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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 21.08.2017*
Judgment Pronounced on: 19.12.2017

+ **TR.P. (CRL.) 87/2016**

MAHESH KUMAR Petitioner
Through: Mr. Sameer Chandra, Advocate

versus

STATE (NCT OF DELHI) & ORS Respondent
Through: Ms.Aashaa Tiwari, APP for State
with SI Sandeep Kumar, PS Palam Village,
Delhi. Mr. Avnish Rana, Advocate for R-2
to R-4.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The petitioner, who is the father of the victim, has filed this petition under section 407 read with section 482 of the Code of Criminal Procedure, 1973 (in short 'the code') seeking transfer of the case vide FIR No.308/2012 dated 03.11.2012 under section 498A/406/34 of the IPC registered at PS Palam Village pending trial before the Court of Ms. Purva Sareen, Mahila Courts, Dwarka to the Court of Learned ASJ (North-West), Rohini for simultaneous disposal with the case registered vide

FIR No.414/14 under section 498-A/304B/302/34 IPC registered at PS Adarsh Nagar.

2. Status report was filed on behalf of the State. It was submitted that the marriage of the deceased, who is the daughter of the petitioner was solemnized with respondent no.2 on 09.02.2010. There were allegations of demand of dowry and cruelty against respondent no.2, 3 & 4 and the FIR No. 308/12 was registered under sections 498A/406/34 IPC. On 01.08.2013, charge sheet was filed in the Court of Ms. Purva Sareen, MM, Dwarka Court, Delhi and the case is still pending.
3. Subsequently, on 21.06.2014, the victim was allegedly murdered and the said FIR 414/14 dated 22.06.2014 under sections 498A/304B/302/34 IPC was registered against respondent no.2, 3 & 4. This case is pending before the Court of V.K Bansal, ASJ (North-West), Rohini District Courts, Delhi.
4. Mr Sameer Chandra, learned counsel for the petitioner had argued that since both the above mentioned cases are of a similar nature and a part of the evidence in these cases would be common, it would be expedient in the interest of justice that both the cases are tried and decided by the court of learned ASJ to avoid multiplicity of proceedings.
5. Per contra, Ms. Aashaa Tiwari, learned APP had argued that a part of the evidence in both the cases has already been recorded and it would not be in the interest of justice to club both the matters and record the evidence again specially when offences

under FIR No.308/12 are being tried by a Metropolitan Magistrate while the offences covered by the FIR No.414/2014 are being tried by an Additional Sessions Judge.

6. I have heard the learned counsel for the parties.
7. The power of the High Court to transfer cases and appeals is given under Section 407 of the code. It would be profitable to reproduce Section 407 herein:

“407.Power of High Court to transfer cases and appeals.-

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice.

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High 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 proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.”

8. **The Hon’ble Supreme Court in *Abdul Nazar Madani v. State of T.N.*, (2000) 6 SCC 204** while laying down the scope of the High Court’s power under Section 407 to transfer criminal cases held as under:

“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.**

9. A perusal of this Section clearly shows that the High Court has the power to transfer a case from one court subordinate to its authority to another which is either equal or superior in terms of jurisdiction. The petitioner has asked for the transfer in this case on the ground of convenience as he claims that a part of the evidence in both the cases would be common and it would help in expediting the disposal of the both the cases.
10. The first FIR No.308/2012 was registered under sections 498A/406/34 of the IPC when the victim alleged harassment and demand for dowry against her husband and his family while the second FIR No.414/2014 was registered under section

498A/304B/302/34 of the IPC after the victim was allegedly murdered within 7 years of her marriage with the accused.

11. It cannot be said that both the FIRs relate to the same incident as the first FIR was registered in the year 2012 due to allegations of harassment for demand of dowry while the second FIR was registered in the year 2014 after the victim and her child were allegedly murdered by her husband. The evidence in both the cases might overlap in connection with the alleged demand for dowry and cruelty inflicted upon the victim in relation to such demand, but since the FIRs have not arisen out of the same incident, they cannot be termed as being cross-cases arising out of the same incident and hence cannot be tried by the same Court.
12. Moreover, the offence covered by FIR No. 308/2012 is triable by a Magistrate while the offence covered under FIR No.414/2014 is triable by the Sessions Court. Moreover, part evidence in both the cases has already been recorded and it would not be lawful to transfer the case pending before Ld. MM to the Court of Ld. ASJ.
13. Following the principle laid down in *Abdul Nazar Madani's case (supra)*, keeping in mind the convenience of both the parties and the prosecution, it would be in the interest of justice and for the convenience of all the interested parties if both the cases are tried in same Court complex.

14. Hence, the case arising out of the FIR No.308/2012 dated 03.11.2012 under section 498A/406/34 of the IPC pending before the court of Ms.Purva Sareen, Mahila Courts, Dwarka is ordered to be transferred to the Court of Ld. CMM, North-West District, Rohini Courts, Delhi in accordance with law.

(VINOD GOEL)
JUDGE

DECEMBER 19, 2017

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