

A STUDY ON POWERS OF SUPREME COURT IN TRANSFERRING CASES

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ABSTRACT:

The power to transfer cases is vested with interest of justice only the parties should not misuse the said opportunity by lodging vague application. The Supreme Court being the apex court having wide powers especially in transferring criminal cases and civil cases from one court to another court. The Criminal Procedure Code section 406 and 407 deals with transfer of cases in criminal nature. The nature of cases to be transferred are discussed in sections as conditions prescribed. Whenever it is expedient for ends of justice the Supreme Court direct particular case to be transferred from High Court to another High Court or from criminal court subordinate to High Court or to another court. The parties who file this application may be Attorney General or the party interested and it shall be made by motion supported by the affidavit. The court if of opinion that the application is frivolous or vexatious then it order the applicant to pay compensation of Rs.1000 depends on circumstances of case. The court jurisdiction arises in interest of justice and power to transfer case from one state to another state the court can be exercised by the Supreme Court. Mere apprehension is not enough the court should see whether the apprehension is reasonable. The transfer of investigation from one Police Station to another is not contemplated under section 406 of CrPC. There is no hard and fast rule prescribed for

deciding the transfer petition. The convenience of parties is necessary and it is based on facts of each case.

KEY WORDS:

Supreme Court- transfer- criminal law- High court- arbitrary power.

INTRODUCTION:

The transfer request will be rejected if the prayer for transfer is not based on ground of convenience of accused and witnesses. It is the discretion of court to transfer particular case or not. The power to transfer cases is vested with interest of justice only the parties should not misuse the said opportunity by lodging vague application. The Supreme Court being the apex court having wide powers especially in transferring criminal cases and civil cases from one court to another court. The Criminal Procedure Code section 406 and 407 deals with transfer of cases in criminal nature. The nature of cases to be transferred are discussed in sections as conditions prescribed. Whenever it is expedient for ends of justice the Supreme Court direct particular case to be transferred from High Court to another High Court or from criminal court subordinate to High Court or to another court. The parties who file this application may be Attorney General or the party interested and it shall be made by motion supported by the affidavit. The aim of this paper is to study about the powers of the Supreme Court in transfer of cases.

RESEARCH METHODOLOGY:

Only secondary sources have been referred for this study. The secondary sources include books related to the Supreme court power to transfer cases. Numerous websites and blogs have been referred for the study. This research paper is doctrinal in nature.

RESEARCH QUESTION:

Whether the Supreme Court has arbitrary powers to transfer cases & whether the Criminal law amendment is necessary?

OBJECTIVES:

- To study on wide powers and discretion of the Supreme Court.
- To analyze the circumstances to transfer particular case.
- To understand the consequences of non-transference of particular case.

- To examine the deep roots of transferring the cases from one court to another.
- To study the outcome of Supreme court decisions and guidelines regarding transfer of cases.

HYPOTHESIS

The party to the case if does not prefer application of transfer then no transfer made further. The power to transfer cases is vested with interest of justice only the parties should not misuse the said opportunity by lodging vague application.

POWERS OF SUPREME COURT:

The Supreme Court being the apex court having wide powers especially in transferring criminal cases and civil cases from one court to another court. The Criminal Procedure Code section 406 and 407 deals with transfer of cases in criminal nature. The nature of cases to be transferred are discussed in sections as conditions prescribed. Whenever it is expedient for ends of justice the Supreme Court direct particular case to be transferred from High Court to another High Court or from criminal court subordinate to High Court or to another court. The parties who file this application may be Attorney General or the party interested and it shall be made by motion supported by the affidavit. The court if of opinion that the application is frivolous or vexatious then it order the applicant to pay compensation of Rs.1000 depends on circumstances of case. The court jurisdiction arises in interest of justice and power to transfer case from one state to another state the court can be exercised by the Supreme Court. Mere apprehension is not enough the court should see whether the apprehension is reasonable. The transfer of investigation from one Police Station to another is not contemplated under section 406 of CrPC. There is no hard and fast rule prescribed for deciding the transfer petition. The convenience of parties is necessary and it is based on facts of each case.

CONDITIONS FOR TRANSFERRING CASES:

If it appears for dispensation of criminal justice if it is not possible, then impartially the court transfer the case to another court where holding of fair trial is conducive. The convenience of parties includes witness produced at trial are relevant considerations while transferring cases from one court to another and also prosecution witness. The Apex Court laid down as;

convenience of parties and witnesses are relevant considerations for transfer and the language should be convenient for prosecuting agency to depose before the court. The Supreme Court confers statutory right to parties for transfer from one State to another State by inserting amendment to those sections. The residual discretionary power of Supreme court cover all typical new cases which require special consideration by the Apex court.

DECIDED CASES:

In Abdul Nazar Madani V. State of TN,

There is no hard and fast rule in deciding the transfer petition. It is solely decided on the basis of facts of the case. The parties convenience is of relevant consideration to meet the ends of justice[3].

In Captain Amarinder Singh V. Prakash Singh,

The Supreme Court laid down in this instant case that there should be impartial trial so the convenience of parties to be taken in to consideration for deciding a transfer petition[4].

In Nahar Singh V. Union of India,

The transfer request will be rejected if the prayer for transfer is not based on ground of convenience of accused and witnesses. It is the discretion of court to transfer particular case or not[5].

In Kaushalya Devi V.Mool Raj,

The court has to see whether there is a reasonable apprehension. Mere apprehension is not enough. For fair and impartial hearing there should be reasonable transfer by the Supreme Court[6].

In State of Maharashtra V.Parful B.Desai ,

In cases if there is a facility of video conferencing then it must be utilized since mere transfer of case is not always a solution to the parties. For eg; if there is a matrimonial case where one party is outside the jurisdiction, in such case upon the request of parties, recording evidence through video conference is upheld[7].

In *Monica V. State of Rajasthan*,

The Honorable Court held that convenience of parties in transferring cases need not consider petitioner alone, it should consider accused and witnesses of that case which is larger interest of society[8].

GROUND FOR TRANSFER:

There are certain grounds to transfer case[9],

- The fair trial cannot be held in any subordinate court and if the place of incidence is away from place of court.
- If there is a question of law which cannot be decided by the lower court.
- And for convenience of party or witness.

OVERVIEW:

The Honorable Apex court is vested with widest discretionary power in transferring cases. Section 406 of CrPC grants discretionary power to the Supreme Court in transferring criminal case. This is done only if the applicant reasonably substantiates his contentions to transfer[10].

The court rejected the transfer plea since the petitioner prayed to transfer from Tamil Nadu to Kerala for communal atmosphere in Tamil Nadu. The court held that apprehension of getting fair and reasonable trial should not be imaginary[11].

Procedures to be followed in filing transfer petition in the Supreme Court:

The affidavit should be filed along with the transfer petition and the court fee Rs.2/- to be paid and 1 + 5 copies of transfer petitions are needed. Also Rs. 50/- as a court fee for criminal matters and the memo of appearance Rs.5/- court fee is filed[12].

If in case of urgent public importance, the Supreme Court can take cognizance of offence in transferring such case. The aim of this power is to keep the judiciary active. Also Art.139A empowers Supreme Court to do so[13].

The Supreme Court of India stayed its own order and transferred all the criminal cases which is of environmental nature to the National Green Tribunal. The criminality of the case is dealt solely by the Tribunal respectively[14].

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 one Criminal court subordinate to one High Court. Whenever it is expedient to do so, it can do for ends of justice[15].

The Supreme Court can exercise such wide powers only if the application is made by the Attorney General of India or party interested. The word “party” includes complainant or public prosecutor or accused and it also includes person lodging FIR[16].

Section 406 of Criminal Procedure Code does not clothe the Supreme Court with the power to transfer investigations from one police station to another simply because first information report is forwarded to a court. The power is limited[17].

In transfer of cases, the apprehension of the party should be reasonable. That is the foundation of transferring cases. It must appear to the court that there exist reasonable apprehension. The transfer is permitted by this code to enable the party to have independent judgment[18].

The Court generally has the power to transfer cases from one court to another. If any party to the case finds that he will not get a fair trial then he may file for application to transfer the case[19].

Apart from the Supreme Court, if any lower court needs to transfer cases from one court to another then it must be performed by the Additional District Magistrate[20].

The court has unanimously come to conclusion that while transferring cases if the record of physical harm being caused to petitioner is shown then it must immediately transfer the case[21].

In order to transfer particular case from one court to another, there must be some concrete proof to be given to the court to make sure there exist reasonable apprehension in the case for such transfer[22].

VERIFICATION OF HYPOTHESIS:

It is hence proved that transfer of cases is vested with interest of justice only the parties should not misuse the said opportunity by lodging vague application[23].

CONCLUSION:

The judiciary watch dog keep eye on legislature and executive authorities control their arbitrary actions keep check on their activities[24]. The transfer of case from one court to another may not change nature of trial or relief nor does it changes subject position with addition of such

provisions. Transfer of cases from one court to another ensures litigant parties assured to justice done to them.

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