

[2023 LiveLaw \(SC\) 141](#)

IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION  
**HRISHIKESH ROY; J., C.T. RAVIKUMAR; J.**  
TRANSFER PETITION(S)(CRIMINAL) NO(S). 298/2020; FEBRUARY 22, 2023  
**NEELAM PANDEY & ANR. versus RAHUL SHUKLA & ORS.**

**Code of Criminal Procedure, 1973; Section 406 - Transfer of case from one state to another must be ordered sparingly - followed *Umesh Kumar Sharma vs. State of Uttarakhand, 2020 (11) SCALE 562* - It is also important to bear in mind that transfer of a criminal case from one State to another implicitly reflect upon the credibility of not only the State judiciary but also of the prosecution agency.**

*For Petitioner(s) Mr. Vishwajit Singh, Sr. Adv. Ms. Veera Kaul Singh, AOR Mr. Pankaj Singh, Adv. Mr. Vignesh Singh, Adv. Mrs. Rashi Bajpayee, Adv. Mrs. Ananya Singh, Adv.*

*For Respondent(s) Mr. Santosh Kumar, Adv. Mr. Rajiv Ranjan Mishra, Adv. Ms. Suruchi Yadav, Adv. Mr. Yadav Narender Singh, AOR*

**ORDER**

We have heard Mr. Vishwajit Singh, learned counsel appearing for the petitioners. Also heard Mr. Santosh Kumar, learned counsel appearing for the respondents.

The petitioners are the complainant pertaining to the suicidal death of *Anubha Shukla* (deceased), in her matrimonial home at Ratlam, within three years of her marriage with *Rahul Shukla* (respondent No.1).

Mr. Vishwajit Singh, learned counsel submits that the petitioners are residing at Faizabad, U.P. and when they proceeded to Ratlam to pursue the case at Ratlam, (where charge sheet was filed on 07.06.2020), the family members were attacked at Ratlam by the husband's family on 28.08.2020.

The learned counsel would advert to the complaint dated 31.08.2000 addressed by the 2<sup>nd</sup> petitioner to the SP, Ratlam to point out that when he visited the Court premises on 28.08.2020 the respondent No.1 was present and had intimidated the complainant and threatened him with dire consequences.

Refuting the above contention of the petitioners, Mr. Santosh Kumar would refer to the counter affidavit to point out that the proceedings before the Court on the concerned date was through virtual mode. The learned counsel would also refer to the certificate dated 02.12.2020 to project that the petitioner No.2 was present for duty in the bank where he is employed. It is further pointed out that the petitioner No.2 has filed a custody case and the proceedings are being continued at Ratlam.

The mere fact that few witnesses in the case reside at Faizabad should not by itself warrant transfer of the criminal case from one jurisdiction to another and concern should only be to ensure fair justice in a case. Suffice here would be to note the following observations in ***Umesh Kumar Sharma vs. State of Uttarakhand***<sup>1</sup>:-

*“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*

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<sup>1</sup> 2020 (11) SCALE 562

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.”

It is also important to bear in mind that transfer of a criminal case from one State to another implicitly reflect upon the credibility of not only the State judiciary but also of the prosecution agency.

Having considered all the above circumstances, we are of the considered opinion that this transfer petition is without merit and the same is accordingly dismissed.

Pending application(s), if any, shall stand disposed of.

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