

(2010) 08 KAR CK 0104
In the Karnataka High Court
Case No : Criminal Petition No. 2997 of 2010

T.M. Umashankar and Sri. T.M. Basavaraj	APPELLANT
Vs	
Smt. Bhagirathamma	RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482, 483

Citation : (2010) 4 KCCR 2667

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : B. Rudragowda, for the Appellant; M.B. Chandrachooda, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—Petitioners have sought for setting aside the order, transferring C.C. No. 205/2009 pending on the file of J.M.F.C., Doddaballapura to the Addl. Chief Judicial Magistrate, Bangalore Rural District, Bangalore, re-numbered as C.C. No. 2318/2010.

2. Respondent has filed a private complaint u/s 200 of Code of Criminal Procedure before the J.M.F.C., Nelamangala for an offence punishable u/s 464 read with Section 34 of IPC. However, the said case was withdrawn from J.M.F.C., Nelamangala and was posted before J.M.F.C., Doddaballapura by an administrative order dated 5th January 2009. Thereafter by another administrative order dated 6th March 2010, the case pending on the file of J.M.F.C., Doddaballapura was transferred to the Additional C.J.M., Bangalore Rural District, Bangalore. It is against the said administrative order, this petition is filed.

3. Sri. Rudragowda, learned Counsel appearing for the petitioners submitted that, petitioners being accused in the said case have been made to move from one place to another without any reason. He has produced the administrative

orders dated 5th January 2009 and 6th March 2010 and submitted that, no reasons are assigned as to why the case is withdrawn from J.M.F.C., Nelamangala and posted before J.M.F.C., Doddaballapura and now from Doddaballapura to Bangalore. He submitted that, such frequent transfer, would vitally affect the case of the accused. He further submitted that, these transfers are made without hearing the parties, who would likely to be prejudiced.

4. On the contrary, learned Counsel for the complainant submitted that, the transfer order is purely for administrative reason and it is an administrative order and is not amenable to the jurisdiction of this Court u/s 482 of Code of Criminal Procedure. He further submitted that, there is no judicial order passed, the transfer of the case was for administrative purpose, the learned Sessions Judge has power u/s 408 of Code of Criminal Procedure to withdraw any case within his jurisdiction and post before another court and there is no reason to interfere with the administrative order.

5. No doubt, Section 482 of Code of Criminal Procedure confers inherent power on the High Court to make such orders as may be necessary to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The power u/s 482 of Code of Criminal Procedure could be exercised in the matter relating to the order passed on the Judicial side. However, High Court has also superintendence power u/s 483 of Code of Criminal Procedure to ensure that there is an expeditious and proper disposal of the cases by the Magistrates.

6. Learned Counsel for the petitioners relied on the judgment of the Apex Court reported in *Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani*, and submitted that, assurance of a fair trial is the first imperative of the dispensation of justice and the 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 mini-grievances. Something more substantial, more compelling, more imperiling from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. The Court must be guided by touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle, the court may weigh the circumstances. The application for transfer is the avoidance of substantial prejudice to a party or witnesses on account of logistics or like factors especially when an alternative venue will not seriously handicap the complainant and will mitigate the serious difficulties of the accused.

7. No doubt, power is vested with the learned Sessions Judge to withdraw the case within his jurisdiction from one Magistrate Court and place it before the other court of the equal jurisdiction. However, such a jurisdiction could be

exercised for the reason that, the transfer is necessitous for dispensation of justice, but if any transfer is to be made on the basis of the allegation or at the request of the parties, it is necessary that the person likely to be affected or prejudiced by such transfer should be heard in the matter.

8. No doubt, administrative power must not yield place to judicial powers, simply because in a given circumstance it co-exists. So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding, it cannot be said that administrative powers must yield place to judicial powers simply because in a given circumstances they co-exist. In this case, though the power is sought to be exercised on the administrative side, but it is not either administrative exigency or fair trial or for any other administrative reasons, but it is based on an application filed by the complainant on certain allegations. Under such circumstances, it cannot be treated as exercise of power on the administrative side. But if it is based on an application, it necessitates that, the Court should have heard the party likely to be affected. It is under these circumstances, this Court invoking the power under Sections 482 and 483 of Code of Criminal Procedure has entertained this petition.

9. From the records secured by this Court, it is clear that the transfer is effected not on the administrative ground, but at the request of the complainant, if the transfer is to be made on the basis of allegation made by one of the parties, then court would be justified in passing the order of transfer. In this case, transfer is effected on the basis of the allegation made by the complainant. It is also clear that the order of transfer of the case from one court to another, would definitely prejudice the other party. In such case, the learned Judge should have considered the matter on the judicial side. However, in this case, the order of transfer also does not show any valid reason for transferring the case.

Accordingly, the petition is allowed. The transfer order passed on the administrative side dated 6th March 2010 in No. ADM/65/2010(37) by the learned Sessions Judge, Bangalore Rural District, Bangalore, is hereby set aside. Learned Sessions Judge, Bangalore Rural District, Bangalore is directed to consider the grievance of the complainant as an application seeking transfer, hear the parties and pass appropriate order. Both the parties are directed to appear before the learned Sessions Judge, Bangalore Rural District, Bangalore on 18th August 2010.