

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER
TRANSFER CRIMINAL PETITION No.28 OF 2023

ORDER:

I have heard learned counsel for respondent Nos.1, 2 and 4 Mr. Shiv Shankar. None appeared for the petitioner, though the matter is listed under the caption of "Part Heard". No reply affidavit is filed by the learned counsel for the petitioner.

2. This Transfer Criminal Petition is filed by the petitioner/informant/*de facto complainant* under Section 407 of Code of Criminal Procedure (in short "Cr.P.C.") seeking transfer of S.C. No.147 of 2020 on the file of Senior Civil Judge Court, Bapatla, Bapatla District to Senior Civil Judge Court, Tirupati, Tirupati District.

3. The case of the petitioner in brief is that her marriage with respondent No.1 solemnised on 21.2.2012 at Ponnur town, at that time her parents gave gold, land and cash to respondent No.1 and thereafter, she went to Chennai, where she resided along with her husband/respondent No.1. The petitioner

alleged that respondent No.1 along with his family members, harassed her on demand of additional dowry and she came to Ponnur on 04.12.2016 and went to her in-laws house to question their issue and then her parents-in-law, brother-in-law and his wife and also her husband abused her in filthy language, forced her to accept for divorce and with an intention to kill her, they said to be poured kerosene and tried to lit fire, but in the meanwhile, Sri Mannava Rosaiah, who is her relative came there and rescued her. She filed a complaint before Ponnur Urban Police Station, which is registered as C.C. No.194 of 2016 for the offences punishable under Section 498(A), 307 IPC, Sec.3&4 of the Dowry Prohibition Act against the respondent Nos.1 to 4, which is now pending before Senior Civil Judge Court, Bapatla, Bapatla District vide S.C. No.147 of 2020. The main contention of the petitioner is that respondent Nos.1 to 4 are threatening her with dire consequences to withdraw the case, as now she is residing at Chennai, she is attending the Court proceedings from there only. She prays to allow the petition.

4. The 1st respondent filed counter, which adopted by respondent Nos.2 and 4 denying the averments in the affidavit of the petitioner. It is the contention of respondent No.1 that petitioner came up with false averments, suppressing the real facts and previous cases, which she filed at different places against different persons. It is the contention of respondent No.1 that in W.P.No.27454 of 2021 filed by the petitioner she has shown that she is a resident of Nidubrolu of Ponnur Mandal, Guntur District and even in a report lodged in Crime No.61 of 2023 of Ponnur town Police Station on 24.03.2023, she has shown that she is a resident of Nidubrolu of Ponnur Mandal, Guntur District, which itself shows that the petitioner came up with false grounds. He prays to dismiss the petition.

5. The learned counsel for respondent Nos.1, 2 and 4 would submit that the petitioner filed this petition with false averments, only to harass and blackmail respondents, though she attended before Senior Civil Judge Court, Bapatla, Bapatla District in S.C. No.147 of 2020 only once. He would further submit that the petitioner is intentionally suppressed the

previous cases and her previous marriage with one Mr. Bandaru Amarnath and Mr. K. Rajesh and she has initiated different proceedings at different Courts, which itself shows that she is chronic litigant. It is the contention of the learned counsel for the respondents that in Crime No.61 of 2023 dated 24.03.2023, she has shown that she is a resident of Nidubrolu of Ponnur Mandal, Guntur District, and one more criminal case also registered against her in Crime No.63 of 2023 on 25.03.2023, wherein her address is shown as she is a resident of Nidubrolu of Ponnur Mandal, Guntur District. He prays to dismiss the petition.

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

“Whether there are any grounds to transfer. S.C. No.147 of 2020 from Senior Civil Judge Court, Bapatla, Bapatla District to Senior Civil Judge Court, Tirupati, Tirupati District?”.

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

“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.”

8. It is settled law that mere apprehension that justice may not be done at a particular forum and mere inconvenience of the petitioner may not be a ground for transfer of a case, there must be reasonable apprehension not mere apprehension that trial would be seriously undermine and justice would not be done, if their request to transfer the case is not considered. The Hon’ble Apex Court in **Afjal Ali Sha @ Abjal Shaukat Sha Vs.**

State of West Bengal & others¹, judgment dated 17.03.2023, while considering the transfer of criminal case has held that the transfer of the case has to be accepted in exceptional case, considering the fact that transfers may cast unnecessary aspersions on the State Judiciary and the Prosecution Agency. Wherein it is also discussed ratio laid down by Hon'ble Apex Court in **Nahar Singh Yadav Vs. Union of India**², at para 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

¹ 2023 Live Law(SC) 268

² (2011) 1 SCC 307

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

(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.”

9. In the present case, petitioner is the informant/*defacto complainant*, who lodged a criminal report against

respondent Nos.1 to 4 for the offences punishable under Section 498(A), 307 IPC, Sec.3&4 of the Dowry Prohibition Act, vide S.C. No.147 of 2020 on the file of Senior Civil Judge Court, Bapatla, Bapatla District. The alleged incident said to be occurred at Ponnur town and most of the witnesses are also residents of Ponnur town, except the petitioner herein is said to be residing at Chennai city. The documents which respondent No.1 filed along with his counter shows that on 24.03.2023 also petitioner has shown that she is a resident of Nidubrolu of Ponnur Mandal, Guntur District and in W.P.No.27454 of 2021 also she has shown that she is a resident of Nidubrolu of Ponnur Mandal, Guntur District. Even otherwise, the petitioner being witness in the Sessions Case can appear only once and she need not appear before Senior Civil Judge Court, Bapatla, Bapatla District for each and evert adjournment and no specific incident has stated by her with regard to the alleged threat on the part of respondent Nos.1 to 4. Hence, there are no grounds to consider the request of the petitioner to transfer the case from

Senior Civil Judge Court, Bapatla, Bapatla District to Senior Civil Judge Court, Tirupati, Tirupati District.

10. In the result, this Transfer Criminal Petition is dismissed. The learned Senior Civil Judge, Bapatla, Bapatla District, shall conduct trial in S.C. No.147 of 2020 as expeditiously as possible by following the principles laid down by Hon'ble Apex Court in **Mukesh Singh Vs. The State of Uttar Pradesh and another**³, in Special Leave Petition (Criminal) Diary No(s).8905/2022 dated 30.09.2022, wherein, Hon'ble Apex Court followed the ratio laid down by Hon'ble Apex Court in **Vinod Kumar Vs. State of Punjab**⁴, held that "the mandate of law itself postulate that examination-in-chief followed with cross-examination is to be recorded either on the same day or on the day following. In other words, there should not be any ground for adjournment in recording the examination-in-chief /cross- examination of the prosecution witness, as the case may be" and also shall follow ratio laid down by Hon'ble Apex

³ 2022 LiveLaw (SC) 826

⁴ (2015) 3 SCC 220

Court in **Neetu Tripathi Vs State of Uttar Pradesh and another**⁵, wherein it is held that “Once the witness is in the witness box and is being cross examined every endeavour must be made to ensure that the cross examination is completed on that day”. No order as to costs.

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

JUSTICE BANDARU SYAMSUNDER

Date: 07.07.2023
MVK

⁵ 2022 LiveLaw (SC) 349

209

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

TRANSFER CRIMINAL PETITION No.28 OF 2023

Date: 07.07.2023

MVK

