

**CRR 3393 of 2022
with
IA No. CRAN 4 of 2023**

**Sujoy Poddar
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Manjit Singh,
Mr. Abhishek Bagal.

For the Opposite Parties : Mr. Soumik Ganguly,
Mr. Diptendu Banerjee.

1. The present revisional application has been preferred by the petitioner/husband praying for transfer of proceedings being Misc. Case No. 76 of 2020 (T.R. No. 158 of 2020), pending before the learned Judicial Magistrate, 2nd Court, Katwa, Purba Burdwan under Section 125 Cr.P.C. to the learned Chief Judicial Magistrate, Barrackpore, North 24 Parganas or any other competent criminal court having jurisdiction in the district of North 24 Parganas.
2. It is submitted that the wife in the present case has filed the case under reference at Katwa and the petitioner suffering from certain ailments is unable to travel to Katwa to contest the case.
3. It is further submitted by the learned counsel for the petitioner that the opposite party/wife resides with her children in Kolkata and as such prays that the matter be transferred from Katwa to Barrackpore within the jurisdiction where the petitioner/husband resides.
4. On the other hand, the learned counsel for the opposite party has contended that the wife resides with her two

children with her parents at their residence at Katwa and, as such, strongly objects to the prayer of the petitioner.

5. **Considered the materials on record.**
6. In ***Jyoti Mishra vs. Dhananjaya Mishra, (2010) 8 SCC 803, decided on August 27, 2010***, the Supreme Court held:-

“6. Otherwise also, we are not inclined to transfer a criminal case from one State to another solely on the ground that it would be more convenient for the complainant (wife) to prosecute the matter there. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings.

7. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non- appearance of the accused before the Indore Court would be quite drastic. ***Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife.***

8. For all these reasons, we are not inclined to accept the prayer for transfer in these cases.”

7. The Supreme Court in ***Umesh Kumar Sharma vs State of Uttarakhand & Ors., Transfer Petition (CRL.) Nos. 534-536 of 2019, on 16th October, 2020***, held:-

“17. In Captain Amrinder Singh Vs. Prakash Singh Badal & Ors.5, Justice P. Sathasivam, as he then was, speaking for the three judge Bench, on the issue of transfer of criminal cases, observed as follows: -

“48. The analysis of all the materials, the transfer of the case as sought for, at this stage, is not only

against the interest of prosecution but also against the interest of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter.

* * * *

51. We have already pointed out that a mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, we are of the opinion that in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding 5 (2009) 6 SCC 260 the nature of the accusations made against them.

In the case on hand, the apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.”

18. Let us now examine another precedent on transfer of criminal cases. In *Nahar Singh Yadav & Others vs. Union of India & Ors.* 6, Justice D.K. Jain writing for the three Judge Bench discussed the scope of transfer under Section 406 CrPC in the following terms:-

“22. It is, however, the trite law that power under Section 406 CrPC has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well.” 6 (2011) 1 SCC 307

19. On the same line is the decision in *Harita Sunil Parab vs. State (NCT of Delhi) & ors* 7, where Justice Navin Sinha, enunciated the law on transfer jurisdiction in the following terms:-

“8. The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard- and-fast rule can be prescribed for deciding a transfer petition, which will

always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. The charge-sheet in FIR No. 351 of 2016 reveals that of the 40 witnesses, the petitioner alone is from Mumbai, two are from Ghaziabad, and one is from Noida. The charge-sheet of FIR No. 1742 of 2016 is not on record. A reasonable presumption can be drawn that the position would be similar in the same also.” 7 (2018) 6 SCC 358

20. The above legal enunciations make it amply clear that transfer power under section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises.

21. While assurance of a fair trial needs to be respected, the plea for transfer of case should not be entertained on mere apprehension of a hyper sensitive person. In his pleadings and arguments, the petitioner in my assessment has failed to demonstrate that because of what he endured in 2018, it is not possible for the courts in the state to dispense justice objectively and without any bias. It can't also be overlooked that the petitioner is involved in several cases and this year itself has generated few on his own in the state of Uttarakhand. Therefore, it is difficult to accept that justice for the petitioner can only be ensured by transfer of three cases mentioned in these petitions.

22. While considering a plea for transfer, the convenience of parties would be a relevant consideration. It can't just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution besides the larger issue of trial being conducted under the jurisdictional Court. When relative convenience and difficulties of all the parties involved in the

process are taken into account, it is clear that the petitioner has failed to make out a credible case for transfer of trial to alternative venues outside the State.”

8. In ***Santhini vs Vijaya Venketesh, AIR 2017 SC 5745, decided on 9 October 2017***, the Supreme Court held:-

“6. We have heard Mr. V.K. Sidharthan, learned counsel for the petitioner and Mr. Rishi Malhotra, learned counsel for the respondent.

We have also heard Mr. Ajit Kumar Sinha, learned senior counsel who has been requested to assist the Court.

7. Before we refer to the scheme under the 1984 Act and the 1955 Act, we think it apt to refer to the decisions that have been noted in Krishna Veni Nagam (*supra*). In *Mona Aresh Goel (supra)*, the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition. The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In *Lalita A. Ranga (supra)*, the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time. In *Deepa’s case*, the stand of the wife was that she was unemployed and had no source of income and, on that basis, the prayer of transfer was allowed. In *Archana Rastogi (supra)*, the Court entertained the plea of transfer and held that the prayer for transfer of matrimonial proceedings taken by the husband in the Court of District Judge, Chandigarh to the Court of District Judge, Delhi deserved acceptance and, accordingly, transferred the case. Similarly, in *Leena Mukherjee (supra)*, the prayer for transfer was allowed. In *Neelam Bhatia (supra)*, the Court declined to transfer the case and directed the husband to bear the to-and-fro travelling expenses of the wife and one person accompanying her by train whenever she actually appeared before the Court. In

Soma Choudhury (supra), taking into consideration the difficulties of the wife, the proceedings for divorce were transferred from the Court of District Judge, South Tripura, Udaipur (Tripura) to the Family Court at Alipore (West Bengal). In Anju Ohri (supra), the Court, on the foundation of the convenience of the parties and the interest of justice, allowed the transfer petition preferred by the wife. In Vandana Sharma (supra), the Court, taking note of the fact that the wife had two minor daughters and appreciating the difficulty on the said bedrock, thought it appropriate to transfer the case and, accordingly, so directed.

8. *Presently, we think it condign to advert in detail as to what has been stated in Anindita Das (supra). The stand of the wife in the transfer petition was that she had a small child of six years and had no source of income and it was difficult to attend the court at Delhi where the matrimonial proceedings were pending. The two-Judge Bench referred to some of the decisions which we have already referred to and also adverted to Ram Gulam Pandit v. Umesh J. Prasad²⁰ and Rajwinder Kaur v. Balwinder Singh²¹ and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwelled upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court at Delhi. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.*

9. *Having noted the authorities relating to transfer of matrimonial disputes, we may refer to Section 25 of the CPC which reads as follows:-*

“Section 25. Power of Supreme Court to transfer suits, etc.- (1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceedings be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by motion which shall be supported by an affidavit.

(3) The court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or

proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme 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 two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such Suit, appeal or proceeding.”

10. Order XLI Rule 2 of the Supreme Court Rules, 2013 which deals with the application for transfer under Article 139A(2) of the Constitution and Section 25 of the CPC is as follows:-

“1. Every petition under article 139A(2) of the Constitution or Section 25 of the Code of Civil Procedure, 1908, shall be in writing. It shall state succinctly and clearly all relevant facts and particulars of the case, the name of the High Court or other Civil Court in which the case is pending and the grounds on which the transfer is sought. The petition shall be supported by an affidavit.

2. The petition shall be posted before the Court for preliminary hearing and orders as to issue of notice. Upon such hearing the Court, if satisfied that no *prima facie* case for transfer has been made out, shall dismiss the petition and if upon such hearing the Court is satisfied that a *prima facie* case for granting the petition is made out, it shall direct that notice be issued to the parties in the case concerned to show cause why the case be not transferred.

A copy of the Order shall be transmitted to the High Court concerned.

3. The notice shall be served not less than four weeks before the date fixed for the final hearing of the petition. Affidavits in opposition shall be filed in the Registry not later than one week before the date appointed for hearing and the affidavit in reply shall be filed not later than two days preceding the day of the hearing of the petition. Copies of affidavits in opposition and in reply shall be served on the opposite party or parties and the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by such party or parties.

4. *The petition shall thereafter be listed for final hearing before the Court.*
5. *Save as otherwise provided by the rules contained in this Order the provisions of other orders (including Order LI) shall, so far as may be, apply to petition under this Order." The purpose of referring to the same is that this Court has been conferred with the power by the Constitution under Article 139A(2) to transfer the cases and has also been conferred statutory jurisdiction to transfer the cases. The Rules have been framed accordingly. The Court has the power to allow the petition seeking transfer or to decline the prayer and indubitably, it is on consideration of the merits of the case and satisfaction of the Court on that score."*
- 9.** Thus keeping with the guidelines of the Supreme Court, the petitioner has clearly failed to make out a credible case for transfer of the trial to an alternative venue.
- 10. CRR 3393 of 2022 is thus dismissed.**
- 11. Accordingly if the petitioner is willing, he can avail of video conferencing facility with the permission of the learned trial court.**
- 12.** All connected applications, if any, stand disposed of.
- 13.** Interim order, if any, stands vacated.
- 14.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)