

A STUDY ON POWER OF SUPREME COURT TO TRANSFER CASES AND APPEALS

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ABSTRACT

The Code of Criminal Procedure, clothes Supreme Court with power under Section 406 to transfer a case or appeal from one High Court or a court subordinate to one High court to another High court or to a court subordinate thereto. The law with regard to transfer of cases is well-settled. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. The Supreme court has been given under this section very wide discretionary power to transfer cases and appeals from one High court to another High court or from a criminal court subordinate to one High court to another criminal court of equal or superior jurisdiction subordinate to another High court. The Supreme Court can exercise the power whenever it considers it expedient to do so for the ends of justice. The power shall be exercised if there is a reasonable apprehension on the part of a party to the case that justice will not be done. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

KEYWORDS

Transfer of cases- Supreme court- fair trial- apprehension- reasonable- prevent- ends of justice.

INTRODUCTION

The power shall be exercised if there is a reasonable apprehension on the part of a party to the case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. 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. Section 406 deals with the power of Supreme Court to transfer cases. This power is exercised for fair trial because assurance of a fair trial is the first and foremost imperative of the dispensation of Justice and the central criterion for the court to exercise power of transfer. The question whether the party's apprehension that justice will not be done is a reasonable one is an objective, not subjective question. His mere allegation will not suffice; on the other hand, he need not demonstrate that Justice will inevitably fail. He is entitled to transfer if he shows circumstances, from which it appears to the court that his¹ apprehension is reasonable. For any reputable system of administration of justice should not only be done, it must also appear to have been done. 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.

RESEARCH QUESTION

WHETHER THE SUPREME COURT HAS THE POWER TO TRANSFER THE CASES WITH RESPECT TO THE CRPC.

OBJECTIVES

- To protect the ends of justice.
- To prevent the miscarriage of justice.
- To trace the history to transfer of the case.

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- To interpret the power of transfer.
- Suggestions.

HYPOTHESIS

NULL HYPOTHESIS- Transfer Of criminal cases is permitted by the code of enable a party to have on independent judgment.

ALTERNATE HYPOTHESIS- Transfer Of criminal cases is not permitted by the code of enable a party to have on independent judgment.

RESEARCH METHODOLOGY

Only secondary sources have been referred for this study. The primary sources include interviews with the people were not possible. Secondary sources include books related to Criminal Procedure Code, Constitutional law and research articles on the transfer of cases. Ample websites and blogs have also been referred for this study. This paper was completed through descriptive methodology.

POWER OF SUPREME COURT TO TRANSFER CASES AND APPEALS

The provision made under section 406 of Cr. P. C majorly relies upon the discretion of the Supreme Court. The applicant is not under any obligation to establish conclusively that in absence of this transfer the interest of justice regarding him would fail. The applicant will have to reasonably substantiate his contentions regarding the application. The Supreme Court is not only vested with the authority to transfer files form one High court to another High Court. The Supreme Court also has authority to the transfer any case from one court to another court which is in subordination to the Supreme Court. Any objection if arose by the court under which the matter is lying pending. Although the trail court may ensure the Supreme Court about maintaining the principle of fair and equity, but the Supreme Court would take all reasonable measure to transfer that case to some other court which may be either to the court of same competence of may be court lower or higher competence. Section

406 contemplates transfer of proceedings. It does not clothe the court with the power to transfer investigation from one police station to another, simply because the first information report or remand report is forwarded to a court. Convenience of parties and witness may be a relevant factor to be considered for transferring a case. It is always open to a party to bring to the notice of the appropriate court if and when there is a good ground to support and apprehension that he cannot have a fair trial. Where the local atmosphere is not conducive to a fair and impartial trial, where a case is between persons belonging to two different communities and there is a serious communal tension in the locality as between the two communities. The Supreme Court is vested with the widest discretionary power to make any such order to transfer any specific case or appeal or any matter lying pending before one high court to another high court to meet up the end of justice and satisfy the principle of fair justice. The application to transfer such case from one High court to another high court would be moved by any person who is under apprehension of any unfair action or he may not find proper justice for him or Attorney General of India. The applicant claimed that he would not be able to engage a counsel in the court where the case was pending against him. District Bar Association submitted the affidavit before the court assuring that the defence counsel would be available from among the members of the Bar Association. Therefore, the Supreme Court dismissed the prayer for transfer. Transfer petition may be entertained to alleviate the hardship of all the parties. Permission may also be granted to the accused for being present in the court through his/her counsel. The Supreme Court cannot transfer a contempt proceeding pending before the High Court. Section 406 of Criminal Procedure code does not clothe the Supreme Court with the power to transfer investigation from one police station to another simply because first information report is forwarded to a court. The power is limited. The Supreme Court is given with very wide discretionary power to transfer cases and appeals from one High Court to another High Court or from Criminal Court subordinate to one High Court. Whenever, it is expedient to do so, it can do for ends of justice. The Apex Court held that 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 proper conduct of the trial. The court said power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial and there has to be a real apprehension that there would be miscarriage of justice. It may be noted that the central criterion for directing a transfer is not the hyper-sensitivity or relative convenience of a party. Something more substantial more compelling, more imperiling from the point of view of public justice is necessary for directing a transfer. It was held in a case that it is impermissible for a High court

to transfer a case from one of its subordinate court to another court in other State. A case is transferred when there is a very 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. The solitary ground that safety of the complainant would be in jeopardy if the case is not transferred is a nebulous ground for transferring the case and hence transfer cannot be granted. Under Section 406 of the Code, the Supreme Court will transfer a case if there is a reasonable apprehension on the part of a party to a case that justice will not be done. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjecture and surmises. 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 petitioner 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 larger interest of the society;. The Supreme Court has given it the widest interpretation to also include a political opponent to be an interested party. The Supreme Court allowed the petition and transferred the cases from Chennai to Bangalore and held that to secure the ends of justice and a fair trial it can be said that a political opponent who is 'vitaly interested in the administration of justice in the State' comes within the meaning of 'party interested' as stated in Section 406(2). "Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and we would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner." Once it is brought to the notice of the court that transfer application has been moved, it must stay the proceedings and wait for the decision on the transfer application. An application moved by the accused seeking time to move transfer application if malafide and moved with intent to delay the disposal of the case should be rejected. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more

compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances. A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of the court is obstructive of the course of justice and must surely be stamped out. Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquility at the trial. Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer. 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. However, 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 Supreme Court held that the apprehension entertained by the party must be a reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done. 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 entertained but must appear to the Court to be a reasonable apprehension. In the said context, the Court has held thus:- 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 CrPC. 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.. The transfer of case from one court to another may not change the nature of the trial or the relief nor does it changes the subject position but with the addition of such provisions the legislature and the judiciary imparts a huge impression on the subject about the principle of equity and good conscience. Transfer of cases from one court to another would also ensure that the litigant parties are assured to the justice done to them. The question whether the party's apprehension that justice will not be done is a reasonable one is an objective, not subjective question. His mere allegation will not suffice; on the other hand, he need not demonstrate that Justice will inevitably fail. He is entitled to transfer if he shows circumstances, from which it appears to the court that his apprehension is reasonable. For any reputable system of administration of justice should not only be done, it must also appear to have been done. Mere allegation of apprehension is not sufficient to transfer cases and appeals.

CONCLUSION

Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. It was noticed that early conclusion of the trial becomes much more difficult involving more expenses for the prosecution by it having to bear travelling expenses of official and non-official witnesses and all of which ultimately causes the trial to linger on for years. In our view, at this stage, the apprehensions voiced by the petitioner of possible harm to her at Delhi is too nebulous a ground for transfer. On her own pleadings, the petitioner has been travelling from Mumbai to Delhi since long for professional reasons. Supreme Court will transfer a case from one State to another State only if there is a reasonable apprehension on the part of a party to a case that justice will not be done. Mere apprehension that the accused are influential may not be sufficient to transfer the case. The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard and fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension.

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