

Court No. - 70

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 101 of 2022

Applicant :- Suresh Chandra Tripathi

Opposite Party :- State Of U.P And 2 Others

Counsel for Applicant :- Tiwari Abhishek Rajesh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

Heard learned counsel for the applicant and learned A.G.A. for the State.

This transfer application has been moved under Section 407 CrPC, for transfer of Session Trial No.897 of 2017 (State Vs. Vinod and others), Case Crime No.541 of 2016, under Sections 307, 504 and 325 IPC, P.S. Ghoorpur, District Allahabad pending in the Court of Additional Sessions Judge/F.T.C. Court No.1 Allahabad, from that Court to any other competent Court of Allahabad Judgeship.

It has been argued by learned counsel for the applicant that applicant is complainant of the above stated case, which is pending in the Court of Additional Sessions Judge/F.T.C., Court No.1, Allahabad for trial. After statements of P.W.1 and P.W.2, complainant has moved an application under Section 319 Cr.P.C. for summoning of one Chandra Mani Pandey and Surendra Mani Pandey. In their statements both the witnesses have clearly stated that in the incident, said Chandra Mani Pandey and Surendra Mani Pandey have made exhortation but despite that the application of applicant under Section 319 Cr.P.C. was rejected by the trial Court vide order dated 08.09.2021. Learned counsel submitted that though the said order has already been challenged by the applicant/complainant but the said application of applicant was arbitrarily rejected by the trial Court without considering the evidence. Learned

counsel submitted that applicant has no hope to get justice from the said Court of Additional Sessions Judge/F.T.C. Court No.1, Allahabad. Applicant has earlier moved an application for transfer of the said case before the Sessions Judge, Allahabad but that application has already been rejected vide order dated 13.01.2022. Learned counsel submitted that applicant has no hope to get justice from the said trial Court, hence, the said case be transferred to some other competent Court.

Learned A.G.A. has opposed the transfer application and argued that no ground has been shown for transfer of application.

I have considered the rival submissions of parties and perused the record.

It is well settled law that transfer under Section 407 Cr.P.C. from one Court to another is not to be made in a casual and perfunctory manner and it must be on the basis of some good ground existing and substantiated on record.

Power under Section 407 Cr.P.C. can be exercised by this Court where it is made to appear:

(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.

In the instant case, perusal shows that the only ground taken in the instant transfer application is that the application filed by the applicant/complainant under Section 319 Cr.P.C. has been

rejected by the Court. No specific material could be shown so as to indicate that applicant would not get justice from the said Court or that fair trial would not be held by that Court. Merely because the application of applicant was rejected by the said trial Court, it cannot be a ground to transfer of the case from that Court, particularly when the statements of some witnesses have already been recorded by that Court.

In view of aforesaid, there is no just ground to transfer the said case from the Court of Additional Sessions Judge/F.T.C. Court No.1 Allahabad to some other Court of Allahabad Judgeship. The instant transfer application is without substance and accordingly, it is hereby, **rejected**.

Order Date :- 6.4.2022

Neeraj