

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRIMINAL) NO. 17 OF 2021

RAJKUMAR SABU

..PETITIONER

VERSUS

M/S SABU TRADE PRIVATE LIMITED

..RESPONDENT

J U D G M E N T

ANIRUDDHA BOSE, J.

The present proceeding arises out of a case instituted by the respondents, Sabu Trade Private Limited invoking jurisdiction of the Court of Judicial Magistrate No. IV, Salem (the Salem Court) under Section 156 (3) of the Code of Criminal Procedure, 1973. By filing the

present application under Section 406 of the 1973 Code, the petitioner wants the case to be transferred to the Court of the Chief Judicial Magistrate, Patiala House Court, New Delhi. The allegation of the respondents in the said case is over use of the trade mark SACHAMOTI in respect of sago or sabudana by Rajkumar Sabu (the petitioner). According to the respondents, such use is illegal and unauthorised. The Respondents claim proprietary right over the said trade mark. The complaint was instituted on 22nd May, 2017. The Judicial Magistrate, Salem (Salem Court in short), had required the police authorities to conduct a thorough enquiry with regard to genuineness of the private complaint and a report was filed by the concerned Inspector of Police. The case was registered as CC No. 82/2018 on 5th April, 2018. The Judicial Magistrate took cognizance

of the alleged offences under Sections 420 of the Indian Penal Code and 103 of the Trade Marks Act, 1999 and issued summons to the petitioner. The proceeding before the Court at Salem was instituted by the respondents represented by their Managing Director, Gopal Sabu.

2. Allegations were primarily directed against the petitioner in the complaint. But another individual, Shiv Narayan Sabu was also implicated in the proceeding before the Salem Court. The Transfer Petition, however, has been brought by Raj Kumar Sabu alone. Subsequently, an application for intervention has been filed by said Shiv Narayan Sabu. He supports the petitioner's case for transfer. In the intervention application, the grounds on which transfer is sought by the petitioner has been broadly repeated. Said Shiv Narayan Sabu has

shown sufficient interest to intervene in this proceeding and I allow his application for intervention. Hence the intervenor's cause shall be dealt simultaneously with the petitioner's case. The intervenor has also alleged that he has been unnecessarily dragged into the dispute. But in this proceeding, that grievance of the intervenor cannot be considered. I am to examine the plea for transfer of the aforesaid criminal case only. Before the Salem Court, examination-in-chief of three prosecution witnesses have been completed on 2nd March 2019, 5th April 2019 and 27th May 2019 (as has been pleaded in the Transfer Petition). Next date was fixed by the Salem Court for appearance of the two accused persons.

3. Several proceedings have been instituted over the question of ownership of the trade

mark SACHAMOTI, and these litigations bear features of a family dispute. The petitioner, intervenor and Gopal Sabu, who appears to be in effective control of the respondents' business are brothers. The businesses of petitioner and the respondent-company also seems to have had association or connection in the past. There was a burst of litigations between the two parties, Raj Kumar and Gopal in substance, in the year 2016. The petitioner filed a suit in the High Court of Delhi on 9th June, 2016 alleging infringement and passing off of the same trade mark by the respondent. He claims to have registration of the subject-trade mark in his favour, on the strength of an assignment from his late mother, Chandrakanta Sabu. The said suit was registered as Civil Suit (Commercial) No. 761 of 2016. Gopal Sabu made complaints to the police authorities at Salem

in the months of July and August 2016 seeking action against the petitioner on the allegation of counterfeiting the same brand, referred to in the complaints, inter-alia, as property mark. These complaints were founded also on certain other counts. In the suit instituted in the Delhi High Court, counter claim was lodged by the respondents.

4. The respondents had filed a suit for declaration and injunction to prevent use of the said trade mark in the Court of District Judge, Salem, which was registered as OS No. 148 of 2016. Another suit was filed on 19th August, 2016 in the District Court of Indore, but this suit had been rejected on 16th November, 2016. There was also a suit by the respondents in the High Court at Calcutta, registered as C.S. No. 195 of 2016. Proceedings in this suit however was initially stayed in

view of pendency of the suit in Delhi High Court and subsequently this Court had directed the respondents to withdraw this suit. Both the petitioner and the respondents had filed two transfer petitions in this Court before the present one. These two transfer petitions were registered as being T.P.(C)No. 1320 of 2018 (instituted by the Petitioner) and T.P.(C)No. 1676 of 2017 (that of the respondent) for transferring the opponent's suits to the Courts in which the respective parties had filed their suits. These transfer petitions were heard together by this Court and in a common order passed on 18th July, 2018, a Bench comprising of three Hon'ble Judges of this Court was pleased to direct:-

“(i) OS No. 148 of 2016, titled as Sabu Trade Pvt. Ltd. v. Rajkumar Sabu & Anr., pending before the District Court, Salem, be transferred to the Delhi High Court for adjudication along with CS (COMM) No. 761 of 2016, titled as Mr. Rajkumar Sabu v. Ms. Kaushalya Devi Sabu

& Ors. pending before the Delhi High Court.

(ii) The injunction granted by the Delhi High Court vide order dated 10.06.2016, and confirmed by order dated 22.01.2019, is hereby set aside. The interim application for temporary injunction filed in CS (COMM) No. 761 of 2016 stands revived before the Single Judge of the Delhi High Court and may be heard on merits. FAO(OS) (COMM) No. 69/2019, FAO(OS) (COMM) No. 72/2019 and FAO (OS) (COMM) No. 73/2019, filed before the Division Bench of the High Court as against the order dated 22.01.2019, stand disposed of.

(iii) The order of the Madras High Court dated 07.01.2019 in CMA No. 846 of 2018 and CMP No. 6995 of 2018, as also the order dated 02.02.2018 passed by the Principal District Court, Salem, are set aside. The application for injunction filed in OS No. 148 of 2016 by Sabu Trade Pvt. Ltd. (through Gopal Sabu) also stands revived, and is transferred along with the said suit to the Delhi High Court to be heard in the transferred suit along with the application revived in CS (COMM) No. 761 of 2016 mentioned above.

(iv) The learned Single Judge of the Delhi High Court is requested to decide both the abovementioned applications for injunction in the respective suits within three months.

(v) In view of the clubbing of OS No. 148 of 2016, titled as Sabu Trade Pvt. Ltd. v. Rajkumar Sabu & Anr., pending before the District Court, Salem, along with CS (COMM) No. 761 of 2016, titled as Mr. Rajkumar Sabu v. Ms. Kaushalya Devi Sabu & Ors. pending before the Delhi High Court, and the fact that C.S.No.195/2016, pending before the Calcutta High Court, is identical to the

one transferred above, we think it is unnecessary for the parties to litigate and pursue the matter pending before the Calcutta High Court. Accordingly, we direct the petitioner to withdraw C.S.No.195/2016.

(vi) We make it clear that we have not expressed any opinion on the merits of the matter and the applications for injunction shall be decided by the High Court on their own merit, uninfluenced by any observations made by either this Court or any High Court regarding this matter."

5. Now the petitioner wants the criminal case pending in the Salem Court to be transferred to the Patiala House Court, New Delhi. Two main grounds have been urged on behalf of the petitioner in support of his plea, argued by Mr. S. Guru Krishnakumar, learned Senior Advocate. One is that the points involved in the criminal case are similar to the suits which are being tried and determined by the Delhi High Court. The other ground taken is that the proceeding in the Salem Court is being conducted in Tamil, which the petitioner does

not understand. It has also been urged on behalf of the petitioner that it would be more convenient for the parties to conduct the proceeding in New Delhi as the civil suits are being heard in the Delhi High Court only. The petitioner also complains about distance of over 2000 kilometres between Salem and petitioner's own place of residence at Indore and alleges that there is no direct connectivity between these two places. The authorities relied upon by the petitioner are (i) **Sri Jayendra Saraswathy Swamigal (II), T.N. vs. State of Tamil Nadu & Ors.** [(2005) 8 SCC 771] and **Mrudul M. Damle & Anr. vs. Central Bureau of Investigation, New Delhi** [(2012) 5 SCC 706]. It is also asserted on behalf of the petitioner that the respondents have influence in Salem and he has apprehension that he would

not get impartial enquiry/investigation/trial at Salem.

6. Mr. Gopal Sankarnarayan, learned Senior Advocate has highlighted, in course of his submissions on behalf of the respondent, the delay in approaching this Court seeking transfer of the criminal case. As per his submission, proceeding was registered on 5th April, 2018 and has made substantial progress. The complaint has reached the stage of cross examination of the complainants' witnesses by the petitioner. The transfer petition was filed on 12th January, 2021. He also points out that personal appearance of the petitioner during trial stood dispensed with by an order of the Madras High Court. It is also his submission that the case pending in the Salem Court has criminal elements, which ought not to be mixed up with the civil suit. Relying on a judgment

of a Coordinate Bench in the case of **Umesh Kumar Sharma vs. State of Uttarakhand** [(2020) SCC Online SC 845] and an earlier decision of this Court in the case of **Gurcharan Dass Chadha vs. State of Rajasthan** [(1966) 2 SCR 678], he has argued that to sustain allegation of lack of neutrality in trial as a ground for transfer, credible materials will have to be brought before the Court. His argument is that there is no such material that would justify transfer on this ground. Certain decisions have been referred to on behalf of the respondents on the point that civil and criminal proceedings can go on simultaneously in relation to similar transactions. But I do not consider it necessary to deal with these authorities, as that point does not arise in the present proceeding, which is a Transfer Petition.

7. I shall proceed on the basis that the suits being heard by the Delhi High Court would have points which could overlap with those involved in the criminal case pending in the Salem Court. But that very fact, by itself, in my view, would not justify transfer of the said case. Substantial progress has been made in the said complaint before the Salem Court. So far as the subject-criminal case is concerned, the ground of overlapping points in any event cannot justify the petitioner's case for transfer as even if the petition is allowed, the criminal case shall have to proceed in the Court of Judicial Magistrate and not in the High Court where the civil suits are being heard. Two different judicial fora would be hearing the civil cases and the criminal case. Whether the civil cases and the criminal case would continue together or not is not a

question which falls for determination in this Transfer Petition. Moreover, it does not appear that earlier any complaint was made about the proceeding being carried on at Salem. In fact, the petitioner had applied for quashing the complaint before the Madras High Court but at that point of time, no proceeding was taken out for transferring the criminal complaint. Moreover, on 8th June 2018, the petitioner had appeared before the Salem Court and received copy of the criminal complaint. This has been stated in the list of dates forming part of the Transfer Petition. At that point of time, the two earlier Transfer Petitions were pending. Those two petitions were disposed of on 18th July 2018. The petitioner does not appear to have had expressed their grievances on the basis of which this petition has been filed at that point of time. Barring claims being made

by the petitioner of the respondents being influential person in Salem, no material has been produced to demonstrate that such perceived influence can impair a neutral trial. These allegations, inter-alia, appear in an additional affidavit filed on behalf of the petitioner affirmed on 26th February, 2021. The claims of the petitioner do not match the level of unjust influence exerted on the defence in the case of **Sri Jayendra Saraswathy Swamigal** (supra), on the basis of which the transfer petition was allowed. In that case, this Court found the prosecuting authorities were harassing the defence team of lawyers and there were materials demonstrated by the petitioner to show that the State machinery was going out of its way in preventing the accused from defending himself. The petitioner's case of possible tainted trial is unfounded and does

not meet the standard laid down in the cases of **Gurucharan Dass Chadha** (supra) and **Umesh Kumar Sharma** (supra). I cannot come to a conclusion that justice would be in peril if the case continues in the Salem Court. I am not satisfied on the basis of materials available that the petitioner would not get impartial trial in the Salem Court.

8. Next, I shall turn to the question of the problem of language faced by the petitioner. The respondents seem to be carrying on their business from Salem. In course of hearing before me, no question has been raised as regards territorial jurisdiction of the Salem Court in proceeding with the case, the transfer of which is asked for. Now, complaint is being made that the petitioner not being able to understand Tamil language, the case ought to be transferred to a Court in Delhi. Language was

a factor considered by this Court in the case of **Sri Jayendra Saraswathy Swamigal** (supra), while selecting the Court to which the case was to be transferred. But language was not the criteria based on which transfer of the case was directed. I have briefly discussed earlier the reason for which transfer of the case was directed. The language factor weighed with this Court while deciding the forum to which the case was to be transferred after decision was taken to transfer the case for certain other reasons.

9. Ordinarily, if a Court has jurisdiction to hear a case, the case ought to proceed in that Court only. The proceeding in the Salem Court has not been questioned on the ground of lack of jurisdiction but on the ground contemplated in Section 406 of the 1973 Code. Jurisdiction under the aforesaid provision ought to be

sparingly used, as held in the case of **Nahar Singh Yadav & Anr. vs. Union of India & Ors.** [(2011) 1 SCC 307]. Such jurisdiction cannot be exercised on mere apprehension of one of the parties that justice would not be done in a given case. This was broadly the ratio in the case of **Gurcharan Dass Chadha** (supra). In my opinion if a Court hearing a case possesses the jurisdiction to proceed with the same, solely based on the fact that one of the parties to that case is unable to follow the language of that Court would not warrant exercise of jurisdiction of this Court under Section 406 of the 1973 Code. Records reveal that aid of translator is available in the Salem Court, which could overcome this difficulty. If required, the petitioner may take the aid of interpreter also, as may be available.

10. The petitioner's plea for transfer is based primarily on convenience. But convenience of one of the parties cannot be a ground for allowing his application. Transfer of a criminal case under Section 406 of the 1973 Code can be directed when such transfer would be "expedient for the ends of justice". This expression entails factors beyond mere convenience of the parties or one of them in conducting a case before a Court having jurisdiction to hear the case. The parties are related, and are essentially fighting commercial litigations filed in multiple jurisdictions. While instituting civil suits, both the parties had chosen fora, some of which were away from their primary places of business, or the main places of business of the defendants. The ratio of the decision of this Court in the case of **Mrudul M. Damle** (supra)

cannot apply in the factual context of this case. In that case, a proceeding pending in the Court of Special Judge, CBI Cases, Rohini Courts, New Delhi was directed to be transferred to the Special Judge, CBI cases, Court of Session, Thane. Out of 92 witnesses enlisted in the charge sheet, 88 were from different parts of Maharashtra. That was a case which this Court found was not "Delhi-centric". The accused persons were based in western part of this Country. It was because of these reasons, the case was directed to be transferred. The circumstances surrounding the case pending in the Salem Court are entirely different. In the case of **Rajesh Talwar vs. CBI** [(2012) 4 SCC 217] it was held:-

"46. Jurisdiction of a court to conduct criminal prosecution is based on the provisions of the Code of Criminal Procedure. Often either the complainant or the accused have to travel across an entire State to attend to criminal proceedings

before a jurisdictional court. In some cases to reach the venue of the trial court, a complainant or an accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances in order to depose before the jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court conducting the criminal trial is accepted, the provisions contained in the Criminal procedure Code earmarking the courts having jurisdiction to try cases would be rendered meaningless. Convenience or inconvenience are inconsequential so far as the mandate of law is concerned. The instant plea, therefore, deserves outright rejection."

11. For these reasons, I dismiss the present transfer petition. Connected applications, if any, shall also stand disposed of.

12. There shall be no order as to costs.

.....J.
(Aniruddha Bose)

New Delhi

Dated: 7th May, 2021