

**Misc. Criminal Case No. 16680 / 2013**

26-12-2013

Shri Saket Agrawal, counsel for the petitioner.

Shri Amit Pandey, panel lawyer for the State/respondent No.4.

Heard on the question of admission.

The petitioner, who is a victim of the impugned case, has filed this petition under Section 407 of Cr.P.C. for transfer of Sessions Trial No. 29/2009 pending in the Court of Additional Sessions Judge, Khurai, District Sagar, from such Court to any other Session Court in the Sessions Division, Indore.

After taking me through the awarement of the petition and papers placed on record, the petitioner's counsel submits that in the alleged incident, the petitioner was brutally assaulted by the respondents No. 1 to 3 and due to that he sustained the serious injuries due to which he could have died and he further says that the petitioner is still under treatment as an indoor patient at the Choithram Hospital & Research Centre, Indore and not in a position to move for a long journey to record his deposition before the aforesaid Session Court at Khurai and in such premises, prayed for appropriate directions to transfer the aforesaid case from Khurai to some other Session Court at Indore and in alternate, he prayed to extend the liberty to the petitioner to file an appropriate application before the trial Court to record his deposition in the aforesaid hospital on commission

where he is admitted as an indoor patient for taking the treatment.

He fairly apprised me that on earlier occasion also on behalf of the petitioner an application under Section 407 Cr.P.C. to transfer the aforesaid case from the existing Court to some other Session Court was filed which was registered in this Court as Misc. Cr. Case No. 4577/2012 and on consideration on merits the same was dismissed vide order dated 20-4-2012. On challenging such order by the petitioner before the Apex Court through S.L.P. (Cr.) No. 12950/2013, the same was also dismissed at the stage of motion hearing vide order dated 12-7-2013, Annexure P-1, but he says that the present petition has been filed in some changed circumstances so it could be considered by this Court. With these submissions he prayed for admission and allowing this petition.

On the other hand, the State counsel submits that after affirming the aforesaid order of this Court dated 20-4-2012 by the Apex Court, vide order dated 12-7-2013 rejecting the aforesaid S.L.P. filed by the petitioner, there is no scope in the matter to grant any relief as prayed by the petitioner to transfer the aforesaid case from the existing Court to some other Session Court. In continuation, he said that the petitioner has remedy to file an appropriate application before the existing trial Court in compliance of the aforesaid order dated 20-4-2012 passed by the coordinate Bench of this Court and affirmed by the Apex Court and in such premises also the petitioner is not entitled to get any relief in the matter.

So far recording the deposition of the petitioner on commission is concerned, he said that such aspect could be considered by the trial Court under the concerning provisions of the Cr.P.C. and no order could be passed by this Court at this stage and prayed for dismissal of this petition.

Having heard the learned counsel for the parties keeping in view the arguments and the papers placed on record. I have found that vide order dated 20-4-2012 the petitioner's aforesaid Misc. Criminal Case No. 4577/2012 was dismissed by following observations :-

“Accordingly, the transfer petition is dismissed with the observation that if the petitioner, so desires, may move an application before the trial Court for protection. Needless to say that if such an application is made, the trial Judge shall ensure adequate protection to him while coming to the Court and on returning back to his residence by issuing necessary directions to the Superintendent of Police, Sagar, in this regard.”

Subsequently, on challenging the aforesaid order before the Apex Court through S.L.P., on consideration by affirming such order the same was dismissed vide order dated 12-7-2013 (Annexure P/1) and in such premises I am of the considered view that in the available circumstances contrary to the aforesaid order of the Apex Court, this Court cannot pass any order to transfer the aforesaid case from the existing Court to another Court. Consequently, this petition deserves to be and is hereby dismissed.

However, in the available circumstances, it is observed that in the light of the observation made by this Court in the aforesaid order dated 20-4-2012, affirmed by the Apex Court, the petitioner is at liberty to file the appropriate application before the trial Court to provide him the adequate protection while coming to the Court and returning back to his residence and on filing of such application the same shall be considered by the trial Court in accordance with the directions as given by this Court in the earlier order. Besides this, the applicant is also at liberty under the concerning provisions of the Cr.P.C. to file the appropriate application to record his deposition on commission. On filing the aforesaid applications or any of them by him, the same shall be considered by the trial Court in accordance with the earlier direction of the aforesaid order dated 20-4-2012 so also in accordance with the procedure prescribed under the law.

The petition is dismissed with the aforesaid observations, directions and liberty.

**(U.C.Maheshwari)**  
**V. Judge**

