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Umesh Kumar Sharma Vs. State Of Uttarakhand

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Court : Supreme Court of India

Decided On : Oct-16-2020

Judge : Hon'Ble Mr. Justice Sanjay Kishan Kaul Hon'Ble Mr. Justice Dinesh Maheshwari Hon'Ble Mr. Justice Hrishikesh Roy

Appeal No. : T.P.(Crl.) No.-000534-000536 - 2019

Appellant : Umesh Kumar Sharma

Respondent : State Of Uttarakhand

Advocate for Pet/Ap. : JAYANT MOHAN __

Judgement :

[REPORTABLE]. IN THE SUPREME COURT OF INDIA CRIMINAL ORIGINAL JURISDICTION TRANSFER PETITION (CRL.) NOS. 534-536 OF2019 Umesh Kumar Sharma Petitioner Versus State of Uttarakhand & Ors. Respondents

JUDGMENT
Hrishikesh Roy, J.

1. The present petitions are filed under Section 406 of the Code of Criminal Procedure, 1973 (for short the Cr PC) read with Order XXXIX of the Supreme Court Rules seeking transfer of three criminal cases pending before different courts in Dehradun to competent courts in Delhi or some other courts outside the

State of Uttarakhand. Page 1 of 20

2. Mr. Kapil Sibal, the learned Senior Counsel submits that the petitioner apprehends threat to his life and will be prejudiced in conducting his defense in the courts at Dehradun. The basic premise for such apprehension is that on account of his work as an investigative journalist against the Ruling dispensation, the State is targeting the petitioner for vindictive prosecution. It is pointed out that as a journalist the petitioner has conducted sting operations against the Chief Minister, his relatives and associates in the State of Uttarakhand and therefore he is being targeted for malicious prosecution within the State. Moreover, besides the three cases for which transfer is sought, many false cases are foisted against the petitioner. As such, the petitioner has a genuine and justifiable apprehension that justice will not be done if the trials are conducted in the courts within the State of Uttarakhand. Therefore, those cases be transferred Page 2 of 20 either to the courts in Delhi or to any other competent courts, out of Uttarakhand.

3. Representing the State of Uttarakhand, Ms. Ruchira Gupta, the learned counsel however submits that the petitioner has failed to demonstrate how and in what manner, he will be prejudiced if the trials continue in the courts at Dehradun. According to her, the effort of the petitioner is filed only to delay the proceedings. Since investigation in all three cases are concluded and charge sheet has been filed, the apprehension of interference in the cases by the State administration is contended to be wholly unfounded. The government counsel then refers to the large number of witnesses in the cases to point out that all of them are residents of the State of Uttarakhand and therefore it will be wholly irrational to transfer the trials only on the basis of unsubstantiated apprehension by the accused. Rebutting the contention that the petitioners life is endangered within the State of Uttarakhand, Ms Ruchira Gupta, the learned government Page 3 of 20 counsel submits that these petitions are confined to only three cases whereas the petitioner is accused in several other cases pending in the State. Moreover, he has himself filed five PILs in the year 2020 itself in the High Court of Uttarakhand and this demonstrates that the petitioner is conducting his affairs without any impediment. The government advocate then submits that the transfer of criminal cases should be rare and exception since it impacts the credibility of the Courts in

Uttarakhand. Ms. Gupta submits that some of the criminal cases against the petitioner have been closed and the charges of extortion have been dropped. This according to the learned government counsel would clearly demonstrate the unbiased approach of the State Government and the incorrect and bald allegation made by the petitioner.

4. Representing the Complainant (Ayush Gaur) in the FIR No.100/2018, Mr. Arvind Kumar Shukla, learned counsel points out that his client during his service with the petitioner learned that the petitioner is Page 4 of 20 using the cover of journalism to grab property inasmuch as none of the so-called sting operations carried out by the petitioner has led to prosecution of anyone in the State of Uttarakhand. The counsel submits that in most of the 29 cases pending against the petitioner, the primary charge is grabbing of property, and accordingly, the counsel argues that the petitioner has put forth a non-bonafide plea, in order to delay the trial against him.

5. Insofar as the FIR No.100/2018 is concerned, the Complainants lawyer points out that although the so called investigation and sting operations were carried out, the petitioner never had any intention of actually exposing corruption in high places. The sting operations commenced in January 2018, but there was no attempt made by the petitioner to telecast the video recordings and only then Complainant realized that the video footage collected with secret camera will be used by the petitioner to blackmail people. That is why on 10.8.2018, the Complainant who was one of the team Page 5 of 20 members under the accused, was constrained to file the FIR to expose the nefarious design of the petitioner. The counsel then argues that the petitioner has failed to indicate as to how the trial would be prejudiced if they are to be conducted in the courts at Dehradun.

6. Mr. Anupam Lal Das, the learned Counsel appearing for the co-accused in the FIR No.100/2018, however, joins the petitioner in seeking transfer of the said criminal case from the Courts in Uttarakhand.

7. Before proceeding any further, it would be appropriate to refer to the list of cases pending against the petitioner. Out of those cases, 17 cases relate to the State of Uttarakhand, 4 cases are from the State of Uttar Pradesh, 5 cases relate

to the State of West Bengal, 2 cases are from Delhi out of which one is under investigation of the CBI, and another one at Ranchi, Jharkhand.

8. Whether those cases are without merit or otherwise, can be determined only through trial. However, the numbers do suggest that the petitioner is not an Page 6 of 20 ordinary person. It is also important to note that the State has withdrawn prosecution in many cases filed against the petitioner.

9. We also notice that one of the FIR that is being sought to be transferred i.e. FIR No.16/2007 was filed long back in 2007, when the present ruling dispensation in the State of Uttarakhand, was nowhere in picture. The contents of the allegations in the FIR No.16/2007 (registered on 9.2.2007) relates to a property dispute involving the Will (dated 20.1.1995), of a family member of the petitioner.

10. The next FIR No.128/2018 (registered on 1.11.2018) relates to forcible land grabbing attempts, on the basis of purportedly fake of documents.

11. Perhaps only the FIR1002018 (dated 10.8.2018) is relatable to journalistic activity where the allegation of a core member of the investigative journalism team is that the petitioner in the guise of sting operation (by video recording activities of powerful elements), Page 7 of 20 does not air them and the concerned footages are utilized for extraneous purposes.

12. Let us now examine the arguments of the petitioners counsel about the petitioner being targeted for malicious prosecution. To demonstrate this aspect the learned senior counsel refers to the pro- active steps taken by the public prosecutor to arrest the petitioner by repeatedly approaching the magistrate and then the High Court. Whether the public prosecutor followed the legal process or it was a case of overenthusiasm is an issue, which may not be very relevant for the purpose of these transfer petitions. This is because the incident happened nearly two years back when the FIR1002018 was first registered. More importantly the charge sheet is already filed and the case is scheduled to go for trial in the Dehradun Court. Therefore, the role of the State will now be limited to prove the prosecution case before the Trial Court. In such Court controlled proceeding, the prosecution will have to marshal their evidence which Page 8 of 20 is to be

evaluated by the Presiding Officer of the concerned Court. Therefore, the apprehension of malicious prosecution because of the steps taken by the public prosecutor against the petitioner in 2018, is not acceptable. I may also add that our courts are capable of deciding cases on the merits of the evidence.

13. On the above aspect the following ratio will have a bearing. In Sidhartha Vashisht Vs. State (NCT of Delhi)1, Justice P. Sathasivam, as he then was, while writing for the Division Bench discussed the role of public prosecutor and conducting of investigation and his observations in the present case, will be apposite. 187. Therefore, a Public Prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims. It must be noted that these duties do not allow the Prosecutor to be lax in any of his duties as against the accused 1 (2010) 6 SCC1Page 9 of 20 198The law in relation to investigation of offences and rights of an accused, in our country, has developed with the passage of time. On the one hand, power is vested in the investigating officer to conduct the investigation freely and transparently. Even the courts do not normally have the right to interfere with the investigation. It exclusively falls in the domain of the investigating agency. In exceptional cases the High Courts have monitored the investigation but again within a very limited scope. There, on the other a duty is cast upon the Prosecutor to ensure that rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot-free while an innocent is not punished. Even in the might of the State the rights of an accused cannot be undermined, he must be tried in consonance with the provisions of the constitutional mandate. The cumulative effect of this constitutional philosophy is that both the courts and the investigating agency should operate in their own independent fields while ensuring adherence to basic rule of law.

14. In Maneka Sanjay Gandhi vs. Rani Jethmalani2, for the three Judge Bench, Justice V.R. Krishna Iyer enunciated the law on transfer under Section 406 Cr PC with the following observation: - 2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to 2 (1979) 4

SCC167Page 10 of 20 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 imperilling, 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 when- 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.

3. One of the common circumstances alleged in applications for transfer is the avoidance of substantial prejudice to a party or witnesses on account of logistics or like factors, especially when an alternative venue will not seriously handicap the complainant and will mitigate the serious difficulties of the accused. In the present case the petitioner claims that both the parties reside in Delhi and some formal witnesses belong to Delhi; but the meat of the matter, in a case of defamation is something different. The main witnesses are those who speak to having read the offending matter and other relevant circumstances flowing therefrom. They belong to Bombay in this case and the suggestion of the petitioner's counsel that Delhi readers may be substitute witnesses and the complainant may content herself with examining such persons is too presumptuous for serious consideration. Page 11 of 20

15. In Abdul Nazar Madan vs. State of T.N. & Anr.3, Justice R.P. Sethi speaking for the Division Bench discussed the scope of power under Section 406 Cr PC and observed:- 7. 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 Cr PC. 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 3 (2000) 6 SCC204Page 12 of 20 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.

16. In R. Balakrishna Pillai vs. State of Kerala4, Justice M.B. Shah in another case for transfer under Section 406 Cr PC, made the following pertinent observation:- 9. . we would further state that in this country there is complete separation of the judiciary from the executive and Judges are not influenced in any manner either by the propaganda or adverse publicity. Cases are decided on the basis of the evidence available on record and the law applicable. Granting such application and transferring the appeal from the High Court of Kerala to the High Court of Karnataka would result in casting unjustified aspersion on the Court having jurisdiction to decide the appeal on the assumption that its judicial verdict is consciously or subconsciously affected by the popular frenzy, official wrath or adverse publicity, which is not the position qua the 4 (2000) 7 SCC129Page 13 of 20 judicial administration in this country. We would also mention that at the time of hearing the learned counsel has not raised this contention.

17. In Captain Amrinder Singh Vs. Prakash Singh Badal & Ors.5, Justice P. Sathasivam, as he then was, speaking for the three judge Bench, on the issue of transfer of criminal cases, observed as follows: - 48. The analysis of all the materials, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. **** **** **** **** **** **** **** **** 51. We have already pointed out that a

mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, we are of the opinion that in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding 5 (2009) 6 SCC260Page 14 of 20 the nature of the accusations made against them. In the case on hand, the apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.

18. Let us now examine another precedent on transfer of criminal cases. In Nahar Singh Yadav & Others vs. Union of India & Ors.6, Justice D.K. Jain writing for the three Judge Bench discussed the scope of transfer under Section 406 Cr PC in the following terms: - 22. It is, however, the trite law that power under Section 406 Cr PC has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well. 6 (2011) 1 SCC307Page 15 of 20

19. On the same line is the decision in Harita Sunil Parab vs. State(NCT of Delhi) & ors7, where Justice Navin Sinha, enunciated the law on transfer jurisdiction in the following terms:- 8. 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. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. The charge-sheet in FIR No.351 of 2016 reveals that of the 40 witnesses, the petitioner alone is from Mumbai, two are from Ghaziabad, and one is from Noida. The charge-sheet of FIR No.1742 of 2016 is not on record. A reasonable presumption can be drawn that the position would be similar in the same also. 7 (2018) 6 SCC358Page 16 of 20

20. The above legal enunciations make it amply clear that transfer power under section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises.

21. While assurance of a fair trial needs to be respected, the plea for transfer of case should not be entertained on mere apprehension of a hyper sensitive person. In his pleadings and arguments, the petitioner in my assessment has failed to demonstrate that because of what he endured in 2018, it is not possible for the courts in the state to dispense justice objectively and without any bias. It cant also be overlooked that the petitioner is involved in several cases and this year itself has generated few on his own in the state of Page 17 of 20 Uttarakhand. Therefore, it is difficult to accept that justice for the petitioner can only be ensured by transfer of three cases mentioned in these petitions.

22. While considering a plea for transfer, the convenience of parties would be a relevant consideration. It cant just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution besides the larger issue of trial being conducted under the jurisdictional Court. When relative convenience and difficulties of all the parties involved in the process are taken into account, it is clear that the petitioner has failed to make out a credible case for transfer of trial to alternative venues outside the State.

23. The learned senior counsel for the petitioner made it clear that the petitioner is not pointing any fingers towards the courts and his apprehension is based only on the action taken by the State. The transfer of trials from one state to another would inevitably reflect on the credibility of the States Page 18 of 20 judiciary and but for compelling factors and clear situation of deprivation of fair justice, the transfer power should not be invoked. This case is not perceived to be one of those exceptional categories.

24. When the nature of the three cases are examined, it is seen that two of the cases are property and Will related matters. One of this case is pending for last over a decade. Therefore, this court finds it difficult to accept that the cases are on account of journalistic activities of the petitioner. In fact the credibility of the journalistic activity of the petitioner is itself questioned, by a member of his sting operation team, in the third case. In such circumstances, the prosecution in the concerned three cases cant prima facie be said to be on account of malicious prosecution. Page 19 of 20

25. In view of the forgoing, these Transfer Petitions are dismissed. However, it is made clear that the observations in this judgment is only for disposal of these petitions and should have no bearing for any other purpose. J.

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