

**B.N. Kuttappa Vs. State of Coorg**

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**SooperKanoon Citation :** [sooperkanoon.com/370649](http://sooperkanoon.com/370649)

**Court :** Karnataka

**Decided On :** Jan-20-1956

**Reported in :** 1956CriLJ628

**Judge :** Padmanabhiah, J.

**Appellant :** B.N. Kuttappa

**Respondent :** State of Coorg

**Judgement :**

ORDER

**Padmanabhiah, J.**

1. This is an application filed by the petitioner under Section 526, Criminal P.C. praying that C. C. Nos. 43 and 44 of 1955 pending on the file of the learned Munsiff & First Class Magistrate, Mercara, Coorg, may be transferred to any other Court of. com competent jurisdiction outside the State of Coorg.

2. The facts that have given rise to this petition are briefly as under:-

3. The petitioner is accused 16 in C. C. 43/55 and accused 8 in C. C. 44/55. The accused In C. C. 44/55 are eight of the sixteen accused in C. C. 43/55. The petitioner is stated to be the President of the Indian Coffee Board Labour Union, Coorg Branch, of which the other accused in these cases are said to be the

members. It is further stated that the petitioner is also the President of All Coorg Estate Workers Union and one of the Vice-Presidents of Indian Coffee Board Labour Union.

4. In C. C. 43/55 the charge-sheet against the petitioner is stated to be that he abetted the commission by the other fifteen accused persons of offences under Sections 148, 353 and 324 I.P.C. In C. C 44/55 the case against the petitioner is that he abetted the commission by the other seven accused of offences under Sections 14S and 353 I.P.C.

The allegations made in the application and the affidavit attached to it are that the Congress Party in power in Coorg has been against the Unions of which the petitioner is the office-bearer, that the said party has been supporting the Indian National Trade Union Congress, which is the Labour Wing of the Congress Party, that on this account the Congress Party which is in power in Coorg has been harassing the Unions of which the petitioner is the President, that some of the members of the Indian Coffee Board Labour Union had put forth certain demands regarding the wages and other amenities before the District Magistrate, that the said demands have not favourably been considered, that the District Magistrate is further the Labour Commissioner and Conciliation Officer, that he has dealt with many matters arising in connection with the demands made by the Unions, that the Magistrate before whom the cases are pending is subordinate to the said District Magistrate, that the Magistrate refused ' bail to the accused in C. C. 21/55 for whom the petitioner had stood surety, that the said accused have subsequently been released on bail by the learned Sessions Judfee, Mercara, that C. C. 21/55 was posted for trial to 1-3-55, that the case was taken up earlier on 18-2-1955 without notice to the petitioner, that one of the accused - Kandaswami - was convicted and sentenced on that day on his own adtaission, that on 18-2-1955 the learned Magistrate issued a notice to the petitioner to produce Kandaswami and the other accused in C. C. 21/55 as he had stood surety for them though Kandaswami had been released earlier, that in C. C. 38/ 55 in which the petitioner appeared as a defence witness the same Magistrate convicted 16 accused persons belonging to All Coorg Estate Workers' Union, that C. C. 37/55 and the two cases in question have got a common background, that in O. C. 43/55 some

articles that were seized in C. C. 44/55 have been marked as material objects in spite of the objections raised by the defence, that the learned Magistrate has further permitted the Police to investigate the case coming under Sections 124A and 153A, I.P.C. without a complaint from the Central Government as required by law, that under these circumstances the petitioner apprehends that he will not have a fair and impartial trial at the hands of the learned Magistrate and that justice requires that the two cases pending before him should be transferred to a Court of competent jurisdiction outside the State of Coorg,

5. The respondent-State opposes the application and has denied in their counter-affidavit the various allegations made against them by the petitioner.

6. It appears to me that there is no substance in any of the grounds urged by the petitioner for the transfer of the two cases in question. The basis of applications under Section 526, Criminal P.C. for transfer of criminal cases is, and must be, that the accused must have reasonable apprehension that he will not have a fair trial. The person who wants a transfer of the case must show good grounds for believing that he will not have a fair trial in the Court in which his case is pending. In the absence of such grounds, it is not proper to transfer the case from the alia of that Court.

Before ordering the transfer of a case, the Court must be satisfied on this fact. No doubt the importance of the principle that confidence in the administration of justice is an essential element of good government and that reasonable apprehensions of failure of justice in the mind of the accused should be taken into consideration in dealing with such applications cannot be ignored. But at the same time, we will have to remember that the apprehension entertained by an accused must be such as a reasonable person placed in that situation would entertain. Mere fanciful apprehension on the part of an accused cannot be a ground for transfer of a criminal case.

7. Now we will proceed to consider one by one the grounds urged by the petitioner for the transfer of his cases. The first ground urged on the side of the petitioner is that the Congress Party which is in power in Coorg has been attempting to put down the Unions of which the petitioner is the President and has been supporting

the Indian National Trade Union Congress which is the Labour Wing of the Congress Party.

I am of opinion that this apprehension is more imaginary than real and absolutely unfounded. It is the sacred duty of any Government to maintain law and order and if in so doing any person or group of persons are affected, that cannot be a ground to urge that no Court within the jurisdiction of that Government should try a particular person.

If this contention that the Congress Party in Coorg is trying to demolish the Petitioner's Unions and support their own Union viz. the Indian National Trade Union Congress is true, then that would be a common policy all over the country wherever the Congress Party is in power, which means that the petitioner will have to be tried by a Court within the jurisdiction of a non-Congress Government. I am of opinion that this unfounded belief in the mind of the petitioner cannot be a valid ground for the transfer of his cases,

8. The second ground urged in support of this petition is that the Magistrate before whom the cases are pending is subordinate to the District Magistrate, who, in his capacity as Labour Commissioner and Conciliation Officer has dealt with some matters relating to the Unions of which the petitioner is the President, thereby suggesting that the Magistrate will be influenced. This again is without any substance and what is more is an unwarranted reflection on the trying Magistrate and the District Magistrate.

Simply because, the trial Magistrate is subordinate to the District Magistrate, it cannot be said that an officer of the status of the District Magistrate would go to the extent of influencing a subordinate officer. Further it is significant to note that this ground is not specifically urged in the affidavit filed by the petitioner in support of his application, which goes to indicate want of bona fides on his part.

9. The fact that the learned Magistrate refused bail to the accused in C. C. 21/55 and the accused were subsequently released on bail by the Court of Session, cannot give rise to any inference that the Magistrate has been prejudiced against this petitioner who was a surety for those accused. Much was made by the learned

Counsel for the petitioner of the fact that Kandaswami, one of the accused in C. C. 21/55 who was convicted and released, was directed to be produced by the petitioner on the date of hearing.

Evidently this is a mistake as explained by the learned Magistrate in his explanation submitted to the Court. On the face of it, it is clear that it was due to some bona fide error on the part of the Court in having issued a notice to the surety to produce an accused who had been already released by the same Court.

10. The other ground is that sixteen persons belonging to the Unions of which the petitioner is the President have been convicted in C. C. 38 of 1955. This, in my opinion, cannot be a valid ground for transfer of the cases in question. The vague allegation that C. C. 38/55 and the cases on hand have got a common background cannot be accepted and the same does not appear to be true. If that is so, I am sure the learned Magistrate will himself abstain from proceeding with the cases before him.

The very fact that Kandaswami, one of the accused in C. C. 21/55, and one of the accused in C. O. 38/55 were released by the same Magistrate under Section 562, Criminal P.C. goes to negative that the Magistrate has been prejudiced against the petitioner or that he has been influenced by outside agencies.

11. There cannot be any truth in the bald statement that the Coorg Government is interested in securing petitioner's conviction. No Government worth the name can entertain such a base idea and thus pollute the administration of justice in the State and consequently degrade itself in the estimation of the public. It is the duty of every Government established by law to Keep the judiciary independent.

The existence of an independent Judiciary is a necessity and a great asset to any State and its maintenance a duty and equally a compliment to itself. These are the principles that should govern the conduct of any Government in dealing with the Judiciary of the State. There is nothing to show or suggest that the Coorg Government has departed from the well-laid and recognised principles.

12. There is also no substance in the other grounds, that the learned Magistrate was wrong in marking certain articles seized in C. C. 44/55 as material objects in C. C. 43/55 and that the learned Magistrate was also wrong in according permission to the Police to investigate the matter under Sections 124A and 153A, I.P.C. without the formal complaint of the Central Government according to rules.

There can be nothing irregular in marking articles seized in another case if the same are relevant for the case on hand, and if the learned

Magistrate had no jurisdiction to permit the Police to investigate the matter arising under Sections 124A and 153A I.P.C. that cannot be a ground for transfer of the cases. At the most, it is a wrong order a bona fide error of judgment. A bona fide error of judgment or that a judicial order happens to be passed against a party in the course of proceedings cannot be considered as a valid ground for the transfer of cases.

13. The application is highly belated and indicates want of bona fides on the part of the petitioner. Many of the grounds urged in the application and the affidavit and also by the learned Counsel at the time of arguments in support of the transfer were available to the petitioner even long prior to the date of the present, application.

In spite of them, the petitioner kept quiet and allowed the case to proceed. It is admitted that nearly thirty witnesses have been examined in one of the cases. The apprehensions entertained by the petitioner are not reasonable. The circumstances relied on by him are not such as to afford a reasonable apprehension in his mind that he would not receive a fair trial in the Court of the learned Magistrate. No sufficient grounds exist to justify the transfer of the cases.

14. In the result, this petition stands dismissed.