

M. Halappa Gowda Vs. Kupperamane Manjamma

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Court : Karnataka

Decided On : Dec-01-1966

Reported in : AIR1968Mys97; 1968CriLJ524

Judge : C. Honniah, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342, 526 and 540;
Indian Panel Code, 1860 - Sections 354

Appeal No. : Criminal Petn. No. 466 of 1966

Appellant : M. Halappa Gowda

Respondent : Kupperamane Manjamma

Judgement :

ORDER

(1) This is an application for the transfer of C.C. No. 612/64 on the file of the Special First Class Magistrate, Sagar, which is pending against the present petitioner.

(2) The facts are these; Respondent who is absent in these proceedings filed a complaint against the petitioner alleging that he had committed an offence punishable under Section 354 I.P.C. Some witnesses on behalf of the complainant including complainant were examined. A charge was framed against the petitioner on 25-11-1965 and the case was posted to 20-12-1965 to ascertain whether he

wanted to cross-examine the prosecution witnesses. On 20-12-1965 the case was adjourned to 11-1-1966 as the Magistrate was on leave. As 11-1-1966 happened to be a holiday, the case was posted to 4-2-1966. On that day Advocate for the respondent retired, and the petitioner submitted that he would like to cross-examine all the witnesses. The case was adjourned to 2-3-1966 for cross-examination of the witnesses. On 2-3-1966 the witnesses were not present and the case was adjourned to 22-3-1966 and on the adjourned date, no witnesses were present, and therefore the case was adjourned to 19-4-1966. Even on that day there were no witnesses; hence the case was finally adjourned to 4-5-1966, and on which day also, no witnesses were present. In spite of that, the case was adjourned on 12-5-1966. On that day when the case was called, the witnesses were not present. At the request of the counsel for the respondent, the learned Magistrate directed the case to be called later.

When it was called again, the witnesses were not present. Again at the request of the counsel for the respondent, the Magistrate directed the case to be called later and when the case was called late in the day, the complainant and one witness were present. The accused made an application praying for an adjournment on the ground that his counsel was unwell. therefore the case was posted to 10-6-1966. On that day, the counsel for the petitioner prayed for an adjournment by filing an application stating therein that he was running high temperature and he could not go on with the case. The learned Magistrate rejected the petition on the ground that the petitioner was dragging on the case. He discharged the witnesses and posted the case to 15-6-1966 for examination of the petitioner and on that day the petitioner was not examined. The case was posted to 24-6-1966. In the meanwhile, the petitioner filed an application under Section 540 of the Code of Criminal Procedure for recalling the witnesses at his cost for further cross-examination, as it was necessary in the interest of justice. The learned Magistrate rejected that application also. The petitioner was examined on 24-6-1966 under Section 342 Cr. P. C. and the case was posted to 15-7-1966 for examination of the defence witnesses. In the meanwhile, the petitioner filed an application in the Court of the Sessions Judge, Shimoga, for transfer of the case. On 15-7-1966 the petitioner did not produce the defence witnesses as he by then had filed a transfer application. The learned Magistrate closed the case.

(3) The transfer application filed before the learned Sessions Judge by the petitioner was also dismissed. In these circumstances, this petition is filed.

(4) Mr. Kadidal Manjappa, the learned counsel for the petitioner, contends that the learned magistrate gave any number of adjournments for the complainant; but when the counsel for the accused made an application to adjourn the case on the ground that he was running high temperature, the Magistrate refused adjournment, and discharged the witnesses. He also contends that when an application under Section 540 Cr.P. C. was made to the court requesting the Magistrate to recall the witnesses for further cross-examination, that was also rejected on untenable grounds; with the result valuable right given to the accused to further cross-examine the witnesses has been deprived of, and these circumstances are sufficient to induce in the mind of any person a reasonable apprehension that he may not get fair trial and justice in the case and therefore in the interest of justice the case may be transferred to some other court.

(5) By S. 526 Criminal Procedure Code, it is provided:

'(1) Whenever it is made to appear to the high Court: (a) that a fair and impartial inquiry or trial cannot be had in any Criminal court subordinate thereto'

the High Court may order, amongst various alternatives, the transfer of the case.

(6) But this section is not exhaustive, and as has been pointed out by Sri. Lawrence Jenkins in (1900) 2 Bom LR 755, that in considering the expediency of directing a transfer for the ends of justice, the court has deemed it essential to decide not merely by question whether there has been any real bias in the mind of a Magistrate, but also the further question. 'Whether incidents may not have happened, which though they may be susceptible of explanation, are nevertheless such as are calculated to create, in the mind of the accused, a reasonable apprehension that he may not have a fair and impartial trial. The principle is quite clear, that apart from the susceptibilities of the accused, if circumstances do exist or events have happened, which are calculated to create in the mind of the accused the reasonable apprehension that he will not be fairly treated at his trial, the transfer should be made (Air 1947 Bom 409). The real test in cases of this

nature is not whether the learned Magistrate is really biased against the accused, but the test is if the accused has reasonable grounds for apprehending that he will not get a fair or impartial hearing, then his apprehension is real and the case requires to be transferred.

(7) From the events that happened in the court of the Special First Class Magistrate Sagar, the accused undoubtedly got reasonable apprehension that he may not get fair trial in that court.

(8) For the foregoing, I direct that the case be transferred to the court of the First Class Magistrate, Shimoga, for disposal according to law. The request of the petitioner to further cross-examine the witnesses has been rejected on untenable ground. The transferee court will give opportunity to the petitioner to cross-examine the witnesses required by him.

(9) The petition is, therefore, allowed.

(10) Petition allowed