24 CPC differs much from similar order passed by a single Judge invoking the power under Section 407 of the Cr.P.C. and as such, the said decision is not applicable to the case in hand. On the other hand, the non-availability of any such right of

appeal under Section 5(i) of the High Court Act in relation to an order passed under different provisions of the Cr.P.C. stands asserted and declared by different Division Benches of this Court cited herein before. We are also of the same view and we hold that the power exercised by the Single Judge refusing to transfer the cases from one Magistrate's Court to another Magistrate's Court, in exercise of the power under Section 407 Cr.P.C., is not appealable under Section 5(i) of the Kerala High Court Act. Thus, the question on maintainability of the present appeal stands answered against the appellants.

22. Coming to the merit, this Court finds that the appellants have been arrayed as accused in as many as 27 cases registered against them, by the police, in five northern districts viz. Kasaragodu, Kannur, Wynaad, Kozhikode and Malappuram. The petition was to cause some of the relevant cases to be transferred either to the CJM Court, Ernakulam or to the concerned Court in Thodupuzha. The circumstance under which such power is to be exercised is clearly evident from Section 407 of the Cr.P.C. The offences involved herein are under Section 379 and Section 34 IPC and almost all the witnesses including the mahazar witnesses may be from the said place. Transfer of these cases to some other court so as to suit the convenience of the accused, disregarding the hardships to the witnesses is a matter of concern and it cannot be in the best interest of proper administration of justice. This alone was considered by the single Judge while passing the order under challenge (though not expressed in so many words). The contention of the appellants, that their offer to pay travelling charges to the witnesses was omitted to be considered, does not impress this Court in any manner. Might of the accused, physical or financial, shall never be a matter of consideration in their favour in the administration of justice.

23. We find considerable force in the submission made by the learned Public Prosecutor that any such order enabling the transfer of cases as sought for will only help to undermine the justice and that the accused, who are belonging to the districts of Ernakulam and Idukki, (among whom, the first appellant is stated as the owner of a lorry) and working in different capacities as Driver, Conductor, Door checker in various buses plying in the route Ernakulam-Thodupuzha or Ernakulam-Idukki, may attempt to tamper the evidence and influence the witnesses. We do not intend to express anything with regard to such apprehension expressed by the public prosecutor. It will be enough to mention that, this is not a fit case to consider the request for transfer and that the verdict passed by the learned single Judge is well within the jurisdiction and not assailable under any circumstance. The appeal stands dismissed.