

**2022 LiveLaw (SC) 532**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
*DINESH MAHESHWARI; ANIRUDDHA BOSE, JJ.***

May 17, 2022

CRIMINAL APPEAL NO. 820 OF 2022 (Arising out of S.L.P.(Crl.) No. 941 of 2019)

**NAZMA NAZ & ANR. Vs. RUKHSANA BANO & ORS.**

**Code of Criminal Procedure, 1973; Section 407 - Fault or shortcoming on the part of the staff of the Subordinate Court and for that matter, any delay in compliance by the Court were hardly the reasons for the High Court to immediately adopt the course of transferring the matter.**

(Arising out of impugned final judgment and order dated 19-12-2018 in TA No. 492/2018 passed by the High Court of Judicature at Allahabad)

*For Petitioner(s) Mr. Raj Kishor Choudhary, AOR Ms. Malvika Raghavan, Adv. Mr. Shakeel Ahmed, Adv. Mr. Nakul Chaudhary, Adv. Ms. Apurva Gaur, Adv. Mr. Anupam Bhati, Adv.*

*For Respondent(s) Mr. Vinod Diwakar, AAG Mr. Shashank Shekhar Singh, AOR*

**ORDER**

Nobody has appeared for respondent Nos. 1 and 2 despite repeated service of notice.

Leave granted.

Having heard learned counsel for the petitioners and learned counsel for the State, and having perused the material placed on record, we are clearly of the view that the impugned order dated 19.12.2018 as passed by the High Court, transferring the proceedings in Sessions Trial No. 715 of 2017 from the Court of Additional Sessions Judge First, Aligarh to the corresponding Court at Mathura, cannot be approved.

It appears that the learned Single Judge of the High Court felt dissatisfied with the conduct of the staff of the Subordinate Court in not taking on record the order passed by the High Court and for that matter, made elaborate comments in the order impugned on the conduct of the Trial Judge and then, proceeded to order transfer of the trial.

With respect, we are unable to endorse the approach in the order impugned.

It is noticed that transfer was sought by the accused persons, *inter alia*, with the grievances that the discharge application moved by some of the accused persons was not being decided and they were asked to appear before the Court at Aligarh on every date. The High Court had earlier ordered for disposal of the discharge application but the same remained pending.

However, the proceedings in the High Court swelled to the extent of the Court asking the Trial Judge to appear in-person, who was required to appear and submit apology.

In the totality of circumstances of the case, we do not wish to make any comments on the nature of proceedings this matter has undergone but, we are clearly of the view

that because of any fault or shortcoming on the part of the staff of the Subordinate Court and for that matter, any delay in compliance by the Court were hardly the reasons for the High Court to immediately adopt the course of transferring the matter and that too, to a different station.

While examining this matter on 23.01.2019 at the initial stage, this Court had stayed the operation of the impugned order dated 19.12.2018. We are informed that while the operation of the said order has remained stayed but the trial has not proceeded further.

Without any further elaboration, suffice it to observe that we find no reason to allow the impugned order dated 19.12.2018 to operate or to order transfer of the proceedings on the grounds as suggested before the High Court. Thus, it appears just and proper that the impugned order be set aside.

Accordingly, the impugned order dated 19.12.2018 in T.A. No. 492 of 2018 is set aside while leaving all other aspects of the matter open for consideration of the Trial Court in accordance with law.

The appeal stands allowed accordingly.

All pending applications stand disposed of.

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