

THE HON'BLE SRI JUSTICE B. SYAMSUNDER

TRANSFER CRIMINAL PETITION No.49 of 2022

ORDER:

I have heard both sides.

2. This Transfer Criminal Petition is filed by the petitioner/accused under Section 407 of Criminal Procedure Code (For short "Cr.P.C."), seeking to transfer S.C.No.55 of 2013 on the file of VIII Additional District Judge, Vijayawada, to any other court other than Krishna District or to Guntur District.

3. The case of the petitioner in brief is that he is the 5th witness in S.C.No.55 of 2013 on the file of VIII Additional District Judge, Vijayawada, wherein respondent Nos.2 to 16 are arrayed as an accused.

4. Learned counsel for the petitioner would submit that respondent Nos.4, 5, 6, 8 & 10/ A-4, A-5, A-6, A-8 & A-10 are died.

5. Learned counsel for the petitioner would submit that the petitioner is the father of the deceased and filed the present petition due to the attitude of the Presiding Officer of the VIII Additional District Judge at Vijayawada.

6. It is the contention of the petitioner that there is a reasonable apprehension that he may not get justice in the present Court, presided by the Presiding Officer, as he is speaking irrelevant and making prejudicial comments from the bench addressing the prosecution and also the defense counsel. The petitioner also filed additional affidavit narrating the incidents which occurred in the Court during the trial wherein it is stated that the petitioner engaged a private counsel, whom the Presiding Officer not allowed to represent on the ground that the Public Prosecutor is already representing for prosecution. He prays to allow the petition.

7. The 2nd respondent filed counter affidavit denying the averments in the affidavit of the petitioner. It is the contention of the 2nd respondent that when the Presiding Officer was about to commence the trial on 20.06.2022, learned counsel for the de-facto complainant sought time as P.W.2 was absent and not filed any petition for filing photographs and the Presiding Officer insisted the parties to proceed with the trial, but the petitioner twisted the words of the Presiding Officer and filed the present petition with false averments. He prays to dismiss the petition.

8. Mr. Challa Ajay Kumar, learned counsel for the petitioner would submit that the petitioner, who is the father of the deceased, whose son was brutally murdered by accused in S.C.No.55 of 2013, engaged a private counsel to put-forth the prosecution case in effective manner, but the Presiding Officer made unnecessary comments which caused apprehension in the mind of the petitioner that he may not get justice in the said Court. He would further submit that the presence of judicial bias can be a ground for seeking a transfer of criminal case. He relied on the following precedential law:

a. ***State of Punjab/appellant vs. Davinder Pal Singh Bhullar & others/respondents¹***, wherein the Hon'ble Apex Court explained the judicial bias, mode and norms for determination of the judicial bias at Page No.789 at Paragraph No.24, which reads as under:

"There may be a case where allegations may be made against a Judge of having bias/prejudice at any stage of the proceedings or after the proceedings are over. There may be some substance in it or it may be made for ulterior purpose or in a pending case to avoid the Bench if a party apprehends that judgment may be delivered against him. Suspicion or bias disables an official from acting as an adjudicator. Further, if such allegation is made without any substance, it would be disastrous to the system as a whole, for the reason,

¹ (2011) 14 SCC 770

that it casts doubt upon a Judge who has no personal interest in the outcome of the controversy.

9. Learned counsel for the petitioner would also submit that the judicial bias vitiates the proceedings and that there is a reasonable apprehension of judicial bias affects the proceedings become forum non judice. He prays to allow the petition.

10. Mr. Nithin Krishna, learned counsel representing on behalf of respondent Nos.2, 3, 7, 11 to 14, would submit that the petitioner filed this petition only to drag on the proceedings making some allegations against the Presiding Officer without any substance. He would further submit that the case is of the year 2013, wherein accused have been attending the Court since 10 years, due to that, the Presiding Officer intended to dispose of the case as expeditiously as possible and asked both sides to cooperate with the speedy disposal of the case, which is twisted by the petitioner and filed this petition. He prays to dismiss the petition.

11. Mr. Harsha Sai Pavan, learned counsel representing on behalf of respondent Nos.15 & 16, would submit that they are adopting the counter and stand taken by learned counsel representing other respondents.

12. Now, the point that emerges for consideration of this Court is:-

“Whether there are any grounds to transfer S.C.No.55 of 2013 from VIII Additional District Judge, Vijaayawada, to any other Court other than Krishna District or to Guntur District.”

13. POINT:- Before going into the merits of the case, it would be beneficial to quote Section 407 of Cr.P.C., which reads as follows:

“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 copy of the grounds on which it is made; and no order shall be made on of 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 or 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.”

14. The Hon'ble Apex Court in **Afjal Ali Sha @ Abjal Shaukat Sha Vs. State of West Bengal and others**², judgment dated 17.03.2023, while considering the transfer of a criminal case as held that the transfer of the cases has to be accepted in exceptional cases considering the fact that transfers may cast unnecessary aspersions on the State Judiciary and the Prosecution Agency, wherein it is also discussed the ratio laid down by the Hon'ble Apex Court in **Narha Singh Yadav**

² 2023 Live Law (SC) 268

Vs. Union of India³, (2011) 1 SCC 307, at Paragraph No.29

which reads as under.

"29. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 CrPC should be exercised, it is manifest from a bare reading of subsections (2) and (3) of the said section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and nonofficial witnesses;(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

³ (2011) 1 SCC 307

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.”

15. In **State of Punjab/appellant vs. Davinder Pal Singh Bhullar & others/respondents**, referred supra, relied on by learned counsel for the petitioner, wherein the Hon'ble Apex Court held at Paragraph No.24 which was also extracted supra, that when the allegations are made without any substance, it would be disastrous to the system as a whole.

16. This Court already called for remarks from the Presiding Officer of the Court, wherein she explained the proceedings which happened in S.C.No.55 of 2013.

17. A perusal of Paragraph No.7 at Page No.2 of remarks submitted by the Presiding Officer discloses the things happened in the Court during hearing of S.C.No.55 of 2013.

18. The contention of the petitioner is that he engaged another counsel to assist the Public Prosecutor, whom the Court has not allowed to represent, which learned Judge rightly done as when the Public Prosecutor is representing the State, he alone has got the right of audience before the Court and the de-facto complainant who engaged the private counsel can only

assist the Public Prosecutor as per the procedure laid down under Cr.P.C.

19. It is settled law that mere apprehension that justice may not be done at a particular forum cannot be a ground for transfer of a case. There must be reasonable apprehension not mere apprehension that trial would be seriously undermined and justice would not be done if the request of the petitioner to transfer the case is not considered.

20. In the present case, S.C.No.55 of 2013 is pertaining to the year 2013 and the alleged offence was said to have been taken place on 16.07.2011, that may be a reason for the Presiding Officer of the Court insisting the parties to proceed with the trial which was mis-understood by the petitioner that the Presiding Officer is having judicial bias as per the proceedings said to be taken place in S.C.No.55 of 2013.

21. This Court is of the opinion that there are no grounds to consider the contentions of the petitioner to transfer S.C.No.55 of 2013 from VIII Additional District Judge, Vijayawada to any other Court other than Krishna District or to Guntur District.

22. In the result, the Transfer Criminal Petition is dismissed.

23. The Presiding Officer of VIII Additional District Judge, Vijayawada, shall fix trial schedule of the case and dispose of S.C.No.55 of 2013, as expeditiously as possible, within a period of one (01) year from the date of receipt of the orders of this Court in the present petition. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, stands closed. The interim stay, if any, granted shall stands vacated.

B. SYAMSUNDER, J

11th July, 2023.
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