

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 1616 of 2023
Utpal Behara@ Manoj
-Vs-
The State of West Bengal

For the Petitioner: Mr. S.S Roy, Adv.,
Mr. Dilip Kumar Samantha, Adv.,
Mr. Debapriya Samanta, Adv.

For the State: Mr. Saswata Gopal Mukherjee, Ld. PP.,
Mr. Ranabir Roy Chowdhury, Adv.

Hearing concluded on: 10.05.2023.

Judgment on: 17.11.2023.

BIBEK CHAUDHURI, J. : -

1. 1. The instant revisional application has been filed challenging the order dated 15th March, 2023 passed by the Learned Sessions Judge, Murshidabad at Berhampore arising out of Jiaganj Police Station case no. 223 of 2019 dated 8th October, 2019 under Section 302/201 of the IPC wherein the Learned Judge transferred the trial of the case from the Learned Additional Session Judge, 2nd Court, Lalbagh, Murshidabad to the Learned Additional sessions Judge, 3rd Fast Track Court, Berhampore and an order dated 18th March, 2023 passed by the Learned Sessions Judge, 3rd Fast Track Court, Berhampore.

2. Jiaganj police station case no. 223 of 2019 dated 8th October, 2019 under Section 302/201 of the IPC was initiated against the petitioner on the basis of an FIR lodged by one Bandhu Krishna Ghosh alleging inter alia that on 8th October, 2019 his cousin brother, his 8 months pregnant wife and their son was brutally murdered and was declared brought dead by the Jiaganj Rural Hospital. Subsequently the petitioner was arrested and facing custodial sessions trial. After completion of investigation chargesheet and supplementary chargesheet was submitted in the court. Charges were framed under Section 302/201 of the IPC. Out of 76 prosecution witness, 42 prosecution witnesses were called under Section 311 of the CrPC and by filling an application the Learned Public Prosecutor informed that no more prosecution witness would be examined which was objected by the defence lawyer. At this stage the case was transferred and the impugned order dated 15th March, 2023 was passed by the Learned Additional Sessions Judge, 3rd Fast Track Court.

3. After such transfer, the newly transferee court at Berhampore took up the petition dated 25th January, 2023 filed by the prosecution proposing no further witnesses to be examined and the defence raised objection on such application. By the impugned order dated 18th March, 2023 the Learned Judge disposed of the said application dated 25th January, 2023 by directing closure of evidence of the prosecution and fixed 3rd April, 2023 for examination of the petitioner under Section 313 of the CrPC.

4. Hence this revision.

5. Learned advocate for the opposite party submits that the learned judge below considering the gruesome murder of the entire family and the aged widowed mother of the victim transferred the case to the Learned Additional Sessions Judge, 3rd Fast Track Court, Berhampore. Both the advocates for the parties put their signature and thereafter continued with the trial by examining several witnesses before the transferred court.

6. Learned advocate for the petitioner submits that the defence lawyer objected to the application filed by the public prosecutor and the learned court below by an order dated 15th March, 2023 transferred the case.

7. The learned advocate for the opposite party submits that Section 408 of the CrPC provides that the Sessions Judge may transfer a case on its own initiative. There is no embargo on the Sessions judge to see as to whether the trial of the case has commenced or not.

“408. Power of Sessions Judge to transfer cases and appeals.

(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub section (1) as they apply in relation to an application to the High Court for an order under subsection (1) of section 407, except that sub-”

section (7) of that section shall so apply as if for the words" one thousand rupees" occurring therein, the words" two hundred and fifty rupees" were substituted."

The power conferred on the Session judge under Section 408 Cr.P.C. to transfer a case or an appeal pending in the Court of Additional Session Judge to any other Additional Sessions Judge whether trial has begun or hearing has commenced is an independent judicial power which is not subjected to the bar imposed by Section 409(2) Cr.P.C. on the administrative power of the Session Judge of recalling a case from Additional Session Judge to another after trial has commenced. In view of the above discussion the learned advocate for the opposite party refers to the decision of this Court in **State of West Bengal vs Gangadhar Dawn and Ors.** reported in **1989 CRI.L.J. 563** where it was held that Session Judge transferring case under Section 408 to the court of Additional Session Judge, who already began the trial thereof, subsequent transfer of the same case is illegal and beyond jurisdiction of Sessions Judge.

8. It was submitted by the learned advocate for the petitioner that they prayed before the court below to stop the proceeding of the case for a period of one month to enable the petitioner to approach this Court against the impugned order dated 15th March, 2023 which was rejected by the transferred court via order dated 18th March, 2023. The learned court below fixed 3rd April, 2023 for examination of the accused under section 313 of the CrPC.

9. It was submitted by the learned advocate for the opposite party that examination under Section 313 was completed and argument was heard in part and at this stage trial of the case should not be stayed for the interest of justice. He further refers to order dated 6th April, 2023 where the learned trial judge recorded that the order impugned was passed on consent and on the date of transfer the learned advocate for the accused in presence of the accused gave consent to such transfer.

10. Learned advocate for the opposite party further submits that the petitioner is trying to delay the trial by filing this revisional application and praying for stay of the proceeding wherein it is a well settled law that trial of the case cannot be stayed merely on the ground that a revisional application has been preferred before this court. On the above discussion a judgment of the Hon'ble Supreme Court has been referred in **Asian Resurfacing of Road Agency PVT. Ltd vs CBI** reported in **AIR 2018 SC 2039**.

11. The ultimate goal of any judicial system on the earth is the deliverance of justice and protection of the rights of every person. The courts are highly revered institutions of justice with people having high expectations of justice which is sought after by the aggrieved party. Therefore, the court is under high moral obligations for keeping the machinery of justice, equity and good conscience alive.

12. The learned court below rightly rejected the petitioner's petition where the petitioner gave consent for such transfer and continued with the examination under Section 313 of the Cr. P.C. Thus in view of the above deliberation made above, I do not find any merit in the case

13. Accordingly, the application is dismissed.

(Bibek Chaudhuri, J.)