

# **Transfer petition- A Judicial Analysis**

**By Jyoti Goel**

## **Introduction**

Transfer petition means when somebody wants to transfer his or her case from court to another in some other state for the purpose of convenience of the party. The party may write an application for the transfer of the case and the court may approve or disapprove it accordingly.

## **Transfer of case under Constitution of India**

We all know that Constitution is the groundnorm of our country. Every other law is derived from this and cannot go in contravention to the provisions of the Constitution.

For transfer petition article 139A is the provision. It was introduced as a part of 42<sup>nd</sup> constitutional amendment. It enabled the citizens to approach the apex court to transfer their cases to other court in some other place or state provided they fulfill the conditions provided in the provision. But this article is not exhaustive of the articles 136 and 142.

## **Article 139A: Transfer of certain cases**

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney-General for India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.<sup>1</sup>

The purpose of this provision is that no one must suffer injustice due to lacunae in the machinery. Everyone has the right to justice and it is the duty of state and the judiciary to ensure

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<sup>1</sup> Bare act- constitution of India

it to all. This is what has been stated in the preamble as well, preamble which is the soul of our constitution.

It is to be noted that where the High Court has the power to dispose the cases then application for transfer of cases to the Supreme Court cannot be entertained.

### **Case laws under article 139A**

#### **1. KK. Vankatapathi vs State**

**Issue :-** the petitioner was ex Advocate General of Tamil Nadu state and was appointed as special prosecutor by the High Court said that he wasn't provided with all the required papers in appeal which was filed by the CM of Tamil Nadu, Ms J. Jayalalitha. He filed a petition for transfer.

**Decision :-** Supreme Court dismissed the petition and ordered rehearing of case after complete papers and documents were given to the petitioner.

### **Transfer petition under civil procedure code**

Under Section 25 of this code Supreme Court has been given the power to transfer any case, appeal or other proceedings from the High court or any other civil court of one state to that of another across India. The Supreme Court can exercise this power when it feels it necessary to order a transfer for the need of justice.

In majority cases this provision comes handy in matrimonial matters and usually by the wife. When the husband institutes or files a divorce case or any other proceeding relating to marriage against the wife then the case goes on at the place where the husband is residing. The wife, who in most cases has returned to her paternal house files a transfer petition on the ground that it is hard for her to bear the expenses of travelling, or her child isn't grown up enough to be left behind, or maybe she faces some sort of threat when she comes to attend the proceedings etc. The court being sensitive to these issues of the lady usually considers it fit to grant the transfer. But this is not the case in every situation.

Matrimonial issues is one type, there are other cases such as property related issues etc. which can be transferred on various grounds as per the suitability of the applicant.

### **Case laws relating to civil transfer matters**

#### **1. Harish Nagam vs. Krishna Veni Nagam**

**Issue:-** The couple got married in 2008 in Hyderabad They got a daughter in 2009. While living with the in laws in Jabalpur, M.P. the wife was subject to physical and

mental torture. She got an injury in the spinal cord and left the husband's place with her daughter in 2012. The husband filed for restitution of conjugal rights which was dismissed as the case was withdrawn. Later the husband filed for divorce in Jabalpur itself. The wife then filed for transfer of case since she being single parent of a minor daughter could not leave her alone and also bear the expenses of travelling from Hyderabad to Jabalpur.

**Decision :-** The court granted transfer of case owing to the condition of the wife. It was transferred to family court, Hyderabad.

## 2. Kalpana Devi Prakash Thakkar vs Devi Prakash Thakkar

**Decision:-** The court disallowed wife's petition to transfer the case concerning matrimonial issues from Mumbai to Palanpur, Gujarat due to following reasons:-

- a. The husband was a doctor and his absence will cause inconvenience to the patients.
- b. His mother was old and ailing who needed proper care and attention.
- c. The wife had relatives in Mumbai where she could come and stay during the proceedings.
- d. The husband was ready to pay for expenses of wife during her travelling.

The problem arises when the case involves transfer to Jammu and Kashmir since civil procedure code does not apply there.

## 3. Kiran Ramanlal Jani vs Gulam Kadar

**Decision:-** The petitioner prayed for transfer of case from Jammu and Kashmir to Gujarat. The case was regarding claim for motor accident. The court allowed the transfer provided the respondents to do not have an objection. It was but made out that there to be a better way to deal with such type of legal matters. When there some transfer of case from one state to Jammu and Kashmir then petition must be filed under Article 136 against the orders of summons, personal appearance etc. Once it is done, the Court will have power under Article 142 to transfer the case and do justice.

## Transfer petition under Criminal Procedure Code

Under Sections 191, 402, 406, 407, 408 Crpc one can apply for transfer of a case.

Under Section 406, the Supreme Court has got the powers to transfer criminal cases or appeals from one High Court to another or one Criminal Court to another. But the Supreme Court can act only on the application by the Attorney General or the application by the party interested. The

Supreme Court can even on dismissing of the application ask the party to pay compensation of not more than Rs 1000 on the grounds of it being frivolous.

## **Case laws relating to criminal matters**

### **1. Maneka Sanjay Gandhi vs Miss Rani Jethmalani**

**Decision:** - Justice Krishna Iyer observed that: assurance of a fair trial is the first imperative of the dispensation of justice and the central criteria for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mine- grievances. Sometimes more substantial more compelling, more imperiling from the point of view of public justice and its attendant environment is necessitous if the court is to exercise its power of transfer. This is the cardinal principal although the circumstances may be myriad and vary from case to case.<sup>2</sup>

### **2. Vikas Kumar Roorkeewal vs State of Uttrakhand and others.**

**Issue:** - A high profiled accused murdered an engineer. The Uttrakhand police was incapable and also somewhat reluctant in dealing with the case. The case was then given to the Uttar Pradesh Police which made a special task force to investigate into the matter.

**Decision:-** For the safety of the witnesses who face fear and threat in coming to Haridwar for the case proceedings the case was transferred from Haridwar court to Delhi Court. It was mandatory so that justice is not hampered.

## **Format for transfer petition**

### **1. Short synopsis**

A simple synopsis stating the grounds on which you wish to seek transfer of petition must be presented before the Supreme Court or as the case may be.

### **2. Details of the case**

Specify the details of the case and also the Court in which to transfer the case of desire.

### **3. Grounds**

The grounds on which transfer is desired must be specified. These can be:

- a. Prejudice in the jurisdiction- for example the husband might hamper with the proceedings, he being quite influential.
- b. Threat to life- it is a good ground to ask for transfer

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<sup>2</sup> <http://www.legalserviceindia.com/Supreme-court/Transfer-of-Petition-in-India.htm>

- c. No support- if the petitioner has no support or conveniences in the original place of case he/she may ask for transfer
- d. Medical issues- are the person has medical problems and cannot travel, but a proof must be given for this purpose.
- e. Family issues- like ailing parents or minor kids or their studies being hampered tc.
- f. No income source- if the petitioner has low income or no income he/she will face problems in travelling etc.

#### 4. **Interim relief**

Stay of proceedings desired to be transferred can be sought for.

### **Conclusion**

For the sake of providing justice our law makers have given this provision that if required then a case can be transferred from one court to another. The system has to be bit flexible to suit the necessity of the situation. Anything, whatever the situation may be should not come in the way to providing justice to the victim. A law is made for the people, for their betterment and good. People are not made for law. It is the utmost duty of a state to ensure justice to its citizens so that they can live happily, peacefully and with safety. The criminals and wrong doers must have a fear of law in their minds. They should be well aware of the fact that they cannot harm anyone with any level of ease and that the system does take it very seriously.

For the convenience of the people our system gives courts the power to transfer the cases from court to court and from one place to other. This power should not be taken for granted but. Only grounds which the court thinks fit that they are hampering with the process of justice will be entertained and not any random excuses.

The law respects and takes care of the needs and desires of the people and in return the people must also respect the law and consider it as the supreme commander and well wisher of the nation.