

Transfer of Criminal Cases: A Study

By

Prof(Dr) Mukund Sarda[×]

1. Courts are often frequented with petitions for transfer of cases pending in one court to another court. In order to deal with such cases, the Criminal procedure Code 1974 has provided Sec 406. This section confer power on the courts to transfer cases and may be stated thus:-
 - i) Sec 406 Criminal Procedure Code deals with transfer of cases from the court of one State to another State. The Supreme Court 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 court. This power can be exercised whenever, it is made to appear to the Supreme Court that an order under Sec 406 CrPC is expedient for the ends of justice;
 - ii) For exercising the powers under Section 406, the Supreme Court can act only on the application of the Attorney-General of India or of a party interested. 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) In the event of dismissal of any such application, the Supreme 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

[×] Principal & Dean, New Law College, Bharati Vidya Peeth University, Pune.

has opposed the application, such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

A summary of Sec 406 of the Criminal Procedure Code gives the following norms:-

- a) Power to transfer a case from one State to a court in another State can be exercised by the Supreme Court only;
- b) 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;
- c) The application for transfer must be made by the Attorney-General or Advocate-General of the State or of a party interested; and
- d) The jurisdiction under Sec 406 arises in the interests of justice only.

2. A mere allegation of apprehension is not enough and the court has to see whether the apprehension is reasonable.¹ Where a person was convicted on the charge of an attempt to commit murder of the Chief Justice of the State, the petition made for transfer of the appeal case to another High Court on the plea that the appellant will not get fair and impartial hearing in the court presided by the complainant, the Supreme Court ordered the transfer of the case.² Illustrations can be given of a few cases where the Supreme Court ordered the transfer of the cases and can be stated thus:-

- i) The complainant being the only witness in the case and the petitioner was poor;³

¹ See for details Kaushalya Devi's case (1964)1 or LJ P.233(SC).

² L.s.Rajiv Vs. State of Mysore AIR 1953 SC P.435.

³ Inder Singh Vs. Kardar Singh AIR 1979 SC P.1720.

ii) Where there was every likelihood of physical harm being caused to the petitioner,⁴ and

iii) Where all essential attributes of a fair and impartial trial are put in jeopardy.⁵

3. While observing that no hard and fast rules can be prescribed for deciding transfer petitions, the apex court stated⁶ that such cases have to be decided on the basis of fact of each case, convenience of parties including witnesses to be produced at the trial and relevant considerations to be taken into account. In all cases the paramount considerations should be the need to meet the ends of justice⁷. The norms laid down in Abdul Nazar Madan's case⁸ can be stated as follows:-

- i) The purpose of the criminal trial is to dispense fair and impartial justice, uninfluenced by extraneous considerations;
- ii) Where it is shown that public confidence in the fairness of the trial could be seriously undermined, any party can seek a transfer;
- iii) The apprehension that a party will not get a fair and impartial inquiry or trial should be reasonable. It should not be based on mere conjectures and surmises;
- iv) If it appears that the dispensation of criminal justice is not possible impartially and objectively and without bias, the court may order

⁴ Ranjit Singh Vs. Popat Rambhaji Sonavane AIR 1983 SC P.291.

⁵ Supra Note I,

⁶ Abdul Nazar Madani Vs. State of Tamil Nadu AIR 2008 SC P.2293.

⁷ Dr. Subramanya Swamy Vs. Ramakrishna Hegde AIR 1990 SC P.113.

⁸ Ibid Note 6.

transfer of a case to a court where the holding of a fair and proper trial is conducive;

- v) Convenience of parties can be a relevant ground for transfer. Convenience of parties would include convenience of the prosecution, other accused persons if any, the witnesses and the larger interests of society;⁹
- vi) Safety of the women petitioner was considered as a ground for transfer of a criminal case from Delhi to Durg;¹⁰
- vii) Convenience of the prosecuting agency and the language in which all the witnesses had to depose before the court was regarded as a ground for transfer of a case;¹¹
- viii) Speedy trial can also be a ground for transfer of a case;¹²
- ix) In a transfer case from Delhi to Mumbai the following facts were taken into consideration in ordering the transfer of a case:-
 - a) Corruption case against the working couple one employed in Gujarath and the other in Maharashtra;
 - b) Large number of witnesses were from Maharashtra;
 - c) Most of the investigation and searches were made in Maharashtra;
 - d) Travelling expenses of parties and witnesses to Delhi, apart from expenses would cause delay violating the right to speedy trial;
 - e) Prosecuting agency has well-equipped office in Maharashtra; and
 - f) Court handling CBI cases were located in Maharashtra.

⁹ Shree Baidyanath Ayurved Bhawan Ltd., State of Punjab (2009)9 SCC P.414.

¹⁰ Mrs. Sesamma Phillip Vs. Phillip AIR 1973 SC P.573. This case was of a matrimonial case.

¹¹ Captain Amarinder Singh Vs. Prakash Singh Badal AIR 2009 SC (Suppl) P.2120.

¹² Hussain Khatoon Vs. Home Secretary, Bihar AIR 1979 SC P.1360.

The desirability of conferring a statutory right to parties to seek transfer of a case needs to be provided apart from the discretionary power of the Supreme Court to transfer a case. The statutory right may be provided by a suitable provision which can be on these lines:-

Proposed Amendment

Section 406A: The parties shall have the right to transfer of a case from one State to 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 the language in which they will depose in the court;
- ii) The most of the issues relating to investigation such searches 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 ensure speedier and expeditious trial; and
- iv) Any other ground, which the Supreme Court considers to be just and equitable in the interests of the entire trial of the case.

The Supreme Court will be able to deal with all typical new cases which require special consideration in view of clause (iv) suggested above.