



2026:AHC-LKO:21409

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

TRANSFER APPLICATION (CRIMINAL) No. - 22 of 2023

Neeti Verma

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home And
Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Krishan Kanhaya Pal, Krishan
Kanhaya Pal, Pooja Pal, Santosh Kr.
Yadav Warsi, Shekhar Singh
Counsel for Opposite Party(s): G.A., Aakanksha Shah, Aishwarya
Pratap Singh, Prabhat Shukla, Raj
Narain, Raj Narain Pandey, Vivek
Kumar Dwivedi

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Viswash, Advocate holding brief of Sri Shekhar Singh, the learned counsel for the applicant, Sri Mohd. Asif Khan, learned AGA-I appearing on behalf of the opposite party no.2, Sri Aishwarya Pratap Singh, the learned counsel for the opposite party no.1 - Rishikalp (husband of the applicant) and perused the records.
2. By means of the instant application filed under Section 407 Cr.P.C., the applicant has sought transfer of Case No.987 of 2022: State Vs. Rishikalp from the Court of learned Chief Judicial Magistrate, Raebareli to the Court of learned Chief Judicial Magistrate, Kanpur arising out of Case Crime No. 0099/2021 under Sections 498-A, 323, 504, 506 I.P.C., read with Section 3/4, Dowry Prohibition Act, Police Station Mill Area, District Raebareli.
3. It has been stated in the affidavit filed in support of the transfer application that the applicant had got married to the opposite party no.1, but the date of marriage has not been disclosed in the affidavit filed in support of the application. The learned counsel for the applicant has orally informed the court that the date of marriage is 06.12.2020. It is stated that the opposite party no.1 and his family members ill treated the applicant for demanding dowry and she was forced to leave her matrimonial home but the date of this incident is

not pleaded in the affidavit. The applicant returned to her matrimonial home but the opposite party no.1 and his family members beaten her up and forced her to leave the matrimonial home but the date of this incident is also not disclosed in the affidavit filed in support of the application.

4. On 05.03.2021 the applicant lodged an F.I.R. No.99 of 2021 in Police Station Mill Area, Raebareli for the offence under Sections 498, 323, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act against the opposite party no.1, his father, sister and a cousin. After investigation, a charge-sheet was submitted and the trial of the aforesaid case is pending, which is sought to be transferred through this transfer application.

5. The ground for transfer is that on 21.02.2023, the applicant had lodged another FIR No. 107 of 2023, under Sections 323, 504 and 506 I.P.C. against the opposite party no.1 alleging that when the applicant had gone to the court of C.J.M., Court No.9, Raebareli for doing pairavi of the case lodged by her, the opposite party no.1 threatened the applicant and her father at about 11.00 AM on 21.02.2023 and he also threatened that he would make the court file disappear. When the complainant was going to give information of this incident to the Police Post In-charge at 2:40 PM on 21.02.2023, the opposite party no.1 started abusing her and upon her resistance, the opposite party no.1 beaten her up and ran away through gate number one. The security personnel present at gate number one were engaged in chit-chat, and they could not catch the opposite party no.1. In the FIR, the applicant requested for being provided security.

6. The learned counsel for the applicant has submitted that after investigation the police has submitted a charge-sheet, but a copy thereof has not been brought on record.

7. The opposite party no.1 has filed a counter-affidavit opposing the transfer application denying the averments made in the affidavit filed in support of the application for transfer and it has been stated that the applicant has cooked up a false story to create a ground for transfer of the case.

8. The opposite party no.1 has filed a supplementary affidavit annexing therewith copy of evidence given by the applicant before the learned Family Court in Case No.73 of 2022, under Section 125

Cr.P.C. and a copy of medical prescriptions of opposite party no.1. It has also been stated in the supplementary affidavit that the applicant is working as Sub-editor of News 85.IN and being a journalist, she independently travels, takes interviews of influential persons and it is not that the applicant is unable to move around because of any threat perception.

9. The learned counsel for the applicant has submitted that because of the incident that took place inside the court premises on 21.02.2023 the applicant is experiencing threat in pursuing the proceeding instituted by her before the court at Raebareli and therefore the trial should be transferred to a competent court at Kanpur.

10. In support of his submissions, the learned counsel for the applicant has relied on a judgment of Hon'ble Supreme Court in the cases of **Nahar Singh Yadav and another Vs. Union of India and others**: (2011) 1 SCC 307, **Rupali Devi Vs. State of U.P. and others**: (2019) 5 SCC 384 and an order passed by Hon'ble Supreme Court in the case of **Dinesh Mahajan Vs. Vishal Mahajan**: Transfer Petition Criminal No.442 of 2021, decided on 26.10.2021.

11. Per contra, the learned counsel for the opposite party no.1 has submitted that no real incident took place as has been alleged in the second F.I.R. lodged by the applicant and the F.I.R. has been lodged merely in order to create a ground for transfer. The applicant did not suffer any injury in the alleged incident, there is no independent witness of the incident and the transfer cannot be made merely on an artificial ground created by the applicant by lodging an F.I.R. He has placed reliance on a judgment of Hon'ble Supreme Court in the case of **Jyoti Mishra Vs. Dhananjaya Mishra**: (2010) 8 SCC 803.

12. In **Nahar Singh Yadav v. Union of India**: (2011) 1 SCC 307, the Hon'ble Supreme Court held that: -

*“29. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 CrPC should be exercised, it is manifest from a bare reading of sub-sections (2) and (3) of the said section and on an analysis of the decisions of this Court that **an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial.** Some of the broad*

factors which could be kept in mind while considering an application for transfer of the trial are:

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice."

(Emphasis added)

13. In **Rupali Devi v. State of U.P.**: (2019) 5 SCC 384, the Hon'ble Supreme Court held that *"the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code."* There can be no dispute against this proposition that the Court at the place where the wife takes shelter shall also have jurisdiction to entertain her complaint, but in the present case, the wife herself had lodged the complaint at Raebareli. The question is whether there is a sufficient ground for transfer of the case from Raebareli to Kanpur Nagar.

14. In **Dinesh Mahajan Vs. Vishal Mahajan**: Transfer Petition Criminal No.442 of 2021, decided on 26.10.2021, the Hon'ble Supreme Court held that *"Mere apprehension of threat of life is not a sufficient ground to transfer a case, without lodging a complaint or substantiating the said ground."*

15. In **Jyoti Mishra v. Dhananjaya Mishra**: (2010) 8 SCC 803, the Hon'ble Supreme Court held that: -

“5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic.

6. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife.”

16. As has been held by the Hon'ble Supreme Court in **Dinesh Mahajan Vs. Vishal Mahajan** (supra), a mere apprehension of threat is not sufficient to transfer a case. As per the law laid down in **Nahar Singh Yadav v. Union of India** (supra) an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Comparative inconvenience and hardships likely to be caused to the accused, the prosecution and the witnesses would also be a deterrent against transfer of trial.

17. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court, it appears that applicant got married to the opposite party on 06.12.2020. As per the FIR lodged on 05.03.2021, they are living separately since 21.01.2021. The ground for transfer is that on 21.02.2023, the opposite party threatened and beaten up the applicant inside the Court premises, but it appears that the applicant did not suffer any injury in the incident. There is no independent witness of the alleged incident. The opposite party no.1 has denied the allegation in the counter-affidavit. The applicant is working as Sub-editor of News 85.IN and being a journalist, she independently travels, takes interviews of influential persons and it is not that the applicant is unable to move around because of any threat perception. The aforesaid facts indicate that there is no sufficient ground for transfer of trial instituted by the applicant at Raebareli to Kanpur Nagar.

18. In view of the foregoing discussions, the transfer application lacks merits and the same is **rejected.**

March 25, 2026
Ram.

(Subhash Vidyarthi,J.)