

**Jamuna Devi Vs. District and Sessions Judge and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/134784](http://sooperkanoon.com/134784)**

**Court : Guwahati**

**Decided On : Aug-28-2006**

**Judge : P.G. Agarwal, J.**

**Appellant : Jamuna Devi**

**Respondent : District and Sessions Judge and ors.**

**Disposition : Petition dismissed**

**Judgement :**

**P.G. Agarwal, J.**

1. This matter relates to taking of the suo motu revision against the order dated 17.6.2005 passed by the learned Sessions Judge, Tinsukia in Transfer Petition No. 3/2005 whereby the Sessions Case No. 68(T)/02, which was pending in the court of the Additional Sessions Judge (FTC No. 2), Tinsukia was withdrawn and transferred to the court of the Additional Sessions Judge (FTC No. 1), Tinsukia.

2. Srimati Jamuna Devi was the complainant in that Sessions trial and while the trial was proceeding before the learned Additional Sessions Judge (FTC No. 2), two accused persons namely, Gautam Bora and Prabin Tamuli filed the Misc. (Crl.) Transfer Petition No. 3/2005 before the learned Sessions Judge, Tinsukia under Section 408/409 Cr.P.C. for transfer of the said case from the trial court to any other court, wherein certain allegations were made against the trial court. The

learned Sessions Judge, upon hearing both the sides, allowed the petition vide order dated 17.6.2005 and transferred the case as stated above, to the court of the learned Additional Sessions Judge (FTC No. 1), Tinsukia.

3. The complainant/informant Smti Jamuna Devi, thereafter, filed an application before hon'ble the Chief Justice of this court alleging that the impugned order passed by the learned Sessions Judge, Tinsukia is in violation of the law laid down by this court in the case of Subrata Paul v. Smti Ratna Gope 2002 (1) GLJ 421.

4. We have perused the decision in Subrata Paul (supra) and find that the question raised in the present case is altogether different. Section 409 Cr.P.C. reads as under:

409. Withdrawal of cases and appeals by Sessions Judges. - (1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(3) Where a Sessions Judge withdraws or recalls a case or appeal under Sub-section (1) or Sub-section (2), he may either try the case in his own court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another court for trial or hearing, as the case may be.

5. In the present case, there is no dispute at the Bar that the trial had commenced before the Additional Sessions Judge (FTC No. 2), Tinsukia and even a number of witnesses were already examined and, hence, in view of the provisions of Section 409(2) the learned Sessions Judge had no authority or jurisdiction to withdraw the case as the power under Section 409(2) can be exercised at any time, before the trial court of the case or hearing of appeal has commenced. We find that the learned Sessions Judge did not exercise any power under Section 409 Cr.P.C.

6. Now, coming to the question of exercise of power under Section 408 Cr.P.C, we find that it empowers the Sessions Judge to transfer a case from one criminal court to another when it is expedient for the end of justice and the words used in Section 408 provides 'whenever it is made to appear to a Sessions Judge'. Thus, the power can be used on application of a party or even suo motu. The power of Sessions Judge under Section 408 Cr.P.C. is identical to that of the High Court under Section 407 Cr.P.C. except certain modifications. This court in the case of Subrata Paul (supra) held -

7. From the aforesaid discussions of statutory provisions, I am of the considered opinion that the learned Sessions Judge has been vested with unconditional power of withdrawal or transfer any criminal case from any criminal court in his Session Division which are not covered by Section 409 Cr.P.C. and transfer the same to other criminal court of competent jurisdiction under him in view of Section 408 Cr.P.C. Similarly, the learned Sessions Judge in a Session Division has been vested with the power to withdraw or recall the cases be made over to the Assistant Sessions Judge or any case from the file of Chief Judicial Magistrate subordinate to him at any stage of the inquiry or trial or appeal, but recalling a case (not withdrawing) which he has made over to the learned Additional Sessions Judge, power is to be exercised, if so required, before commencement of trial of a case or as the case may be hearing of an appeal. In case, in the opinion of the learned Sessions Judge any case requires to be recalled from the file of the learned Additional Sessions Judge even after the commencement of the trial or hearing, he must report to the High Court with his own reasoning justifying such recalling of the case as permissible under Sub-section (2) of Section 407 Cr.P.C.

7. It seems that the observation of this court in later part of the above paragraph has let the informant to prefer the present application. Provisions of Section 408 are concurrent to provision of Section 407(2) Cr.P.C. Section 407(2) Cr.P.C. reads as follows:

407(2) The High Court may act either on the report of the lower court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

8. The issue whether that the Sessions Judge should report to the High Court of his reasonings, may arise only in a case where the Sessions Judge takes a suo motu action. But, so far rejection is concerned ; the court is required to pass a reasoned order, so that the aggrieved party can approach the High Court under Sections 407 Cr.P.C. In the instant case, the transfer was allowed on an application filed by the accused in a judicial proceeding and that too after hearing both the sides. We, therefore, find that there is no requirement of law that the Sessions Judge is to report to the High Court where such an application is' allowed. A conjoint reading of Section 408 and 409 Cr.P.C. shows that so far as the provisions of Section 409 are concerned, these are more or less administrative provisions for transfer or distribution of cases amongst various courts, that is to say, a rider has been provided that such distribution or withdrawal shall not take place once hearing has commenced. On the other hand, provisions of Section 408 Cr.P.C. are legal provisions where the aggrieved party may approach the Sessions Judge for transfer of a case for the ends of justice. In this connection we may also refer to a Full Bench decision of the Allahabad High Court in *Radhey Shyam v. State of U.P.* 1984 (2) Crimes 50, which reads as follows:

For the reasons given above our answer to the question referred to us is that the Sessions Judge is empowered under Section 408 Criminal Procedure Code to transfer a part heard case or appeal from a court of an Additional Sessions Judge to another competent Court within his sessions division if it expedient in the interest of justice and the limitations imposed under Section 409(2) Criminal Procedure Code are not applicable in exercise of the power of transfer conferred under Section 408 Criminal Procedure Code.

9. In view of the above, we find that the learned Sessions Judge, Tinsukia had power and jurisdiction to consider the application for transfer in his judicial side and the impugned order does not suffer from the vires of lack of jurisdiction.

10. Now coming to the merit of the case, we find that the learned Sessions Judge Huh passed the impugned order after hearing both the sides and after considering the allegations. The case has already been transferred and the trial has commenced before the Additional Sessions Judge (FTC No. 1). We are, therefore, of the view that no case for entertaining the suo motu revision is made out. The petition stands dismissed.

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