(2001) 07 CAL CK 0052

Calcutta High Court

Case No: C.R.R. No. 564 of 2001

Sonali Enterprise		APPELLANT
	Vs	
Glaxo India Limited		RESPONDENT

Date of Decision: July 17, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 407, 407(2), 410
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2002) 1 ILR (Cal) 133

Hon'ble Judges: Asit Kumar Bisi, J

Bench: Single Bench

Advocate: Purnasish Gupta, for the Appellant;Joy Sengupta and R.K. Khanna, for the Respondent

Final Decision: Dismissed

Judgement

Asit Kumar Bisi, J.

The present revision application is preferred by the Petitioners/accused against an order No. 2 dated February 2, 2001 passed by Sri P. Bhattacharjee, learned Chief Judicial Magistrate, Alipore in Criminal Misc. Case No. 645 of 2000. By the impugned order, the learned Chief Judicial Magistrate, Alipore has dismissed the petition u/s 410 Code of Criminal Procedure filed by the Petitioners/accused.

2. The Petitioners/ accused filed an application u/s 410 Code of Criminal Procedure before the learned Chief Judicial Magistrate, Alipore for withdrawal of three cases u/s 138 of the N.I. Act pending before the learned 8th Judicial magistrate, Alipore and another two cases u/s 138 of the N.I. Act pending before the learned 9th Judicial Magistrate, Alipore and transfer of those cases for trial either by the learned 8th Judicial Magistrate, Alipore or by the learned 9th Judicial Magistrate, Alipore.

3. It is an admitted fact that the parties are common in ail the aforesaid five cases which have been initiated u/s 138 of the N.I. Act and the offence is of the same

nature but the documents and causes of action are different for which separate evidence is to be led during the trial of each case.

4. Mr. Gupta, learned advocate appearing on behalf of the Petitioners has cited the ruling reported in the case of Ayyannar Agencies v. Sri Vishnu Cement Ltd. in support of his contention that in cases of like nature, trials must be conducted by the same Court. Mr. Sengupta, learned advocate appearing on behalf of the opposite party/complainant on the other hand has pointed out that the decision of the Hon�ble Apex Court as referred to above by Mr. Gupta, learned advocate has got no manner of applicability to the instant matter. He has cited the decision reported in Munna Lal Dwarkdas v. P. Banerjee (2000)10 S.C.C. 598, wherein it has been held that it is not proper for the District Magistrate to transfer the case from the Court of the Trial Magistrate merely because in a similar case, the Magistrate had taken a particular view on a point of law. Mr. Sengupta, learned advocate has cited the ruling reported in 2000 S.C.C. (Cri.) 1293 ,A.I.R. 1949 Cal. 257, wherein it has been held by the Hon''ble Apex Court that mere allegation by the accused, of apprehension of denial of justice, is not sufficient and the power of transfer cannot be exercised on hypersensitive ground or mini grievances.

5. On consideration of the rival contentions of the learned advocates for the parties and weighing pros and cons of the matter, I find no justification for transfer of the cases to one court as sought by the Petitioners and that is evidently more so when separate trials are being conducted in two different courts of Judicial Magistrate, Alipore which are situated within the same area. The ruling cited by Mr. Gupta, learned advocate for the Petitioners vis. Ayyannar Agencies v. Sri Vishnu Cement Ltd. 2000 S.C.C. (Cri.) 1293 has to manner of applicability to the instant matter since in that case the Hon''ble Apex Court transferred of one case pending before the 4th Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad to the 17th Metropolitan Magistrate, Saidaped, Chennai, primarily on the ground it would be advantageous to all the parties to have all cases before the same court at Chennai. The facts and circumstances which necessitated transfer of the case by the Hon''ble Apex Court in the ruling referred to above are clearly distinguishable from the facts of the instant matter which this Court is seized of. I have already pointed out that separate trials are being conducted in two separate courts which are situated at Alipore and if the trials are held separately in each case in the respective courts where the trials are being conducted, it will not be disadvantageous to any of the parties.

6. Let me now advert to another legal aspect of the matter. As per proviso to Sub-section (2) of Section 407 of the Code of Criminal Procedure, 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. Here, the Petitioners have not filed any application for transfer before the Sessions Judge, Alipore and as

such the mandatory requirements of law which invoke this Court to exercise its power u/s 407 Code of Criminal Procedure for transfer of the said cases is conspicuously absent and that being so, the present revisional application cannot be said to be maintainable in the eye of this law.

7. For the foregoing reasons, the revision application is dismissed. There will be no order as to costs.

8. Let an urgent Xerox certified copy of the order be given to the learned advocate for the Petitioner at an early date, if applied for.