

(2018) 03 GAU CK 0047

In the Gauhati High Court

Case No : Transfer Petition (Crl.) No. 8, 9 of 2015

Sreekanta Dev Sarma

APPELLANT

Vs

Bhola Kakati and 2 Ors.

RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0047

Hon'ble Judges : RUMI KUMARI PHUKAN

Bench : Single Bench

Final Decision : Disposed

Judgement

1. Both the matters being related to same subject matter, taken up together and disposed of by this common order.

2. The two followers of Vaishnavism (Bhakat) namely, Jugal Hazarika and Bhula Kakati, residents of Jorhat, inspired by their Paramguru Srimanta

Shankardev felt highly aggrieved and insulted for publication of two books, by Sri Sree-Kanta Devo Sarma namely, "Sankar Birochit Kirtan

Dharmaputhy Hoyne" and the "Sankar Bibhrant". According to them, the said book has been published in order to hurt the feeling of crores

of people of Assam and it is ill motivated and ill minded which itself is an insult to the highly esteemed religious scripture of Assamese People. feeling

aggrieved and throbbed by insult on the Paramguru Srimanta Shankardev for the objectionable words, language, expression in the books authored by

said Sree Kanta Devo Sarma, both the persons named above lodged two complaints on the same subject matter before the Court of Chief Judicial

Magistrate, Jorhat, Assam and on the basis of which C.R. Case No. 233/2014 U/S 295/ 295A/ 500/ 500B IPC was registered in the Court of Judicial

Magistrate, 1st Class, Jorhat and another C.R. Case No.42/2014 under same section of law registered in the Court of SDJM, Titabor.

3. In both the cases the said accused person Sree Kanta Devo Sarma entered his appearance and released on bail. Subsequent thereto the present

two applications have been preferred for transferring the said case from the Court of Jorhat to the Court of Kamrup, Guwahati on the twin grounds

that the petitioner being an old aged person about 79 years is suffering from various ailments is unable to attend Court at Jorhat, he being a resident of

Guwahati. The next ground for making such transfer prayer is that for proper adjudication of the matter various persons residing in and around

Guwahati will be required to examine various persons as witnesses who have expert knowledge and experience in Assamese Literature, Research

Scholars etc. for their valuable interpretation towards his write up in the book. According to him the said book was written on the basis of his studies

on different books and there is no any personal comment or surmises of the petitioner in the said two books nor he has any intention to hurt the

sentiment of any person or community and however he is ready to beg apology to all concerned.

4. Such a prayer of transfer has been vehemently opposed by the respondent (the two complainants in the aforesaid cases) by filing objection on the

ground that the respondent Bhola Kakati himself is an old person aged 86 years and he is also suffering from various ailments and is unable to attend

Court at Guwahati from Jorhat. That apart, it has been contended that the petitioner failed to make out any proper ground for transfer of the case

from Jorhat to Guwahati. All that has been stated by the petitioner herein that in case of producing witnesses on his part then he has to produce some

witnesses having expertise in the literature and religious books in support of his defence and all these depend on the eventuality of succeeding in the

case by the complainant by necessary evidence. It contends that such a prayer for transfer has been made only on apprehension and speculation,

which is not maintainable. The complainant however has no any objection in case the accused person is represented by his lawyer.

5. The learned counsel for the petitioner has referred the decision of the Honâ??ble Apex Court (2000) 6SCC 204 wherein it has been held that the

convenience of parties including the witness to be produced in the trial also a relevant consideration for deciding the transfer petition. The convenience

of parties does not necessarily mean the convenience of the petitioner alone who approached the court on the misconceived motions of apprehension.

Convenience for the purpose of transfer means the convenience of prosecution, other accused, the witnesses and the larger interest to the society.

6. On the other hand, the learned counsel for the respondent also heavily relied on the decision subsequent to the aforesaid decision as below:

1. (2009) 6 SCC 260 Capitan Amarinder Singh Vs. Prakash Singh Badal.

2. (2012) 4 SCC 217 Rajesh Talwar Vs. CBI and others.

3. (2012) 1 SCC 680 Ashish Chadha Vs. Asha Kumari and another.

In case of Capitan Amarinder Singh (Supra) deals a separate issue regarding transfer of case on the apprehension of miscarriage of justice or bias, of

course same is not the issue before this court. In Rajesh Talwar (Supra) a proposition has been laid down that inconvenience cannot be a valid basis

for transfer of criminal proceeding from one court to another court. Para 46 of the judgment is reproduced below : Jurisdiction of a court to conduct

criminal prosecution is based on the provisions of the Code of Criminal Procedure. Often either the complainant or the accused have to travel across

an entire State to attend to criminal proceedings before a jurisdictional court. In some cases to reach the venue of the trial court, a complainant or an

accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances, in order to depose before the

jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court

conducting the criminal trial is accepted, the provisions contained in the Criminal Procedure Code earmarking the courts having jurisdiction to try cases

would be rendered meaningless. Convenience or inconvenience are inconsequential so far as the mandate of law is concerned. The instant plea,

therefore, deserves outright rejection.

7. In Ashish Chadah (Supra) speaks that transfer order merely on the say-so of a party have a demoralizing affect on the trial of the court. Unless a

very strong case based on concrete material is made out, such transfer should not be ordered.

8. Turning to the matter in hand and the objection so raised by the respondent it transpires that trial of the case not yet proceeded and immediately

after appearance of the accused petitioner the prayer for transfer has been made

on the ground of inconvenience of the accused petitioner as stated above. Even if we go by the comparative assessment of both the parties it would reveal that the one of the complainant Bhola Kakoti is also an old aged person about 86 years at the time of filing the case in the year 2014 and the present accused petitioner is also stated to be 79 years of age at the time of filing of the case and status of both of them are equal. Both of them are also suffering from several ailments as per the medical document annexed. On the other hand, the complainant obviously opt for trial in his place of abode and journey from Jorhat to Guwahati which is around 7 hours is not feasible for a person with such old age and ailment.

9. On the next the question of adducing evidence on the part of accused petitioner has not yet come and will be the dependent on the trial. The case of the complainant (respondent herein) cannot be transferred on merely on the apprehension of the accused petitioner that it may cause inconvenience of his witnesses supposed to be examined in his case. The accused petitioner has not also given the list of witnesses with all particulars in support of his contention. So many legal as well as literal luminaries still present in the district of Jorhat as the main office of Assam Sahitya Sabha is situated in Jorhat district itself. It cannot a case that all the prospective witnesses only belong to Guwahati. The provision of Section 407 provide as follows:

Section 407: Power of High Court to transfer cases and appeals- whenever it is made appear to the High Court-

1. (a) that a fair and impartial enquiry or trial cannot be held 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 court or will tend to the general convenience of the parties all witness or is expedient for in ends of justice, It may order transfer of such cases to any other court of competent jurisdiction.

10. Obviously, on the basis of any of the appropriate ground, a case may be transferred from one place to another keeping in view of the general convenience of the parties. But in the present case as has been discussed above both the parties will face inconveniences if the transfer of cases is allowed. Moreover, petitioner failed to make out a strong ground for transfer of the case from the jurisdictional court of Jorhat to the court of

Guwahati.

11. Having regard to all above factual aspects as well as the legal pronouncement, this court is the opinion that the prayer for transfer of the case is not justifiable and accordingly both the petitions are dismissed with a direction to the Ld. Trial Court to proceed with the trial expideously. The Ld.

Court shall allow the petitioner to be represented by his counsel if so, prayed for by him, considering his age and ailment etc. earlier stay orders stand vacated.

12. Both the petitions stand disposed accordingly.