

(1996) 03 CAL CK 0017
In the Calcutta High Court
Case No : Criminal Rev. No. 8 of 1996

State (C.B.I.)

APPELLANT

Vs

Klichine Aleksandre and Seven Ors.

RESPONDENT

Date of Decision : 15-03-1996

Acts Referred:

Arms Act, 1959 — Section 25, 27
Constitution of India, 1950 — Article 139A, 21, 22
Criminal Procedure Code, 1973 (CrPC) — Section 154, 407, 407(1)
Penal Code, 1860 (IPC) — Section 121, 121A, 122, 123

Citation : (1996) 2 CALLT 61

Hon'ble Judges : Asish Baran Mukherjee, J

Bench : Single Bench

Advocate : P.R. Ray, Prantosh Mukherjee and Saibal Mondal, for the Appellant; Alope Kr. Sengupta, Sandip Ghosal and S. Singla for Accused Nos. 7 and 8, S.P. Talukdar, S.K. Mallick, J. Banerjee and A. Momem for Accused Nos. 9 to 14, Sekhar Basu and Jaymalya Bagchi for Accused Nos. 15 to 19, Arup Chatterjee, Anjan Pal and G. Sarkar for Accused Nos. 20 and 21, Neeiotpal Ghosh, for Accused Nos. 22 to 24 and S.S. Ray, Milan Mukherjee and S. Ganguly for Accused No. 25, for the Respondent

Judgement

Asish Baran Mukherjee, J.—The revisional application arises out of an application u/s 407(1)(c) Cr.P.C. for transferring Case No. G.R. 1542 of 1995 from the Court of learned S.D.J.M., Purulia to the Court of learned Chief Metropolitan Magistrate, Calcutta. The petitioner is the C. B. I. Their case in short is that Jhalda P. S. Case No. 152 of 1995 u/s 121/121A/122/123 I.P.C. and u/s 25/27 Arms Act was started on 18.12.95 on the basis of a suo moto F. I. R. by O. C. of Jhalda Police Station in connection with dropping of huge quantity of sophisticated arms and ammunitions from the aircraft in the night of 17/18.12.95. In consequent of Notification dated 27. 12.95 of the State of West Bengal and Notification of Central Government dated 28.12.95, the C.B.I, took over the invention of the said P.S. Case and a Criminal case was registered in the office of the C.B.I, in Calcutta accordingly.

2. The said aircraft dropping the arms was made to land at Sahara Airport at Bombay and six foreign nationals who were the Crew members and were found in the aircraft were arrested on 23.12.95. They were produced before the Court of Metropolitan Magistrate at Bandra, Bombay on 24.12.95 and was remanded to police custody till 1.1.96 with direction to produce them before the S.D.J.M. at Purulia. During investigation two other accused were arrested at New Delhi and produced before the Metropolitan Magistrate, Patiala House at New Delhi. They were remanded to police custody till 30.12.95 with the direction to produced them before S.D.J.M., Purulia. The accused persons were accordingly produced before S.D.J.M., Purulia on the relevant dates when they were given to further police remand for periods up to 6.1.96 for some of the accused and up to 8.1.96 for the rest, the aircraft has also been seized and kept at Sahara International Airport at Bombay.

3. Due to serious nature of the case high security arrangements are to be taken at the production of the accused persons to be taken to Purulia from Calcutta. Movement of the accused persons from Calcutta to Purulia is risky in the interest of the foreign nationals also, the case is of serious nature having national and international ramifications and investigations is not only confined to Purulia but different parts of the country namely Varanasi, Calcutta, Madras, Delhi, Bombay etc. and also outside country like Bulgaria, Pakistan, Thailand, Britain, Singapore, Latvia and other places. Purulia is far off from Calcutta and it takes a lot of time to cover the distance. There is no airport near Purulia but the nearest one is situated in Calcutta. Of the eight (8) accused persons arrested so far, six (6) are foreign nationals and two (2) are residents of Delhi and as such their interest will not be hampered if the case is transferred to Calcutta. Involvement of national and international organisations cannot be ruled out for which top security arrangements are required to be made for keeping the accused persons in judicial custody which could be provided in Calcutta. Accordingly, the present application was made on 5.1.96. The application was moved before the Hon''ble Chief Justice on 5.1.96 when it was assigned to the Division Bench presided over by the Hon''ble Chief Justice and Shri Mukul Gopal Mukherjee, J. After giving initial directions for remand of the accused on a specified dates the matter was directed to be replaced before the regular Bench on 17.1.96. On 17.1.96 the matter was placed before the Division Bench presided over by Shri S.K.Mukherjee, J. and Shri Rabin Bhattacharyya, J. Direction was given to place the matter before the Bench to be presided over by a single Judge taking up revisional applications. Accordingly, the matter was placed before this Bench on 22.1.96. At a subsequent stage an application was filed by the C.B.I, for addition of parties as it was found during hearing on 22.1.96 that apart from the 8 accused namely in the application, there were other accused persons also arrested in this case and subsequently enlarged on bail. Accordingly, direction was given to add them as parties and supply copy of the revisional application on them. Accordingly, names of seventeen (17) other accused were added as opposite party making the total number of accused O.P.s at twenty five (25).

4. It was found in course of hearing but before the revisional application was heard on merit that six(6) foreign nationals were un-represented. As such, opportunity was given to them to inform this Court whether they would like to be represented by Lawyers or whether they would like to be heard in person. The six (6) foreign nationals informed the Court In writing that they would like to be heard in person. Accordingly, direction was given on the Superintendent, Presidency Jail, Calcutta to produce all the accused persons in custody numbering nine (9) on 15.2.96. On that day the six (6) foreign nationals who figured as accused were examined through an interpreter namely Shri Nishikesh Banerjee, a retired senior interpreter of this Court who was specially appointed by this Court and their submissions were noted. The other three(3) accused who were at that stage in Jail appointed Lawyers.

5. Thereafter, the learned Advocates representing different accused were also heard at length on different dates. Before taking up consideration of the submissions made by them it is necessary to mention the options expressed by the accused persons either in person or by their learned Advocates regarding the venue of the case pending against them.

6. Of the six(6) foreign nationals only one, namely Peter Bleach is English knowing and in answer to the query made by the Court he is stated that he wanted the case to be transferred to Calcutta and the reason given by him is that he would be in a position to obtain legal assistance in that case. The remaining five(5) foreign nationals who appeared to be of Russian Origin and whose names are 1. Klichine Aleksandre, 2.Caida Moleg, 3. Moskvitine Igor, 4. Timmermat Igor, 5. Antimenko Evguemi being interrogated with the help of the interpreter wanted the case to be transferred to Calcutta and the reason which have been assigned are the distance between Calcutta and Purulia, that the condition in Calcutta is normal which is not so at Purulia, that they would be in a position to contact the consultant and would get legal assistance. They also slated that they could express their intention and difficulties before the Court only on the date of their production in this Court when they for the first time get the assistance of an interpreter to convey their feelings and necessities to the Court.

7. The remaining three (3) accused who at the relevant times were in the custody but were represented by Lawyer namely, accused Nos. 22 to 24 also supported transfer to Calcutta. Accused Nos. 7 and 8 who were enlarged on bail by transferred to Calcutta. Thus, altogether eleven(11) of the accused persons including the six(6) foreign nationals wants the case to be transferred to Calcutta. Whereas accused Nos. 1 5 to 19, all foreign nationals, who were on bail, as also accused Nos. 9 to 14, accused Nos. 20 to 21, all of whom are Indian Nationals and are on bail opposed transfer. Accused Nos. 25 remained non-committal on the point of transfer.

8. In the aforesaid background it is necessary to dispose of the revisional application by determining whether the said case should stay at Purulia or to be transferred to Calcutta. Some legal objections had been taken by the learned

Advocates who represented the accused persons opposing transfer. It has been argued that the case being at the investigation stage, this Court has got not authority to transfer the case from Purulia to Calcutta. This legal objections in my opinion is to be disposed of first of all before taking up the other point raised by the learned Advocates. The transfer in this case has been pleaded in accordance with the Section 407(1)(c) Cr. P. C which speaks of transfer under this section where it required by any provision of Cr. P. C. or will tend to the general convenience of the parties of witnesses or is expedient for the ends of justice. In such contingencies a case or appeal may be transferred from a Criminal Court subordinate to this Court to any other Criminal Court of equal or superior jurisdiction.

9. It has been argued on the basis of some reported decisions that a case at the investigation stage cannot be transferred. Reliance has been placed on a case reported in 1987, SCC(Criminal) 221. This was an application made under Article 139A of the Constitution which deals with the power of the Supreme Court to transfer the case pending before one or more High Courts when there are substantial question of general importance. In such cases the Supreme Court may withdraw such case or cases from the High Court and dispose of the same by itself. The fact of the case under consideration is not available from the reporting but it appears that there was an attempt to transfer a case pending at the investigation stage. The prayer for transfer was rejected with liberty to renew the prayer after submission of charge sheet. As I have said earlier the facts are not available from the reporting but from the reporting as it appears we get that an attempt was made to withdraw a case from one Court to the Supreme Court in accordance with Article 139A of the Constitution, when as a matter of fact in the absence of the charge-sheet, it was not clear whether there was such a case to be transferred to Supreme Court for decision. In my opinion, this is clearly distinguishable, since the scope of Article 139A of the Constitution and the scope of Section 407 Cr.P.C. are not identical. Reliance has been placed in another case reported in Dr. Ram Chander Singh Sagar and Another Vs. State of Tamil Nadu and Another, an application was made u/s 406 when it was held that the said section contemplates transfer of a proceeding from one Court to another but it does not clothe the Court with power to transfer investigation from one Police Station to another, simply because the first information or remand report is forwarded to a Court. It was however, directed that in case the accused is to appear in a far off Court during investigation stage it is for him to move that Court for appropriate order. With this the matter was disposed of. Here also the facts are wanting but it is clear that an attempt was made by invoking the power of the Supreme Court for transferring investigation of the case. The case reported in Joginder Kumar Vs. State of U.P. and others, also relied on by one of the learned Advocates opposing transfer does not in my opinion appeared to be relevant in our case. This practically deals with the fundamental rights given under Article 21 and 22 of the Constitution. Reliance has also been placed by the learned Advocate representing accused Nos. 9 to 14 opposing the transfer on

Baljit Singh and Another Vs. State of Jammu and Kashmir and Others, where it has been held that convenience of the witness alone cannot be a ground for transfer of a case from one Court to another.

10. On the other hand, the petitioner has relied on a number of decisions in support of his contention that there is no legal bar in transferring the present case. Reliance has been placed in a case reported in Bhimappa Basappa Bhu Sannavar Vs. Laxman Shivarayappa Samagouda and Others, where in the word "case" has been interpreted. It is held that the word "case" is not defined by the code but its meaning is well understood in legal circles. In criminal Jurisdiction it means ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. In other context the word may represent other kinds of proceedings. But in the context of the sub-section it must mean a proceeding which at the end results either in discharge, conviction or acquittal of an accused person". The above decision is with regard to interpretation of Section 417 of the old code which corresponds to Section 378 of the New Code. Thus for our case the word "case" means a proceeding for the prosecution of a person alleged to have committed an offence. In my opinion the present proceeding is a case within the meaning of the aforesaid interpretation. Reliance has been placed on another case reported in Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani, where the principles of transfer has been stated thus "assurance of a fair trial is the first imperative of dispensation of justice and central criterion for the Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like many grievances. Something more substantial, more compelling, more imperiling from the point of view of public justice and its attendants involvement is necessary if the Court is to exercise the power of transfer". The other case relied on is reported in P.C. Gulati Vs. Lajya Ram Kapur and Others, when a case pending before a Magistrate was transferred by the High Court to the Court of Additional Sessions Judge. The said transfer was upheld as illegal.

11. After giving my careful consideration to the decisions referred to by the learned Advocates and after considering the scope of Section 407(1)(c) Cr. P. C, I am of opinion that there is no legal bar in transferring the present case from the Court of one Magistrate to the Court of another Magistrate.

12. In view of the aforesaid finding, let us consider whether in the present case such transfer is expedient in the interest of justice. The submissions on behalf of the petitioner is that the case is of national as well as international importance involving Indian as well as foreign national and at least six(6) foreign nationals are in custody and in the interest of safety and security of this personnel and fair investigation, the case need to be transferred to Calcutta. Emphasise has been given on the distance between Calcutta and Purulia. It has been argued that having regard to the facts of the case the Jail at Purulia is not secured enough for keeping the foreign nationals there. At the same time, it is also risky and dangerous to take this accused from Calcutta to Purulia at an interval of fortnight

in course of remand. It is also submitted that investigation of the case is not confined to Purulia alone but different places in the country and also abroad and as such Calcutta having the facility of an International Airport is convenient for such investigation.

13. The learned Advocate representing accused Nos. 7 and 8 while supporting transfer of the case to Calcutta gave emphasis on the security aspect of the accused involved. The learned Advocate narrated the unruly scene while the accused persons were produced in Purulia. It is submitted that police have to resort to Lathi Charge to keep at bay the mob pelting stones. He also pleaded that the accused persons on bail should be exempted from personal appearance till submission of charge-sheet. The learned Advocate representing accused Nos. 15 to 19, mainly confined his argument to the maintainability of the transfer application. The learned Advocate representing accused Nos. 9 to 14 while opposing transfer complaint that as because the C.B.I, has also a Camp Office at Purulia the accused persons on bail should not be asked to report their attendance in Calcutta to the C.B.I, authorities as they are required to do in terms of the order of the learned C.M.M. The learned Advocate representing accused Nos. 20 to 21 also opposed transfer and objected to some technical objection regarding the affidavit accompanying the revisional application. The learned Advocate representing accused Nos. 22 to 24, supported transfer on the ground of the security of the accused and also stressed that the relations and also the lawyers representing the accused are more safe in Calcutta than in Purulia. The learned Advocate representing the accused No. 25 is non-committal about transfer. The learned Advocate also submitted that his client in whose favour there was a prayer from Police for discharging the accused was still pending. In this connection it may be mentioned that on a scrutiny of the L.C.R. it appeared to me that the said prayer of discharge of accused No. 25 was rejected by the learned S. D. J. M., Purulia and as such instead of discharge he was released on bail.

14. After giving my careful consideration to the submissions of the learned Advocates representing different sides, I come to the conclusion in the interest of justice and general convenience and also in the interest of the case itself the same should be transferred to Calcutta. While discussion the different stands taken by the accused, I have shown that of all the nine accused in custody at the relevant time when the matter was heard, six are foreign nationals and they are of un-represented till that day when the argument was over. Five of them are not English knowing and an interpreter is absolutely essential as otherwise they cannot communicate their feelings or necessities to the Court in course of their production ori remand. It is true, that they are not Indian citizens, nevertheless, the principles enshrined in our constitution dealings with fundamental rights specially Article 21 of the Constitution must apply to their case and they should have the advantage of taking legal advised of their own choice during the course of the proceeding. They have stated in un-equivocal terms that except when they were produced before this Courts they did not get the assistance of an

interpreter ever. They stated that in the absence of making contact with their consulate they are not in a position to be defended by Lawyer. The distance between Purulia and Calcutta being considerable, such contact is not possible unless the case is transferred to Calcutta. Regarding the accused persons who are of Purulia origin their main grievance is that in course of investigation they are required to attend Court and also the C.B.I. Office for the purpose of interrogation and as such in the event of a transfer to Calcutta it would be harassing for them as they would be required to move from Calcutta to Purulia and back very frequently. A scrutiny of the place of residence of the accused persons as appearing in the petition of transfer reveals that they hail from different parts of this country as well as from other countries and as such it would be easy for them to keep contact with their Lawyers if they can get the service of an Airport which is available in Calcutta and not at Purulia. The difficulty to be felt by the accused persons on bail but of Purulia origin can be mitigated if certain directions are given in the matter of their attendance in Court and also before the C.B.I, authorities. Thus, I come to the conclusion that the reasons in favour of transfer far out weighs the status quo and as such I am of opinion that the revisional application need be allowed to transferring the case from Purulia to Calcutta.

15. Accordingly, it is ordered that Jhalda P.S. Case No. 152 of 1995 that is G.R.Case No. 1542 of 1995 pending before the learned. S.D.J.M., Purulia as also the connected criminal case if it is registered with the C.B.I. stands transferred to the Court of the learned C.M.M., Calcutta. It is further directed that the accused persons on bail shall not be required to attend the Court of learned C.M.M., Calcutta on the dates fixed for report of the I.O. during investigation stage unless specific direction is given by the learned C.M.M. to that effect in the interest of the case itself as and when found necessary. Regarding the interrogation to be made by the C.B.I, authorities, so far as it relates to the accused persons on bail, in view of the submissions made on behalf of the C.B.I, that they are required to interrogate some of the accused persons and not all, such interrogation may be made only after furnishing the names of the persons required for such interrogation before the learned C.M.M. who by specific order shall direct such interrogation at a place convenient to both the accused persons and the C.B.I, authorities after taking into consideration the difficulties expressed by both the sides. So long the said names are not supplied by the C.B.I, authorities and necessary order is passed by the learned C.M.M. further interrogation of accused persons on bail shall remain stayed. The revisional application is accordingly disposed of. Let copy of the order together with both the L.C. Rs. one received from the Court of learned C.M.M., Calcutta and the other received from the Court of learned S.D.J.M., Purulia be sent to the Court of the learned C.M.M., Calcutta. A copy of order shall also go to the learned S.D.J.M., Purulia.