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**A CRITICAL OVERVIEW OF THE POWERS OF SUPREME COURT IN
TRANSFER OF CASES: A SPECIAL CASE STUDY OF UMESH KUMAR
SHARMA V. STATE OF UTTARAKHAND, 2019**

- Kushagra Singh¹

The power under 406 of Cr. P. C shall only be used when there is reasonable apprehension that justice will not be done and the petitioner is not required to prove or demonstrate that justice will not be served and justice will fail, petitioner had only to show that there is some reasonable ground.

The Supreme Court can transfer the case or appeal on certain grounds:

- To uphold the ultimate goal of the judicial system which is to provide them justice.
- On the recommendation of superior judicial officers
- When there is a lack of complete jurisdiction
- When the trial court requests to transfer the case
- Or when there is an infringement of natural justice.

The best way to analyze any law or provision is to study it through a case study, so, we will discuss the case of (Umesh Kumar Sharma v. the State of Uttarakhand, 2019)² to understand the power given to the Supreme Court under section 406 of Cr. P. C.

Recently in Sushant Singh Rajput's case, we had seen the importance of this section.

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² Umesh Kumar Sharma v. the State of Uttarakhand, 2019, (2020) 16 SCC 845

POWER OF THE SUPREME COURT TO TRANSFER CASES AND APPEALS

The power to transfer cases and appeals are given to the Supreme Court under section 406 Of Cr. P. C. this section gives the discretionary power to the Supreme Court to transfer any case and appeal pending before one High Court to any other High Court in India. The Supreme Court also possesses the authority to transfer any case from one court to another court which is inferior to the Supreme Court. This power is given to the Supreme Court to maintain the principle of natural justice and to full fill the means of justice.

Section 406 of Cr. P. C says that -

“(i) whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court.

(ii) The Supreme Court may act under this section only on the application of the Attorney-General of India or a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(iii) Where an application for the exercise of the powers conferred by the section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application, such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case”³

A study of the above provisions gives the following norms: -

1. This power is given to the Supreme Court for the interest of justice only;
2. The application for the transfer of the case must be filed by the Attorney Journal or the party interested;

3.Code of Criminal Procedure, 1973, §, 406

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3. The power of transfer of the case from one state to another state is given to the Supreme Court only.
4. The Supreme Court will only transfer a case when there will be a reasonable explanation that justice will not be done.

The provision made under section 406 of Cr. P. C mainly relies on the discretion of the Supreme Court. whereas the applicant will have to establish that "the apprehension of not getting a fair and impartial trial is reasonable and not just imaginary, based upon conjectures and surmises"

CASE STUDY

Umesh Kumar Sharma v. State of Uttarakhand, 2019

The present petition was filed under section 406 of Cr.P.C. to seek a transfer of three cases pending before the courts in Uttarakhand to Delhi or somewhere else. Because the petitioner has an apprehension that he had been maliciously prosecuted by the state because he has conducted a sting operation against that time Chief Minister and his family members said the learned senior counsel Mr. Kapil Sibal. (Mr. Umesh Kumar Sharma Journalist of "Samachar plus" has conducted a sting operation in 2016 against that time Uttarakhand CM Harish Rawat, to bring down his government).

the learned government counsel showed the factual matrix of the three cases, out of the three, two were related to some property matters, one case was of the year 1995 and the other was of 2007, and during these cases were under trial another case was filed for forcible land grabbing attempt.

also, one of the colleagues of Mr. Kumar named Ayush Gaur (one of the core member of the investigative team) made an allegation and filed a complaint that Mr. Umesh Kumar was using his cover of journalism to grab the property and he also alleged that none of the sting operations were carried out by the petitioner (Mr. Umesh Kumar) and these so-called sting operations if any carried out by the petitioner has not led to the prosecution of anyone.

the government counsel submits that total of 29 cases were pending against the petitioner most of it related to land grabbing. and the petition filed by the petitioner is non-bonafide, and just filed to delay the trial against him.

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JUDGMENT

In its judgment, the bench said that a charge sheet has been filled in the present case, and if this trial will be transferred from one state to another it would reflect the weakness of the judiciary in that state.

The bench said that "But for compelling factors and a clear situation of deprivation of fair justice, the transfer power should not be invoked. This case is not perceived to be one of those exceptional categories"

the court concluded that the petitioner has a total of 29 cases against him and most of it related to land grabbing, also most of it under trial in Uttarakhand, and he used the cover of Journalism to grab the properties and if any sting operation has been done it did not lead to the prosecution of anyone.

So, the Supreme Court rejected the petition of transfer of a case under section 406 of Cr. P. C by Mr. Umesh Kumar Sharma so-called Journalist.

CONCLUSION

The important thing is that the transfer of the case does not change the nature of the trial or the relief which is provided to the parties. This provision is only to ensure justice.

After the case is transferred if the court finds out that the intention of the party is vexatious, then the court can impose a fine on the applicant.

It was found that the transfer of case becomes problematic because of the fact after the transfer of case prosecution and all the witness has to travel to another state for the case and can become very inconvenient to the persons who are related to the case, and also all these things delay the justice, It is also found that most of the petition which comes to the SC is only to get more time or one can say that to delay the justice.

As in the case discussed above the petitioner is willing to travel to Delhi or another state without any reasonable apprehension that justice will not be served. the grounds which was given by the petitioner was that there is a malicious prosecution against him within the state, and threat of life if he will visit Dehradun. The public prosecutor in counter-argument proved that this is just the

trick to delay the justice because already the petitioner is facing many cases in Dehradun high court related to property grabbing.

“While assurance of a fair trial needs to be respected, the plea for transfer of case should not be entertained on mere apprehension of a hypersensitive person,” said the court.



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