

(2010) 10 AHC CK 0275

Allahabad High Court

Case No: Criminal Miscellaneous Transfer Application No. 591 of 2010

Dileep Singh and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Oct. 26, 2010

Acts Referred:

- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 323, 324, 325, 498A

Citation: (2011) 2 ACR 1247

Hon'ble Judges: Bala Krishna Narayana, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Bala Krishna Narayana, J.

Learned Counsel for the applicants is permitted to correct the prayer.

2. Heard Sri R.B. Singhal learned senior advocate assisted by Sri Prashant Kumar Singh and Sri Mohit Singh for opposite party No. 2 and learned A.G.A. for the State.

3. Since the facts of the case are not in dispute, with the consent of the learned Counsel for the parties this transfer application is being finally disposed of at this stage without calling for any counter-affidavit.

4. The applicants are facing trial for the offence punishable under Sections 323/324/325/498A, I.P.C. and 3/4 D.P. Act arising out of case Crime No. 770 of 2007, Police Station Chandausi, District Moradabad, in Case No. 427 of 2008, State v. Abhijeet Singh and Ors., pending in the Court of Additional Chief Judicial Magistrate, Chandausi, Moradabad. Two criminal appeals being Criminal Appeal Nos. 9 and 16 of 2008, Mandakini v. State and Madhavendra Singh v. State, filed by the applicant No. 2 and opposite party No. 2 respectively are also pending before the Additional Sessions Judge, Chandausi, Moradabad.

5. From the averments made in the affidavit filed in support of the transfer application it appears that the applicants moved a transfer application being Transfer Application No. 39 of 2010, Dilip Singh and Anr. v. State and Anr., before the Sessions Judge, Moradabad with a prayer that the aforementioned cases be transferred from the court of Additional Chief Judicial Magistrate, Chandausi, Moradabad and Additional Sessions Judge, Chandausi, Moradabad to any other court of coordinate jurisdiction in the same sessions division.

6. The transfer was sought on the ground that the ancestors of the complainant/opposite party No. 2 have been erstwhile rulers of Chandausi state and as a result the complainant-opposite party No. 2 commands great influence in the area and as such there is danger to the family members of the applicants while appearing in the concerned Criminal Misc. Case No. 50 of 2010, Dileep Singh v. State, Criminal Appeal No. 9 of 2008, Mandakini v. State, and Criminal Appeal No. 16 of 2008, Madhavendra Singh v. State, before the outlying courts at Chandausi, Moradabad.

7. The transfer was also sought on the ground that on account of local Influence of the opposite party No. 2 no advocate was willing to conduct the case on behalf of the applicants.

8. The learned Sessions Judge by his order dated 17.9.2010 rejected the prayer for transfer.

9. Learned Counsel for the applicants submitted that the order by which the transfer application moved on behalf of the applicants before the Sessions Judge has been rejected is a non-speaking and cryptic order and is vitiated by total non-application of mind by the Sessions Judge to the facts of the case and the materials brought on record. The learned Sessions Judge has not recorded any reason for rejecting the prayer for transfer.

10. He further submitted that the prayer for transfer made on behalf of the applicants has been rejected by learned Sessions Judge without examining the grounds on which the transfer was sought on merits.

11. Sri Mohit Singh learned Counsel for the opposite party No. 2 submitted that the learned Sessions Judge did not commit any illegality or mistake in rejecting the transfer application moved before him by the applicants.

12. Learned A.G.A. also advanced submissions in support of the impugned order.

13. After having very carefully examined the submissions advanced by the learned Counsel for the parties and perused the grounds on which the transfer has been sought as well as the materials brought on record and the order passed by the learned Sessions Judge by which he rejected applicants' transfer application, I find that the submissions made by learned Counsel for the applicants have force and the same are liable to be accepted.

14. The Apex Court in [Competition Commission of India Vs. Steel Authority of India Ltd. and Another](#), upon which reliance has been placed by Sri R.B. Singhal, in paragraphs 67 and 68 of the abovementioned judgment has observed as hereunder:

The proposition of law whether an administrative or quasi-judicial body, particularly judicial courts, should record reasons in support of their decisions or orders is no more res integra and has been settled by a recent judgment of this Court in the case of [Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers](#).

By practice adopted in all courts and by virtue of Judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and therefore, proper reasoning is foundation of a just and fair decision. Reference can be made to Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120, in this regard. (Para 68)

15. Copy of the transfer application moved by the applicants before the court below has been filed as Annexure 12 to the affidavit accompanying the transfer application. Even the most superficial reading of the transfer application shows that the transfer was sought on several grounds which have already been referred to by me hereinabove and which need not be repeated. The learned Sessions Judge, refused the prayer for transfer without making any effort to determine the veracity of the grounds on which the transfer was sought and rejected the transfer application without assigning any reason.

16. For the aforesaid reasons the order passed by learned Sessions Judge, Moradabad dated 17.9.2010 (Annexure 15 to the affidavit filed in support of the transfer application), cannot be sustained and is accordingly set aside.

17. The matter is remitted back to the learned Sessions Judge, Moradabad with a direction to decide the transfer application moved by the applicants afresh after affording opportunity of hearing to all concerned in accordance with law by a speaking and reasoned order.

18. Necessary exercise in this regard shall be completed by him within a period of one month from the date of production of certified copy of this order.