

Powers of the Courts to transfer criminal cases: A Critical Study of Supreme Court's decision in Mrudul M Damle's^x

By

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1. The powers of the court to order transfer of cases is provided under Sec 406 and Sec 407 of the Criminal Procedure Code, 1974.¹
2. Sec 406 Cr Pc deals with transfer of cases from the court of one State to another State court and provides thus:-

"Sec 406:

- (i) whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred 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.
- (ii) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.
- (iii) Where any application for the exercise of the powers conferred by the section is dismissed, the Supreme

^x Mrudul M.Damle & another Vs. CBI, New Delhi, 2012 Cr LJP.2841.

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¹ Criminal Procedure Code hereinafter referred as Cr Pc.

Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application, such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case".

A careful perusal of the above provision, clearly enunciates the following norms:-

- (i) The jurisdiction under the present section arises in the interests of justice only;
- (ii) The application for transfer must be made by the Attorney-General or of a party interested;
- (iii) Power to transfer a case from one State to a Court in another State can be exercised by the Supreme Court only; and
- (iv) 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.

As laid down in Kaushalya Devi's case,² a mere allegation of apprehension is not enough, the court has to see whether the apprehension is reasonable. In a case of an appeal against conviction, on the charge of an attempt to murder the Chief Justice of State and applied for transfer of the case to some other High Court, on the ground that the appellant will not have fair and impartial hearing of appeal in the State High Court presided over by the complainant, the Supreme Court ordered the transfer of the case.³

Few other cases, where the Supreme Court ordered the transfer of cases can be stated below:-

² (1964)1 Cr LJ P.233(SC).

³ L.S.Raju Vs. State of Mysore, AIR 1953 SC P.435.

- (i) In cases, where all essential attributes of a fair and impartial trial are put in jeopardy;⁴
- (ii) Where the petitioner was poor and the complainant was the only witness to be examined;⁵
- (iii) Where there was every likelihood of physical harm being caused to the petitioner⁶ and
- (iv) Transfer of investigation from one Police Station to another is not contemplated under Sec 406 Cr Pc.⁷

3. The Supreme Court in Abdul Nazar Madani's⁸ case observed:-
 "while 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 parties including the witnesses to be produced at the trial is a relevant consideration" and the paramount consideration being the need to meet the ends of Justice.⁹ In Abdul Nazar Madani's, the Supreme Court further observed as follows:-¹⁰

- (i) The purpose of the criminal trial is to dispense fair and impartial justice, uninfluenced by extraneous considerations;
- (ii) 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 Sec 407 Cr Pc; or under Sec 408 Cr Pc anywhere in the Country;

⁴ Supra (Kaushalya Devi).

⁵ Inder Singh Vs. Kardar Singh, AIR 1979 SC 1720.

⁶ Ranjit Singh Vs. Popat Rambhaji Sonavane, AIR 1983 SC P.291.

⁷ Inder Singh, Supra P.1720.

⁸ Abdul Nazar Madani Vs. State of Tamilnadu, AIR 2008 SC P.2293.

⁹ Dr. Subramanya Swamy Vs. Ramakrishna Hegde, AIR 1990 SC p.113.

¹⁰ Supra Note (8).

- (iii) 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;
- (iv) 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;
- (v) In case of convenience of parties
 - (a) It does not necessarily mean the convenience of the parties alone who approached the court on misconceived notions of apprehension, but the convenience of the prosecution, other accused, the witnesses and the larger interest of the society; and
 - (b) The convenience of the parties including the witnesses to be produced at the trial is a relevant consideration, while transferring a case from one court situated in one State to the other situated in another State¹¹
- (vi) Transfer of a criminal cases on ground of safety of the woman petitioner from Delhi to Durg was ordered.¹²

4. The apex court also laid down as follows:-

- (i) Impartial trial and convenience of parties and witnesses are relevant considerations for deciding a transfer petition;¹³
- (ii) Convenience of the prosecuting agency and the language in which all the witnesses had to depose before the court;¹⁴ and

¹¹ Shree Baidyanath Ayurved Bhawan (Pvt) Ltd. Vs. State of Punjab & another (2009)9 SCC P.414.

¹² Mrs. Sesamma phillip Vs P.Phillip, AIR 1973 SC P.575. (this case relates to a matrimonial one)

¹³ Captian Amarinder Singh Vs. Prakash Singh Badal, AIR 2009 SC (Suppl) P.2120.

- (iii) Expeditious disposal of the trial is also a facet of fairness of a trial and speedy trial is in fact a Fundamental Right.¹⁵ So this is a ground for transfer of a case.
5. Few cases in which the request for transfer was rejected can be briefly stated thus:
- (i) Where the main accused had not filed for transfer of the case and the number of witnesses were not so large, as the bulk of witnesses were located in the State, the plea was rejected;¹⁶ and
 - (ii) Where the prayer was not based on the ground of convenience of the accused and witnesses as it was on the independence of the courts before whom the matter was pending, the transfer request was rejected, as the court felt that it would be a reflection upon the credibility of not only the entire judiciary but also the prosecuting agency.¹⁷
6. In the case under study,¹⁸ the petition for transfer of a case from Delhi to Mumbai on the grounds:-
- (i) It was a corruption case against the working couple, husband employed in Gujarat and the wife in Maharashtra;
 - (ii) Large number of witnesses from Maharashtra;
 - (iii) Most of the searches during investigation were made in Maharashtra;
 - (iv) Travelling expenses of parties and witnesses, (official and private) to Delhi, apart from expenses would cause delay and the right to speedy trial would be violated;

¹⁴ Jayendra Saraswathy Vs. State of Tamil Nadu Swamigal, AIR 2006 SC P.6. The case was transferred from Kanchipuram to Pondicherry.

¹⁵ Hussaina Khatoon & others Vs. Home Secretary, State of Bihar, AIR 1979 SC P.1360.

¹⁶ Bhairu Ram & others Vs. CBI (2010)7 SCC P.799.

¹⁷ Nahar Singh Vs. Union of India, AIR 2011 SC P.1549.

¹⁸ Supra P.2841, the transfer for special Judge, CBI cases, Rohini Court, New Delhi, to court of Special Judge, CBI cases, Thane, Maharashtra.

- (v) Prosecuting agency has well equipped office in Maharashtra; and
- (vi) Court handling CBI cases located in Maharashtra

7. No doubt, the Supreme Court must have discretionary power to transfer cases on the ground of 'expediency or for the ends of justice' it may be desirable to confer a statutory right to the parties for transfer of a case from one State to a court in another State by inserting appropriate amendment to Sec 406 Cr Pc in these terms:-

Sec 406(A) after Sec 406(1) of Cr Pc in these terms:-

Section 406(A):

The parties shall have the right to transfer of a case from one State to a Court of another State, if they satisfy the Supreme Court;

- (i) That it would be convenient to a large number of witnesses to be examined in the court and in the language in which they will depose in the court;*
- (ii) The most of the issue relating to investigation such as searchers and other matters connected with investigation arise in that state;*
- (iii) That it is convenient to the prosecution to conduct the case as it has a well equipped office and a court of competent jurisdiction exists in that State to try, in order to ensure speedier and expeditious trial; and*
- (iv) Any other grounds, which the Supreme Court considers to be just and equitable in the interests of the entire trial of the case.*

The residual discretionary power of the Supreme Court will cover all typical new cases which may require special consideration by the apex court.

