

Neutral Citation No. - 2024:AHC-LKO:42982
Reserved on 30.05.2024
Delivered on 13.06.2024
AFR

Court No. - 13

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 27 of 2022

Applicant :- Smt.

Opposite Party :- State Of U.P. Thru. Secy. Home Lko. And Others

Counsel for Applicant :- Viplava Singh, Sunil Kumar Singh, Surya Bux Singh

Counsel for Opposite Party :- G.A., Udai Bhan Pandey

Hon'ble Shamim Ahmed, J.

1. Heard Shri Surya Bux Singh, learned Counsel for the applicant, Shri Udai Bhan Pandey, learned Counsel for the opposite party Nos. 2 to 4, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1 and perused the entire material placed on record.

2. This application under Section 407 Cr.P.C. has been moved on behalf of applicant, namely-Smt. with a prayer to transfer the proceedings of Case No.5024 of 2021 (State vs. Ashish Singh and Others) arising out of Case Crime No.651 of 2020 under Sections 498A, 323, 504 and 506 I.P.C. and Sections 3/4 of Dowry Prohibition Act, Police Station-Kotwali Ayodhya, District-Ayodhya pending in the court of Chief Judicial Magistrate, Ayodhya to the competent Court at District Gorakhpur.

3. Learned Counsel for the applicant submitted that the marriage of applicant was solemnized with the opposite party No.4 on 29.11.2016 and after marriage she was being victimized for demand of dowry, then under the compulsion of harassment and torture, a complaint was made to National Commission for Women and an FIR was lodged on 07.09.2020. He further submitted that applicant is a resident of Gorakhpur, but under

the order of National Commission for Women, the FIR was lodged at Ayodhya.

4. Learned Counsel for the applicant further submitted that one Rakesh Kumar Singh (accused in the F.I.R.) is the Uncle (Chacha) of the opposite party no. 4 and is currently serving in Uttar Pradesh Police and at the time of lodging of the FIR, he was posted as Sub-Inspector in District Bahraich and being in the Police department he interfered in the investigation of the case, therefore, proper investigation was not done by the investigating officer as the Uncle of the opposite party no. 4 was exercising his influence.

5. Learned Counsel for the applicant further submitted that the applicant being aggrieved by the interference in the investigation made by Rakesh Kumar Singh, moved an application dated 30.11.2020 before the Additional Director General (Zone), U.P. Lucknow to transfer the Case Crime No. 651 of 2020 under sections 498A and 506 I.P.C. and Sections 3/4 of Dowry Prohibition Act, Police Station-Kotwali Ayodhaya, District Ayodhaya to District Gorakhpur as the applicant/ first informant is lady and is unable to do pairvi and appear before the investigating officer at Ayodhya and it was also stated in the application that accused persons are influential persons of the locality and are interfering with the investigation. He further submitted that thereafter, the matter was referred to the Additional Director General (Crime), Police Headquarter, Lucknow with the recommendation that the case of the applicant be transferred to District Gorakhpur from District Ayodhya, however, despite the recommendation being made by Additional Director General (Zone), Lucknow to transfer the case from Ayodhya to Gorakhpur, the same was not done due to the fact that Rakesh Kumar Singh (accused in the F.I.R.) was posted in nearby District as Sub- Inspector and was regularly interfering with the investigation.

6. Learned Counsel for the applicant further submitted that ultimately the investigation was conducted in a hasty manner exonerating Rakesh Kumar Singh of all charges and the charge sheet was only submitted against opposite parties nos. 2 to 4 only under section 498A I.P.C. and sections 3/4 of Dowry Prohibition Act on 06.04.2021.

7. Learned Counsel for the applicant further submitted that on the aforesaid chargesheet cognizance has been taken by the learned Magistrate on 22.07.2021. He further submitted that applicant/ first informant is lady and her father is aged about 63 years and there is no other male member in the family of the applicant to accompany her from Gorakhpur to Ayodhya on each and every date for appearance before the trial court.

8. Learned Counsel for the applicant further submitted that the applicant is living with her parents at parental house in Gorakhpur and the opposite parties no. 2 to 4 have not taken care of the applicant and being aggrieved by their act, the applicant filed an application under section 12 of Protection of Women from Domestic Violence Act, 2005 against opposite parties no. 2 to 4 and Rakesh Kumar Singh who is cousin father-in-law of the applicant in the Court of Additional Chief Judicial Magistrate, Gorakhpur being Complaint Case No. 15333 of 2020 (Smt. V. Ashish Singh and others) and the said case is also pending in the concerned court in Gorakhpur.

9. Learned Counsel for the applicant further submitted that applicant moved an application for obtaining the result of the investigation before the concerned Investigating Officer to know the progress of the case, on which she was told by the police that the charge sheet has been submitted on 05.04.2021 and she was further advised to visit the concerned court to know the status of her case, then the applicant sent her father, who went to Ayodhya where he came to know that the cognizance has been taken and the case is fixed for 22.11.2021, then the father of the applicant i.e. Anil Kumar Singh reached the concerned court to do pairvi of the case on

22.01.2022 where the opposite party Nos.2 to 4 alongwith some antisocial elements threatened the old father of the applicant and warned her father that if the applicant, her father and other witnesses of case pursue this case and produce the evidence against them, they shall be killed in Ayodhya, thereafter, the father of the applicant informed about this incident to Police Station concerned, but nothing was done by the police due to influence of Rakesh Kumar Singh, accused in FIR.

10. Learned Counsel for the applicant further submitted that the opposite party Nos.2 to 4 are ardent criminals and antisocial elements and the brother of the opposite party No.2 i.e. Rakesh kumar Singh is a police person who has been exonerated in present case, who threaten the applicant and her family members, as such, there is danger of life of the applicant if she goes to do pairvi of the case in Ayodhya.

11. Learned Counsel for the applicant further submitted that an application under Section 12 of Protection of Women from Domestic Violence Act, 2005 against opposite parties no. 2 to 4 and Rakesh Kumar Singh, in the Court of Additional Chief Judicial Magistrate, Gorakhpur being Complaint Case No. 15333 of 2020 (Smt. V. Ashish Singh and others) and the said case is also pending in the concerned court in Gorakhpur, thus, the present case may be transferred to District-Gorakhpur from District-Ayodhya so that the applicant can easily do pairavi in both the cases.

12. On the other hand, Shri Udai Bhan Pandey, learned Counsel for the opposite party Nos.2 to 4 opposed the contentions made by learned Counsel for the applicant and submitted that the allegations leveled by the applicant in the FIR are false and fabricated and the FIR has been lodged only with the intention to harass and torture the opposite party No.4 and his family members. He further submitted that after lodging of the FIR the opposite party No.4 himself made representation to the concerned authorities requesting them to conduct fair investigation in the matter,

thus, he submits that this application lacks merit and substance and the same is liable to be rejected by this Court as the applicant is having apprehensions about danger of her life and she has no credible evidence to demonstrate this fact that the proceedings of the trial are affected by the opposite party Nos.2 to 4 but he did not dispute this fact that the case filed by the applicant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is pending in District-Gorakhpur.

13. Learned A.G.A-I for the State-opposite party No.1 also made an agreement with the submissions advanced by learned Counsel for the opposite party Nos.2 to 4 and submitted that if the applicant is aggrieved by the threats given by the opposite party Nos.2 to 4, she may approach competent forum for redressal of her grievances.

14. I have heard learned Counsel for the respective parties and perused the material placed on record.

15. Before entering into the merits of this case, this Court deems it appropriate to discuss provision of Criminal Procedure Code, 1973 relating to transfer of cases from one court to another court of competent jurisdiction.

16. Section 407 of the Criminal Procedure Code, 1973, provides the High Court with the authority to transfer cases to another court if it believes that a fair and impartial trial cannot be held, or for other reasonable causes. Section 407 (6) of Cr.P.C., 1973 would read 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 a copy of the grounds on which it is made; and no order shall be made on the merits of the applications 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 interest 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."

Thus, the principles governing the transfer of cases include the need to maintain public confidence in the administration of justice, ensuring the safety of the parties, and preventing any undue influence on the judicial process.

17. Now coming to the case in hand, the key reasons provided by the applicant for seeking the transfer of the aforesaid case from District-Ayodhya to District-Gorakhpur includes:-

1. **Influence on Investigation:-** The applicant claims that the uncle of the opposite party No.4, being a Sub-Inspector in the police, used his position to influence the investigation, whereby his name was exonerated from the chargesheet though he was named in the FIR. This creates a significant risk of bias-ness in the proceedings, compromising the integrity of the trial.

2. **Threats and Intimidation:-** The applicant has been threatened with harm to prevent them from attending the trial at District-Ayodhya. This intimidation can impede the applicant's ability to present her case effectively and seek justice and the father of the applicant was also threatened by the opposite party Nos. 2 to 4.

3. **Related Domestic Violence Case:-** A domestic violence case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is already pending in District-Gorakhpur against the opposite party Nos.2 to 4. Consolidating both cases in one jurisdiction could facilitate a more coherent and comprehensive adjudication of related matters.

18. Further, Hon'ble Supreme Court has been pleased to render landmark judgments providing insight into the circumstances under which courts have allowed the transfer of cases:

1. **Maneka Sanjay Gandhi vs Rani Jethmalani (1979) 4 SCC 167:-** The Hon'ble Supreme Court has held that justice should not only be done but should manifestly and undoubtedly be seen to be done. If there is a reasonable apprehension in the mind of the applicant that justice will not be done, the case should be transferred.

2. **K. Anbazhagan vs Superintendent of Police (2004) 3 SCC 767:-** The Hon'ble Supreme Court ordered the transfer of a case due to the potential influence and interference by high-ranking officials in the investigation, emphasizing the importance of an impartial and fair trial.

19. Further, the Hon'ble Supreme Court in the case of ***Abdul Nazar Madani vs State of Tamil Nadu (2000) 6 SCC 204*** was pleased to order the transfer of a case from Coimbatore to Bangalore, citing the need for a fair trial, which is a fundamental right under Article 21 of the Constitution of India. Paragraph No.7 of the aforesaid judgment is reproduced hereinunder:-

"7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to

be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached 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."

20. Further, the Hon'ble Supreme Court in the case of ***Rupali Devi vs. State of Uttar Pradesh and Others*** reported in ***(2019) 5 SCC 384*** has been pleased to observe paragraph Nos.12, 13, 14 and 15 which read as under:-

"12. Section 498-A of the Penal Code was introduced by the Criminal Law (Second Amendment) Act, 1983. In addition to the aforesaid amendment in the Penal Code, the provisions of Sections 174 and 176 of the Code of Criminal Procedure, 1973 relating to inquiries by police in case of death by suicides and inquiries by Magistrates into cause of such deaths were also amended. Section 198-A was also inserted in the Code of Criminal Procedure with regard to prosecution of the offences under Section 498-A. Further by an amendment in the first schedule to CrPC, the offence under Section 498-A was made cognizable and non-bailable. Of considerable significance is the introduction of Section 113-A in the Evidence Act by the Criminal Law (Second Amendment) Act, 1983 providing for presumption as to abetment of suicide by a married woman to be drawn if such suicide had been committed within a period of seven years from the date of marriage of the married woman and she had been subjected to cruelty. Section 113-A is in the following terms:

"113-A. Presumption as to abetment of suicide by a married woman.—*When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to*

all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in Section 498-A of the Penal Code, 1860.”

13. *The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The abovestated object of the amendment cannot be overlooked while answering the question arising in the present case. The judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (Second Amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.*

14. *“Cruelty” which is the crux of the offence under Section 498-A IPC is defined in Black’s Law Dictionary to mean “the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband*

including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Penal Code. The definition of "domestic violence" in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which define "cruelty". The provisions contained in Section 498-A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 CrPC which would squarely be applicable to the present case as an answer to the question raised."

21. Further, in the present case, the apprehension of bias and fear for personal safety are substantial grounds for transfer. The influence exerted

by the opponent's relative who is a Sub-Inspector in the police could unduly affect the investigation and trial proceedings. The threats received by the applicant further jeopardize their ability to participate in the trial fearlessly.

22. Further, the pendency of a related domestic violence case in District-Gorakhpur supports the argument for consolidating the proceedings in one jurisdiction, ensuring comprehensive consideration of all aspects and evidence connected to the dispute and also taking note of the circumstances and guided by the principles laid down in the aforementioned case laws, it is expedient for the ends of justice to transfer the case from District-Ayodhya to District-Gorakhpur. This transfer would mitigate the risk of bias, ensure the safety of the applicant, and facilitate a fair trial.

23. Further, this Court finds that the threats to the applicant's life and the potential for a biased investigation are serious concerns that merit consideration for the transfer of the case to ensure a fair trial and the convenience of the applicant, who already has a domestic violence case pending in District-Gorakhpur, further supports the need for the transfer.

24. This Court is also convinced that a fair and impartial trial cannot be ensured if the case continues to be heard in the Ayodhya District Court due to the influence exerted by the uncle of opposite party No.4 and the threats received by the applicant and her family members.

25. Thus, in view of the law laid down by the Hon'ble Supreme Court and in light of the observations and discussions made above and keeping in view the facts and circumstances of the case, and from the perusal of the record, the proceedings of Case No.5024 of 2021 (State vs. Ashish Singh and Others) arising out of Case Crime No.651 of 2020 under Sections 498A, 323, 504 and 506 I.P.C. and Sections 3/4 of Dowry Prohibition Act, Police Station- Kotwali Ayodhya, District-Ayodhya pending in the court of Chief Judicial Magistrate, Ayodhya are liable to be

transferred from Ayodhya District Court to the Gorakhpur District Court as the apprehension of bias and fear for personal safety are substantial grounds for transfer. The influence exerted by the opponent's relative who is a Sub-Inspector in the police could unduly affect the investigation and trial proceedings. The threats received by the applicant further jeopardize their ability to participate in the trial fearlessly..

26. Accordingly, the proceedings of Case No.5024 of 2021 (State vs. Ashish Singh and Others) arising out of Case Crime No.651 of 2020 under Sections 498A, 323, 504 and 506 I.P.C. and Sections 3/4 of Dowry Prohibition Act, Police Station-Kotwali Ayodhya, District-Ayodhya pending in the court of Chief Judicial Magistrate, Ayodhya are hereby transferred from Ayodhya District Court to the Gorakhpur District Court and the proceedings of the case be conducted by the competent trial court at District-Gorakhpur, expeditiously.

27. For the reasons discussed above, the instant application under Section 407 Cr.P.C. filed by the applicant is *allowed* in respect of the instant applicant, namely-Smt.

28. Registry of this Court is directed to take necessary steps and make arrangements to transfer all the records and proceedings of the aforesaid case to the District Court of Gorakhpur, forthwith.

29. Let a copy of this order be transmitted to both the District Courts i.e. District Court Ayodhya and District Court Gorakhpur for necessary action and compliance, forthwith, by the office of the Senior Registrar of this Court.

30. No order as to cost(s).

Order Date :- 13.06.2024
Piyush/-

(Shamim Ahmed,J.)