

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

TRANSFER PETITION (CRL.) NO.249 OF 2008

SEEMA Petitioner(s)

VERSUS

ANUP KUMAR Respondent(s)

[With appln(s) for stay and office report][For final disposal]

WITH T.P.(CRL) NO.499 of 2008

[With appln(s) for stay and office report][For final disposal]

Date: 14/01/2009 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA  
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. R.K. Kapoor, Adv.  
Ms. Shweta Kapoor, Adv.  
Mr. Harish Chandra Pant, Adv. for  
Mr. Anis Ahmed Khan, Adv.

For Respondent(s) Mr. Gagan Gupta, Adv.  
Mr. Achin Gupta, Adv.

UPON hearing counsel the Court made the following  
ORDER

The transfer petitions are allowed in terms of the signed order.  
No costs.

(Subhash Chander)  
A.R.-cum-P.S.

(Pushap Lata Bhardwaj)  
Court Master

[Signed order is placed on the file]  
IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

TRANSFER PETITION (CRL.) NO. 249 OF 2008

SEEMA . . . . PETITIONER

VERSUS

ANUP KUMAR . . . . RESPONDENT

WITH

TRANSFER PETITION (CRL.) NO. 499 OF 2008

HOSHIAR SINGH & ANR. . . .PETITIONERS

VERSUS

ANUP KUMAR

...RESPONDENT

ORDER

1. The prayer in these two petitions is to transfer criminal case titled 'Anup Kumar vs. Smt. Seema etc.' pending in the court of A.M.J.M. No. 3, Jodhpur (Rajasthan) to a Court of Competent Jurisdiction at Narnaul in the State of Haryana.

2. Petitioner Seema is the wife of complainant Anup Kumar. Various proceedings are admittedly pending between the parties.

Indisputably, Seema filed a criminal case under Section 498A of the Indian Penal Code against her husband. She also initiated a proceeding under Section 125 of the Code of Criminal Procedure against him. A suit for divorce filed by respondent has, by reason of a judgment and order dated 21.9.2007 passed by this court in Transfer Petition (Civil) No. 362 of 2007, been transferred to the Court of competent jurisdiction at Narnaul (Haryana).

Petitioners are said to have received summons in the criminal case filed by the respondent in the instant case in February 2008. These transfer petitions have thereafter been filed.

3. Mr. R.K. Kapoor, learned counsel appearing on behalf of the petitioner would submit that keeping in view the fact that three matters are pending at Narnaul (Haryana), this criminal case may also be directed to be transferred.

4. Mr. Gagan Gupta, learned counsel appearing on behalf of the respondent, on the other hand, would contend that in view of the conduct of the petitioner - Seema is making a misrepresentation before the Court as would appear from the notice addressed to the Chairman and Managing Director of the ICICI Bank Limited, the discretionary jurisdiction should not be exercised in her favour. In any event, in the criminal case, not only Seema but even her father and brother having been accused, there is no reason as to why they cannot face the trial at Jodhpur.

5. Indisputably, a complainant may file a complaint petition at a place where cause of action has arisen therefor. But this Court in exercise of its jurisdiction under Section 406 of the Code of Criminal Procedure may take into consideration various aspects of the matter so as to transfer the criminal case from one place to another, if any exigency of situation arises therefor.

6. As noticed hereinbefore, three matters between the parties are pending at Narnaul (Haryana). We are, therefore, of the opinion that the respondent may not suffer much inconvenience if the present case is also directed to be tried at Narnaul (Haryana).

7. Apart from the outsiders, even in the matrimonial application, his family members may be witnesses. Father of the respondent is a witnesses in the criminal proceedings in question also. We are, therefore, of the opinion that interests of justice would be subserved if criminal case pending in the court of A.M.J.M. No.3, Jodhpur (Rajasthan) be directed to be transferred to a court of competent jurisdiction at Narnaul (Haryana) subject to the following conditions :-.

- a) The Court of A.M.J.M. No. 3, Jodhpur (Rajasthan) shall transfer the records of the case to the District Judge, Narnaul who shall assign the same to a court of competent jurisdiction.
- b) The transferee court shall issue notices upon the parties after fixing the date of hearing. The counsel of the petitioner, however, may inform the court concerned the date fixed in the other three matters pending before different courts including the Family Court at Narnaul (Haryana).
- c) The learned judges where all the matters are pending would, unless it is absolutely inconvenient, fix the same date so as to enable the respondent to attend all the cases at Narnaul,
- d) The court where the matter may be transferred shall not insist upon appearance of the complainant unless found to be absolutely necessary.
- e) The transferee court shall fix specific date(s) for examination of the complainant and his witnesses on which date(s) the petitioners shall not take any adjournment.
- f) The petitioners shall render all cooperation in the matter of smooth hearing of the complaint petition.
- g) In the event, any witness apart from the family members of the respondent is to be examined in court, all expenses thereof shall be borne by the petitioners herein. In the event application is filed for examination of any witness on commission, the same may be considered on its own merit.

8. With the aforementioned directions, the Transfer Petitions are allowed.  
No costs.

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( S.B. SINHA )

J.

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(DR. MUKUNDAKAM SHARMA)

J.

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(ASOK KUMAR GANGULY)

New Delhi  
JANUARY 14 2009