

Emperor Vs. Ram Das

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Court : Allahabad

Decided On : Jan-11-1918

Reported in : (1918)ILR40All307

Judge : Piggott and ;Walsh, JJ.

Appellant : Emperor

Respondent : Ram Das

Judgement :

Piggott, J.

1. The case before us is a reference by the learned Sessions Judge of Ghazipur, recommending that the conviction of one Earn Das on a charge under Section 323 of the Indian Penal Code and the sentence of rigorous imprisonment for one month passed on him be set aside, on the ground that the trial in -the Magistrate's court was vitiated by illegality. It appears that the complaint filed against Earn Das was referred for trial to the court of an Honorary Magistrate, exercising the powers of a Magistrate of the second class. This court recorded the whole of the evidence for the prosecution and a portion of the evidence for the defence. When it had reached this stage, Earn Das applied to the District Magistrate to have the case transferred to some other court. He gave an undertaking that, in the event of such transfer, he would not ask the court to which the transfer was made to re-hear the entire evidence de novo, but would be satisfied if that court proceeded to call and

examine the remainder of the defence witnesses and pronounce judgement on the materials then before it. The case was then transferred by the District Magistrate to the court of a stipendiary Magistrate of the first class. Earn Das made no attempt to evade the undertaking which he had given to the District Magistrate; that is to say, he did not demand that the witnesses, or any of them, who had been already examined by the original trial court should be re-summoned and re-heard. The first class Magistrate accordingly heard and examined the remainder of the defence witnesses named on behalf of Ram Das, convicted him on the charge as framed under Section 323 of the Indian Penal Code and sentenced him to rigorous imprisonment for one month. The learned Sessions[^] Judge has referred the case to this Court on the ground that the provisions of Section 350 of the Criminal Procedure Code do not apply to cases which are transferred from one court to another, and that the first class Magistrate on receiving this case for trial was bound to commence the trial de novo by the examination of all the prosecution witnesses. There is authority for this proposition in one single case of this Court, *Queen-Empress v. Angnu* Weekly Notes, 1889, p. 130. That case was decided by a single Judge upon a reference by a Sessions Judge. The case was not argued, and the judgement is of the briefest. We can only take it that in the opinion of the learned Judge of this Court who disposed of that reference the provisions of Section 350 of the Criminal Procedure Code were not intended to apply to cases of transfer. There was a suggestion in the referring order in that case that the accused had been prejudiced by the course adopted. Apparently there had been some complaint on his part against the manner in which the evidence had been recorded by the original trial court. We do not know how far the learned Judge of this Court was affected : by this consideration in passing the order which he did. The learned Sessions Judge has referred to another decision of this Court, *Queen-Empress v. Bashir Khan* (1892) I. L. R., 14 All., 346. He is entitled to rely upon the opinion, expressed by the learned Judge who disposed of this case, by way of obiter dictum; but the actual point; for decision was different. On the facts of that case, even assuming that the provisions of Section 350, Criminal Procedure, Code, did not apply, those provisions had been contravened and the: order quashing the proceedings was obviously right on this ground, alone. In a recent case, *Emperor v. Nanhua* (1914) I. L. R., 36 All., 315 one of us has committed

himself to a contrary view. Some stress was laid in, deciding that case on the fact that the proceedings transferred: from one court to another were only an inquiry preliminary to commitment, and no doubt the question of possible prejudice to the accused person would require to be more carefully considered in the case of the transfer of a trial than in the case of an inquiry preliminary to commitment. At the same time it is quite clear that either the provisions of Section 350, Criminal Procedure Code, do not apply at all to cases of transfer, or they apply to trials just as much as to preliminary inquiries. This decision is based on certain recent pronouncements of the Calcutta and Madras High Courts. It is sufficient to refer to the cases of Mohesh Chandra Saha v. Emperor (1908) I. L. R., 35 Cal., 457. Kudrutulla v. Emperor (1912) I. L. R., 39 Cal., 781 and Palani(sic)andy Goundan v. Emperor (1908) I. L. R., 32 Mad., 218. The last of these cases was also a case of an inquiry preliminary to commitment; but in this case, as well as in the two Calcutta cases, the principle was most clearly affirmed that Section 350 of the Criminal Procedure Code applied as much to cases in which a Magistrate ceases to exercise jurisdiction so far as the particular case in question is concerned, by reason of its transfer to another court, as to cases in which the Magistrate ceases to exercise jurisdiction by reason of his own death or transfer to another post. It has been shown to us that the two Calcutta cases are not entirely consistent with certain prior decisions of that Court, but they do represent the latest views of that Court on the question for determination before us. On the wording of the Section itself it seems impossible to deny that the words used are wide enough to cover cases of transfer, as well as those cases in which the court remains the same, but the person of the presiding officer is changed. As the learned Judges of the Madras High Court have pointed out, the words 'ceases to exercise jurisdiction therein' must be given their appropriate meaning: and certainly a Magistrate who takes (sic) cognizance of a case on the passing of an order of transfer by a competent court has jurisdiction 'therein,' that is to say, in the said case, by reason of the order of transfer.

2. On the ground of public convenience there seems to be no good reason why the words of the Section should not receive a liberal interpretation, provided such interpretation is not inconsistent with the words themselves.

3. It seems to us that there is no good reason why the practice of this Court should not be brought into conformity with that of the High Courts of Calcutta and Madras, and we are prepared to hold that the provisions of Section 3(sic)0, Criminal Procedure Code, do apply under the circumstances to the case now-before us.

4. It has been further suggested that we ought to interfere on the ground that Ram Das was prejudiced in his defence by the form of the order of transfer passed by the District Magistrate. The learned District Magistrate would have been better advised if he had contented himself with calling attention to the fact that his order was made largely on an undertaking by Ram Das that he would not claim his right to have all the witnesses re-summoned and re-heard. He went a little further than this, and by his order of transfer purported to direct the first class Magistrate to whose court he transferred the case to proceed with the trial from the stage which it had reached in the court of the Honorary Magistrate. If the applicant Ram Das had come before the first class Magistrate and had repudiated the undertaking which he had given to the District Magistrate, had offered some explanation of his conduct in doing so, and had definitely claimed the right conferred by proviso (a) of Clause (1) of Section 350 of the Criminal Procedure Code, it may well be that other considerations would arise. Certainly, the Magistrate who decided this case could not be bound in his judicial capacity by any direction in the order of transfer. It would have been his duty to consider the application and give such effect to it as he thought just and lawful. The fact remains, however, that Ram Das did not demand that any of the witnesses should be re-summoned and re-heard. Proviso (a) to Clause (1) of Section 350 of the Criminal Procedure Code has no application to the facts before us and cannot be relied on in support of the application.

5. Something has been said as regards the severity of the sentence. This point was not taken in the application to the Sessions Judge and we are not prepared to interfere on this ground, as the judgement convicting Ram Das seems to be a just and a proper one. We decline to accept the reference and order the record to be returned, the conviction and sentence to stand. If Ram Das has been released pending this reference he must surrender to his bail and undergo the unexpired portion of his sentence.

Walsh, J.

6. I entirely agree. Apart from authority, I think the Section is clear and too strong for the argument of the applicant in this case. Criticism has been made upon the construction of the Section, but it seems to me a simple and compendious statement to cover all cases thus-' Whenever any Magistrate ceases to exercise jurisdiction in a case and he is succeeded by another Magistrate having such jurisdiction,' (that may occur by death, promotion, retirement; or transfer by a superior authority) 'the Magistrate so succeeding may act on the materials already before him.'

7. Lest it should be supposed that the accused is caught by a strict application of the technical provisions of the Statute, I want to draw attention to one or two matters, to which my brother has not referred. The appellant asks for reduction of sentence, on the ground that it was too severe. He called a number of witnesses to allege that he was not there at all and on the other hand, he brought a cross charge against a prosecution witness for assaulting him at the place in question. Under these circumstances, having a reasonable apprehension that he was going to be convicted, he applied for transfer. In my judgement the accused, Ram Das, got a very favourable order out of the District Magistrate, and he is the one person who has no right to complain. I should want to hear considerable argument before deciding that under such circumstances in acting upon the evidence already recorded the Magistrate committed any irregularity which could not be cured by Section 537 in the absence of circumstances showing a failure of justice. I entirely agree with my learned brother in the order that this reference must be rejected.

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