

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR S.G. SHAH

TRANSFER PETITION (CRL.) NO(s). 199-200 OF 2011

AJAY KATARA & ETC. Petitioner(s)

VERSUS

STATE OF U.P. & ORS. Respondent(s)

(With appln(s) for substituted service,stay and office report)

WITH T.P.(CRL) NO. 204 of 2011

(With office report)

T.P.(CRL) NO. 205-206 of 2011

(With office report)

T.P.(CRL) NO. 207 of 2011

(With office report)

T.P.(CRL) NO. 208 of 2011

(With office report)

Date: 20/07/2012 These Petitions were called on for hearing today.

For Petitioner(s)

Mr P.K.Dey, Adv.

Ms. Kamini Jaiswal,Adv.

For Respondent(s)

Ms Shalini Kumar, Adv.

Mr. Kamlendra Mishra,Adv.

Mr. Vimal Chandra S. Dave ,Adv

Mr. Joseph Aristotle S. ,Adv.

Mr Vageesh Sharma, Adv.

Mr R.K.Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

The ld. Advocate for the petitioner is stating that his client is a witness and suffering for the last one year and he does not know that why the matter has been listed with an endorsement that proof of publication is defective when it is already filed on record.

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Item No.12

Record shows that proof of publication is filed on record on 20.3.2012. It is quite clear that proof of publication which is submitted with such affidavit does not confirm that the notice is published as issued by the registry and forwarded to the ld. Advocate by letter dated 18.2.2012. Instead of publishing the notice as provided by the registry, it seems that petitioner has simply published some text only, without publishing the entire notice which is required as per rules.

While dictating such fact, the ld. Advocate for the petitioner has submitted that his client cannot be asked to spend Rs.10000/- or so for publishing the entire two page in the newspaper and that newspaper has published the notice as such though they have provided the entire notice to the newspaper and that practically such publication is to be treated as proper publication and his client should not be asked to suffer only

because he is a witness.

We are concerned with the proper proof of service. In any case, proof of publication which is filed on 20.3.2012 cannot be treated as proper proof of service. At least publication in English newspaper there is no specific statement in the affidavit and instead of submitting entire page as is being done for publication of notice in vernacular language, some portion of the newspaper is cut and pasted on paper so as to convey that such notice is published on such newspaper on such date.

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Item No.12

However in the interest of justice, as last chance, petitioner is permitted to confirm service upon unserved respondent. The fact remains that this being transfer petition, some litigation must be pending before the Trial Court.

Even petitioner has agreed that he is witness therefore, it would be easy for him to confirm service upon unserved respondents who are probably accused before the Trial Court. If it is so and if trial is pending then, it would be very easy for the Trial Court to call upon the respondent-accused to accept notice of this Court. Therefore, it cannot be believed that petitioner and Trial Court are unable to confirm service upon unserved respondents only because of the reason that they were not present on the date when notice could not be served on the given address. Let there be fresh notice with dasti service. Registry has to follow directions as per Circular dated 19.1.2012. Issue dasti notices at the earliest.

List again on 31.7.2012.

| |(S.G.SHAH)

REGISTRAR | |
hj