

SUPREME COURT OF INDIA

Monica

Vs.

Satish Sharma

Transfer Petition (Crl.) No. 258 of 2007

(S.B. Sinha and Cyriac Joseph JJ.)

27.07.2009

JUDGMENT

S.B. Sinha, J.

1. Transfer Petition (Crl.) No. 258 of 2007 has been filed by Monica seeking transfer of Crl. Revision Petition No.62 of 2007 tiled `Satish Sharma and another vs. Monica and others' filed by respondent No.1. from the Court of Additional District Judge, Jaipur to the Court of Additional District Sessions Judge, Patiala House Courts, New Delhi and for transfer of execution proceedings under Section 83 of the Code of Criminal Procedure, 1973 (for short `the Code') in respect of property No.433, Adarsh Nagar, Jaipur, to the Deputy Commission of Police, South Zone, New Delhi.

2. Transfer Petition (Crl.) Nos. 259-260 of 2007 have been filed by Monica and her mother, Smt. Vinay Malhotra for transfer of S.B. Crl. Misc. Petition No.1402 of 2007 filed by them under Section 482 of the Code for quashing of FIR No.170 of 2007 pending before the High Court of Rajasthan, Jaipru Bench, to the High Court of Delhi.

3. Admittedly petitioner-Monica has initiated some criminal cases against her husband and in-laws. They had been granted bail. Inter alia on the premise that they had jumped bail, proceedings under Section 83 of the Code of Criminal Procedure were initiated against them.

4. Husband and mother-in-law of Monica were declared proclaimed offenders. Property of the mother-in-law of Monica at Lajpat Nagar, New Delhi, was sealed. Father-in-law of petitioner Monica had a joint property at Jaipur. The same is said to be jointly owned by respondent Nos. 1 and 2 and father-in-law of petitioner-Monica. The said property was sought to be attached. Allegedly S.H.O., P.S. Moti Dungri, Jaipur within whose jurisdiction the said property is situate was non-co- operative. However, the said property was attached by S.H.O. P.S. Moti Dungri unilaterally on 20th June, 2007 in terms of Section 83(4)(c) of the Code i.e. to maintain status quo.

5. Petitioner-Monica thereafter filed an application before the trial court at Delhi that the property be sealed in terms of Section 83(4)(a) of the Code whereupon a direction in that behalf was issued on 10th July, 2007.

6. On an allegation that the Monica and her mother (petitioners) had forged the stay order dated 10th July, 2007 without seeking clarifications from the court of learned Additional Chief Metropolitan Magistrate, New Delhi, first information report was lodged by the first respondent (Satish Sharma) with the concerned Police Station. It was alleged that the petitioners had produced the said forged order dated 10th July, 2007 before the local police. Respondent No.1, however, when checked the original order from the Court of Additional Chief Metropolitan Magistrate, New Delhi, and came to learn that the order actually was issued under Section 83(4)(c) of the Code and not under Section 83(4)(a).

7. Petitioner-Monica, who appears in person would contend that as a criminal case under Section 498A/406 and 34 of the *Indian Penal Code* and other proceedings against her husband/her parents-in-law at Patiala House Courts, New Delhi are pending in which she had been appearing in person, proceedings pending at Jaipur be transferred to Delhi.

8. Respondent No.1 is a relative of father-in-law of the petitioner. He has nothing to do with the matrimonial dispute and/or the criminal case filed by the petitioner-Monica against her husband and her in-laws. He is merely a co-sharer in the property of the father-in-law of the petitioner. It is beyond any doubt or dispute that whereas in terms of Section 83(4)(a) of the Code the property has to be taken possession whereas in terms of the provisions of Section 83(4)(c) merely an order of prohibitory injunction to be passed.

9. If the respondents concerned are in physical possession of the property, the question of dispossessing them by way of attachment for jumping of bail by the father-in-law of the petitioner did not arise.

10. Indisputably the learned Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi, on 30th April, 2007 inter alia passed the following order :-

“Meanwhile complainant submits that she could not get the process u/s 83 Cr.PC executed insofar as Jaipur property is concerned. She requests for one more date. Under these circumstances, issue fresh process Us 83 CrPC against the accused Bhaskar Sharma in respect of the Jaipur property to be got executed with the aid and assistance of the local police. At this stage, on request, the said process be given dasti to the complainant for execution. Petitioner received the said process on 5th May, 2007.”

11. Respondent No.1 contends that no member of her in-laws' family had lived at the said house for the last forty years.

12. We have noticed hereinabove that allegations had also been made by the petitioners against the Station House Officer of P.S. Moti Dungri, Jaipur and on the basis of such

allegations the Court of Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi, was also moved.

13. We have gone through the list of dates contained in the counter- affidavit, on perusal whereof it appears that in pursuance of the execution of the order of attachment dated 10th July, 2007, Station House Officer of P.S. Moti Dungri, Jaipur called the occupants of the property on 19th July, 2007 and directed them to vacate the property immediately as the same would be sealed on 20th July, 2007. It is only then that respondent No.1 obtained a copy of the said order dated 10th July, 2007 by fax on 19th July, 2007.

14. As the respondent No.1 and the other witnesses have nothing to do with the criminal case pending in the Court of Additional Chief Metropolitan Magistrate, Patiala House, New Delhi and as the act of commission of forgery is said to have taken place at Jaipur, we are of the opinion that it is not a fit case where the order of the transfer should be passed as most of witnesses are from Jaipur only. Furthermore, the petitioner need not even attend the proceedings pending before the learned Additional Sessions Judge, Jaipur or the High court of Rajasthan, Jaipur Bench in person.

15. It furthermore appears that the investigation is not yet complete. Respondents in their counter-affidavit have stated that the petitioners have not yet been examined by the Investigating Officer.

16. This Court in *Abdul Nazar Madani v. State of Tamil Nadu*¹, has held:-

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 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. 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 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.

17. For the reasons mentioned above we find no ground to transfer the matters from Jaipur to Delhi. The transfer petitions are dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

¹(2000) 6 SCC 204