

(2007) 04 AHC CK 0226

Allahabad High Court

Case No: None

Naresh alias Bare Baua and
Others

APPELLANT

Vs

State of U.P. and Sri Vinay Kant
Sharma

RESPONDENT

Date of Decision: April 6, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156, 407, 482
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 279, 323

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Poonam Srivastav, J.

Heard Sri V.P. Srivastava, Senior Advocate, assisted by Sri Lav Srivastava, learned Counsel for the applicants and Sri Somesh Khare and Komal Khare Advocates for the opposite party No. 2.

Counter and rejoinder affidavits have been exchanged.

2. The instant transfer application has been filed with prayer to transfer the Session Trial No. 1130 of 2006 State of U.P. v. Naresh and Ors. pending in the court of Additional Sessions Judge, Court No. 16, Kanpur Nagar to some other Sessions Division except Etawah.

3. The basis for seeking transfer of the case is that the opposite party No. 2 Vinay Kant (first informant) is practicing advocate at District Kanpur Nagar and Kanpur Dehat, both are situated in the same premises. The first informant is brother of the deceased Harsh Kant Sharma. The accused were not allowed to surrender as the first informant and his colleagues, who are present in the court during working

hours, were agitated and every time when the accused appeared for surrender, there was a commotion created within the court premises itself which led to filing of a Misc. Application u/s 482 Cr.P.C, which was numbered as Criminal Misc. Application No. 7646 of 2006. A report was called for by this Court vide order dated 7.7.2006 from the Sessions Judge, Chief Metropolitan Magistrate, Kanpur Nagar as well as President District Bar Association. The President Sri Man Haran Gopal, President Kanpur Bar Association denied of any such incident, they expressed their ignorance about the fact when the accused were prevented from surrendering by a mob of 300-400 lawyers. The letter of the President Kanpur Bar Association has been brought on record as Annexure-3 to the affidavit. This letter was written to the District Judge, Kanpur Nagar. Having no alternative, they got themselves arrested by travelling without ticket and after their arrest, two accused were summoned by means of warrant "B". It is also stated in the affidavit that the accused Naresh alias Bare Baua, Ajai Kumar alias Pammoo and Mukesh alias Tillan were provided special security by the S.S.P. and they could surrender at 10.00 A.M. Sharp when most of the lawyers had not arrived in the court premises. It is also stated in paragraph 10 of the affidavit that the applicants engaged Sri Nand Lai Jaiswal, Advocate but he has refused to appear since he was threatened by other advocates at Kanpur. Finally the applicants managed to procure one counsel who happens to be relative but he was only a junior counsel. A senior counsel Sri Gulam Rabbani was also engaged but he was rebuffed by the opposite party No. 2 along with hundred other lawyers, hence he withdrew his memo of appearance. Similar incident happened with one Sri Rudrasen Bajpayee, another senior counsel. An application was moved in the two Bar Associations of the District for providing an advocate but the Secretary Bar Association declined this request as he could not compel any counsel against his wishes to appear. Annexures 4 and 5 are letters of Sri Man Haran Gopal Awasthi, General Secretary Lawyers Association, Kanpur and Sri Dinesh Shukla, Lawyers Association, Kanpur. It is also submitted that on another occasion on 16.11.2006 one of the pair of the applicants was given severe beating by opposite party No. 2 regarding which a first information report has been registered at case crime No. 803 of 2006, under Sections 279 427 323 504 506 I.P.C. at Police Station Kalyanpur, District Kanpur Nagar. This report could only be lodged after great persuasion and effort at the instance of the accused. Another first information report at case crime No. 407 of 2006, under Sections 147 148 149 342, 323 I.P.C. Police Station Kalyanpur, District Kanpur Nagar dated 28.7.2006 is annexed as Annexure No. 7 to the affidavit. There is yet a third first information report lodged by the applicant Naresh against the opposite party No. 2 at case crime No. CC22 of 2005, Police Station Kalyanpur, under Sections 342, 324, 323, 504 I.P.C. on 13.10.2005. It is also brought to the notice of the Court in paragraph 18 of the affidavit that on 29.1.2007 the applicant Rakesh Dwivedi was given beating while he was returning from the court-and since the police refused to register a report, a letter was sent by registered post to S.S.P. Kanpur Nagar on 29.1.2007. Rakesh Dwivedi was medically examined in Emergency Ward of K.P.M. Hospital. The injury report is annexed as Annexure-11. In this back

drop, learned Counsel has made a request for transfer of the session trial to some other district.

4. Counter affidavit has been filed on behalf of opposite party No. 2. It is submitted that the accused are land mafia and involved in a number of land grabbing cases. The accused blatantly abused the process of law and are criminals. The murder of the brother of opposite party No. 2 was committed while execution proceeding of a rent case and in process of taking possession of the property, which infuriated the accused and resulted in commission of crime. In paragraph 21 of the counter affidavit, the opposite party No. 2 submits that he is a non practicing advocate and was enrolled in the year 2006. He is the prime eye witness of the entire incident and in the event, the trial is transferred somewhere else, it will be difficult for him to appear in the court and record his evidence. It is also stated that no notices were issued to the opposite parties in Criminal Misc. Application No. 7646 of 2006. The Secretary of the two Bar Associations have specifically denied any such incident. The averments to the effect that the accused were provided police security is emphatically denied in paragraph 24 of the counter affidavit. It is further asserted that the accused Naresh alias Bare Baua, Ajai Kumar alias Pammu and Mukesh alias Tillan were arrested by the police on 9.7.2006. Parcha No. 13 of the case diary dated 9.7.2006 is annexed as Annexure CA-7 to the counter affidavit. On perusal of the said document, it transpires that three accused were arrested on 9.7.2006. In paragraphs 25 and 26 of the counter affidavit, names of certain advocates are mentioned who have filed their Parcha. It is also stated that Sri Dinesh Kumar Shukla, Secretary, Lawyers Association himself filed his Vakalatnama on behalf of the applicants for contesting the matter. Photocopies of the memo of appearance filed by the respective counsels are also annexed as Annexure CA-8. It is also submitted that a number of first information reports detailed in paragraphs 15, 16 and 17 are all cases, which are being contested in the court of Kanpur by different counsels. Annexure-CA-10 to the counter affidavit is an application u/s 156(3) Cr.P.C. moved at the instance of applicant Mahesh Kumar Dwivedi, brother of applicant Nos. 1 and 2 and Annexure CA-11 is judgment in Criminal revision No. 201 of 2006 dated 3.10.2006 passed by Special Judge (SC/ST Act), Kanpur Nagar. Sri Somesh Khare has tried to demonstrate that all these proceedings before the court were taken up by one or the other counsel and, therefore, the ground of transfer is non existent. Reliance has been placed on a decision of this Court in the case of Zohra Begum (Smt.) and Ors. v. VIIth ADJ, Bareilly and Anr. 2000 (2) ARC 224.

5. I have perused the transfer application, counter and rejoinder affidavits. There are two grounds on which the applicants have prayed for transfer of the case. The first one is non availability of the counsel and second that they apprehends danger to their life. The mere allegation by the accused of apprehension can not be said to be reasonable and justifiable to transfer the case. If this is allowed, the entire judicial system would be wrecked. The Apex Court in the case of Abdul Nazar Madani v. State of Tamil Nadu and Anr. 2000 Cri. L.J., 3480, held that an allegation of

surcharged communal atmosphere at place of incident perse is not sufficient for transferring the trial. No doubt the application u/s 482 Cr.P.C. was moved in this Court only because the accused were not able to surrender on account of atmosphere created by the first informant as well as his brother colleagues but this fact was not substantiated either by the District Judge or by office bearers of respective Bar Associations. Besides, the assertions on the part of the applicants that it was the S.S.P. who provided security for surrender of the three accused stands belied as the extract of the case diary brought on record along with counter affidavit, shows that they were arrested by the police. Thus it appears that the apprehension spelled out in the transfer application appears to be imaginary. The purpose of criminal trial is to dispense fair and impartial justice and any party can seek transfer anywhere within the State u/s 407 Cr.P.C.

6. I provided the apprehension is reasonable and not imaginary. It is also established from the record that various criminal proceedings have been initiated at the instance of the applicants and they contested the matter in various courts, counsels have appeared on behalf of the applicants. The first informant is a junior advocate as it has specifically been mentioned that he was enrolled only in the year 2006 and non practicing advocate. If the apprehension raised in this application is accepted then in every cases where the advocate is one of the litigant, the cases should be transferred from that court, it can not be substantiated objectively. In the case of [Smt. Mahua Bhowmick Vs. Bobby Bhowmick](#), it was held that the ground of threat to one's personal safety and security, if at all, is a law and order problem of the particular locality and is not covered by the grounds specifically enumerated in Section 407 Cr.P.C.

7. In view of what has been stated above, the apprehension expressed by the applicants appears to be quite flimsy and is not sufficient for transfer of the case. If the applicants apprehend danger, then they can apply for adequate security to the authorities concerned such as District Magistrate and S.S.P. I am not inclined to transfer the proceedings of the session trial No. 1130 of 2006-State of U.P. v. Naresh and Ors. to another district. The transfer application lacks merit and is accordingly dismissed.