

21.04.2026
Ct. No. 30
S.L. No. 18
SM

CO 3086 of 2024
Smtya. Bharati Pramanik
Versus
Sri Santanu Pramanick & Anr.

Mr. Balai Lal Sahoo
Mr. Amit Bikram Mahato
Mr. Surojit Samanta
Mr. Manoranjan Mahato
Ms. Sohini Samanta

.....for the petitioner

Mr. Samiran Mandal
Mr. Abhinaba Dan
Ms. Sremoyee Dutta

.....for the opposite parties

- 1.** The Civil Revision has been preferred praying for transfer of Misc Case NO. 38/71 of 2023 being a proceedings under the Domestic Violence Act pending before the learned **Additional Chief Judicial Magistrate**, 2nd Court at Bishnupur, District-Bankura to the Court of learned **Additional Chief Judicial Magistrate** on Haldia, District- Purba Medinipur.
- 2.** Learned counsel for the opposite parties on appearance has challenged the maintainability of the civil revision on the ground that an application for transfer of criminal proceeding is maintainable only under Section 407 of the Cr.PC.
- 3.** Admittedly, the proceeding herein is pending before a criminal Court and the petitioner has sought for transfer of the criminal proceeding from one criminal Court to another Criminal Court.

4. Both parties have relied upon judgments in their support.

5. Petitioner has relied upon the judgment in ***(Rohan Shah versus Nishigandha Shah) Misc Civil Application No. 475 of 2022 of High Court of Judicature at Bombay.***

6. The opposite parties have relied upon the judgment in ***(Smt. Sanwari Mishra And Anr. Versus Judicial Magistrate Iird, Lucknow And Anr.) Transfer Application (Civil) No. 27 of 2022 of Allahabad High Court.***

7. On hearing the learned counsels for the parties and on perusal of the materials on record the relevant provision for transfer of proceedings under the Civil Procedure Code is provided under Section 24 of the Code of Civil Procedure:-

“24. General power of transfer and withdrawal.- (1) *On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-*

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) **withdraw any suit**, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) **Where any suit or proceeding** has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section, -

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]”

8. And the procedure for transfer of the criminal proceedings is provided under Section 407 of the Code of Criminal Procedure:-

“407. Power of High Court to transfer cases and appeals.-(1) *Whenever 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;***

(ii) 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 an 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 an 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."

9. The petitioner herein has invoked the civil revisional jurisdiction for transfer of a criminal proceeding from one Criminal Court to another Criminal Court.

10. It is the contention of the petitioner that the proceedings under Domestic Violence Act are quasi civil in nature, such as claims for maintenance or residence.

11. It appears from the judgment relied upon by the petitioner herein Rohan Shah (supra), that the prayer for transfer was **from a criminal Court to the Family Court at Bandra**. The purpose of such transfer was to bring all proceedings connected with the matrimonial dispute under one Court. The proceedings under Domestic Violence Act in the judgment relied upon was pending in the Court of **Metropolitan Magistrate (Criminal Court)** and the prayer for transfer of the said case was to a **Family Court which is a Court which deals cases civil in nature**. Thus, the facts and circumstances in the said case are not similar to the facts and circumstances of the present case, in view of the fact that the transfer in this case has been sought for, from one Criminal Court to another and as such the provision of Section 24 CPC shall not be applicable in the present case and the petitioner's relief for

transfer of the proceedings lies under Section 407 of the Criminal Procedure Code.

12. The Civil Revision is accordingly dismissed.

13. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]