

**Criminal Revisional**  
**PRESENT: The Hon'ble Justice Ashim Kumar Roy**  
**Judgment On : 08-02-2010.**  
**C.R.R. No. 4275 of 2009**  
**Sk. Bismilla**  
**versus**  
**The State of West Bengal & Ors.**

**Point:**

**Transfer:** A witness whether has locus standi to seek direction for transfer of the trial to another court- Code of Criminal Procedure, 1973-S.407.

**Fact:** Invoking Section 407 of the Code of Criminal Procedure the petitioner moved this Court for transfer of a Sessions Trial relating to an offence punishable under Sections 302/201/34 of the Indian Penal Code on the ground that the Court was lying vacant. Learned Counsel of the accused person opposed the prayer for transfer, challenging the locus standi of the petitioner and submitted that he was not the defacto complainant of the case, but was mere a witness.

**Held:** Question of locus standi does not operate as a bar for this Court to exercise its power under Section 407 of the Code of Criminal Procedure. The question at whose behest the High Court has been moved seeking transfer of a Sessions Trial is wholly immaterial. It may be moved by the defacto complainant or the witness or by the accuseds or on behalf of the prosecution, i.e., by the State, even the High Court may exercise such power on its own motion suo motu. All that is essential for the High Court to invoke Section 407 of the Code to transfer any trial that it must be made appear to it that such transfer is expedient in the interest of justice. (Paragraph – 3)

For Petitioner : Mr. Swapan Banerjee

For State : Mr. Amajit De

For O.P. No. 4 : Mr. Saumya Bandyopadhyay

**The Court:**

1. Invoking Section 407 of the Code of Criminal Procedure the petitioner moved this Court for transfer of a Sessions Trial relating to an offence punishable under Sections 302/201/34 of the Indian Penal Code now pending before the Learned Additional Sessions Judge, Fast Track, 1st Court, Asansol, on the ground that the Court was lying vacant.

It may be noted in this connection a report was called for from the Learned Registrar (Judicial Service), High Court, Appellate Side, Calcutta. Accordingly, the report has been submitted and the same is with the record. The

report shows that the concerned Court is lying vacant.

2. It is submitted on behalf of the petitioner that his sister was brutally murdered by the accused persons and their trial was commenced on and from November 19, 2008, on framing of charge and till date already out of total 19 witnesses, 15 witnesses have been examined and only the police witnesses were to be examined. But, in the meantime the Trial Court had fallen vacant due to transfer of the Learned Judge. It was further submitted that there was no remote possibility of filling up of vacancy very soon and the trial be transferred to some other Court for ends of justice. It was submitted that the particular Learned Sessions Judge before whom the trial was pending, now posted as the Additional Sessions Judge, 3rd Court, Asansol, in the same sessions division and it was prayed that this case be transferred to that Court because most of the witnesses were examined before him.

On the other hand, Mr. Saumya Bandopadhyay, Learned Counsel appearing on behalf of the accused person/opposite party no. 4, opposed the prayer for transfer, challenging the locus standi of the petitioner. He submitted that he was not the defacto complainant of the case, but was mere a witness. He also took serious objection to the prayer of the Learned Counsel of the petitioner that the trial be transferred to the Court of the Learned Additional Sessions Judge, 3rd Court, Asansol, on the ground that nobody had any choice of Court. The Learned Counsel appearing on behalf of the State submitted that he had no objection if the case is transferred to any other Court so that trial be concluded shortly because accused persons are facing custody trial.

3. Now, having heard the Learned Counsels appearing on behalf of the parties and considering the materials on record and the relevant provisions of law, I find that the question of locus standi does not operate as a bar for this Court to exercise its power under Section 407 of the Code of Criminal Procedure. The question at whose behest the High Court has been moved seeking transfer of a Sessions Trial is wholly immaterial. It may be moved by the defactocomplainant or the witness or by the accuseds or on behalf of the prosecution, i.e., by the State, even the High Court may exercise such power on its own motion suo motu. All that is essential for the High Court to invoke Section 407 of the Code to transfer any trial that it must be made appear to it that such transfer is expedient in the interest of justice. This Court is not unmindful about the anxiety of the present petitioner, who is the full brother of the victim of murder. From the facts and circumstances of the case, I am fully satisfied that the transfer of the trial in question, is expedient in the interest of justice.

4. Accordingly, I dispose of the instant criminal revision directing that the sessions trial be transferred to the Court of the Learned Sessions Judge, Burdwan, who in turn shall take immediate steps for transfer of the aforesaid trial to any competent Sessions Court functioning within the Asansol Subdivisions.

The Learned Sessions Judge is further directed to take necessary

steps in this regard within two weeks from the date of communication of this order and the transferee Court shall also make all endeavours to conclude the trial as expeditiously as possible preferably within six months from the date of receipt of the records.

This criminal revision, thus, stands disposed of.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

( *Ashim Kumar Roy, J.* )