

Applicant :- Pramod Kumar Tiwari @ Lota Tiwari

Opposite Party :- State Of U.P. & Anr.

Counsel for Applicant :- Amar Nath Dubey

Counsel for Opposite Party :- G.A., Ashok Kumar Srivastava

Hon'ble Mohd. Faiz Alam Khan, J.

Supplementary Affidavit filed by the applicant is taken on record.

Heard Sri Amar Nath Dubey, learned counsel for applicant, Sri Ashok Kumar Srivastava, learned counsel for opposite party no.2, learned Additional Government Advocate for State and perused the record.

The instant application has been moved by the applicant/accused with a prayer to set aside the order dated 20.7.2021, passed by the Sessions Judge, Pratapgarh in Transfer Application No.166/2021, Pramod Kumar Tewari alias Lota Tiwari v. State of U.P. pertaining to S.T.No.22/2013, arising out of Case Crime No.473/2012, under Sections 147,148,149,452,302,307,504,506, 120-B/34 I.P.C. P.S.Kotwali Nagar, District Pratapgarh, whereby the request of the applicant to transfer the above mentioned case to some other court from the court where the same is pending has been rejected, with a further prayer to transfer the above case to any other court of the same Judgeship.

Learned counsel for applicant submits that on 20.3.2021 the applicant had over heard a conversation between the public prosecutor and the Presiding Officer of the Court and the prosecutor was informing the Presiding Officer of the court that the file (instant case) has been transferred to his court keeping in view his reputation and he (Public Prosecutor) is having all the hope that the Presiding Officer would convict and sentence the accused persons with the maximum imprisonment. It is also stated that on 3.4.2021 the Advocates were not appearing in the courts in pursuance of the resolution of the Bar but the Presiding Officer of the court was in a hurry to hear the arguments of the case and this shows that the public prosecutor has colluded with the informant and, therefore, is impressing upon the Presiding Officer of the court to convict and sentence the applicant.

It is also submitted that the applicant is not having any hope that he will get justice from the court where the case is pending

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and the same may be transferred to any other court of the same Judgeship.

Learned Additional Government Advocate submits that transfer of a criminal case is a serious matter and it is not for a party to choose his forum for adjudication of the dispute and, therefore, the instant application is not having any substance and the same be rejected.

Sri Ashok Kumar Srivastava, learned counsel appearing for opposite party no.2 vehemently submits that the applicant/accused is in a habit of moving transfer applications and in the past also the transfer applications have been moved by the accused persons of the instant case and the ground is not such on the basis of which the case can be transferred.

Having heard learned counsel for parties and having perused the record it is evident that when the application for transfer of the case was moved to the Sessions Judge, the arguments have been completed on behalf of one accused as is apparent from the report which was sent by the Presiding Officer of the court to the Sessions Judge which has also been quoted in the order of the Sessions Judge. It is also apparent that the Sessions Judge while rejecting the application of the applicant has categorically opined that the Presiding Officer has vehemently denied the charges levelled against him and has also stated in his report that the same case was previously fixed for judgment in the court of Additional District & Sessions Judge, Court No.4, Pratapgarh on 15.4.2021 (must be 15.04.2020), however the judgment could not be passed and thereafter the case has been transferred to the court of Special Judge, POCSO Act, Pratapgarh.

The grounds which have been made the basis of moving this transfer application shows that the applicant is having merely an apprehension. In this regard it is worthwhile to refer a passage from the three Judge Bench decision of the Hon'ble Supreme Court passed in **Gurcharan Dass Chadha v. State of Rajasthan** MANU/SC/0093/1966 : AIR 1966 SC 1418, wherein it has been held:

"...The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A Petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of

justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension."

Hon'ble Supreme Court in **Abdul Nazar Madani v. State of T.N.** MANU/SC/0349/2000 : (2000) 6 SCC 204 has held that:

"...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."

In Captain **Amarinder Singh v. Parkash Singh Badal and Ors.** MANU/SC/0797/2009 : (2009) 6 SCC 260, while dealing with an application for transfer petition preferred Under Section 406 Code of Criminal Procedure, a three-Judge Bench of Hon'ble Supreme Court has opined that for transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It has also been observed therein that mere an allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be present but must appear to the Court to be a reasonable apprehension. In the said context, Hon'ble Supreme Court has held thus:

"19. Assurance of a fair trial is the first imperative of the

dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State Under Section 407 and anywhere in the country Under Section 406 Code of Criminal Procedure.

20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one."

In *Lalu Prasad alias Lalu Prasad Yadav v. State of Jharkhand* MANU/SC/0796/2013 : (2013) 8 SCC 593, Hon'ble Supreme Court, repelling the submission that because some of the distantly related members of the trial Judge were in the midst of the Chief Minister, opined that from the said fact it cannot be presumed that the Presiding Judge would conclude against the Appellant. From the said decision, following passage is reproduced:

"Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-a-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent."

The aforesaid laws would clearly emphasize on sustenance of majesty of law by all concerned. Seeking of the transfer of criminal trial at the drop of a hat is not recognized by the courts or by any tenet of law. An order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the conduct of the trial by a Presiding Officer. This power would have to be exercised

cautiously and in exceptional situations, where it becomes necessary to do so to provide complete justice and credibility to the trial as held in **Nahar Singh Yadav and Anr. v. Union of India and Ors.** MANU/SC/0964/2010 : (2011) 1 SCC 307], the apprehension with regard to the miscarriage of justice should be real and substantial.

It is also worthwhile to extract the view of the Hon'ble Supreme Court in **Usmangani Adambhai Vahora Vs. State of Gujarat and Ors**, Reported in MANU/SC/0014/2016 (AIR 2016 SC 336), wherein it is emphasized that simply because an accused or a party has filed an application for transfer, a Judge is not required to express his disinclination. He is required under law to do his duty and not to succumb to the pressure put by a party by making callous allegations and he is not expected to show unnecessary sensitivity to such allegations.

In the instant case, this Court is disposed to think that apprehension which has been made the basis to seek order for transfer of the case pending before the court below is absolutely weak and cannot be remotely said to be reasonable.

Having regard to the grounds on which the transfer application has been moved, as well as the law placed above, in the considered opinion of this Court are not sufficient to exercise the jurisdiction for the transfer of the aforesaid case from the court where the same is pending.

For the reasons recorded herein above, I do not find any substance in the application under Section 407 Cr.P.C. moved by the applicant and, therefore, the same is **dismissed**. However as the case is pending since long for disposal, the trial court is directed to expedite the trial of the above case and conclude the same at the earliest without providing soft adjournments to the parties.

A copy of the order be immediately sent to the trial court by the office through District Judge concerned.

Order Date :- 26.8.2021
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