

Saghir Ahmad Vs. Rex

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Court : Allahabad

Decided On : Sep-10-1948

Reported in : AIR1949All190; 1949CriLJ243

Judge : Bind Basni Prasad, J.

Appellant : Saghir Ahmad

Respondent : Rex

Advocate for Pet/Ap. : Mr. Kazmi

Judgement :

Bind Basni Prasad, J.

1. This is an application under B. 491, Criminal P. C by a detenu, Moulvi Baghir Ahmad, who has been detained under the orders of the Provincial Government, passed in accordance with the U. P. Maintenance of Public Order (Temporary) Act, 1947. A preliminary objection has been raised by the learned Assistant Government Advocate. He contends that inasmuch as the detenu is a resident of district Kheri, this application should have been made to the Bench of this Court Sitting at Lucknow. The office has also made a note to this effect. Mr. Kazmi, learned Counsel for the applicant, contends that this Court can deal with this application.

2. Paragraph 14, U. P. High Court's Amalgamation Order 1948 made by the Governor-General in exercise of the powers conferred by Section 229, Government of India Act, 1936, provides as follows:

The new High Court, and the Judges and division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint: Provided that unless the Governor of the United Provinces, with the concurrence of the Chief Justice, otherwise directs, such Judges of the new High Court, not less than two in number, as the Chief Justice may, from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Avadh as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court.

In pursuance of the aforesaid provision Notification No. 610S dated 26th July 1948 was issued by the Chief Justice which runs as follows:

In exercise of the powers conferred by Article 14, U. P. High Court (Amalgamation) Order, 1948, the Chief Justice of the High Court of Judicature at Allahabad is pleased to direct that as from 26th July 1948, until further orders the Bench of the High Court at Lucknow shall exercise the jurisdiction and power vested under the said Order in the said High Court in respect of the cases arising in the whole of Avadh.

3. It is clear that so long as the aforesaid notification is in force it is the Bench of the High Court at Lucknow which alone can exercise the jurisdiction and power of this Court in respect of cases arising in Avadh and an application of the present nature cannot be made at Allahabad. The detenu is not only a resident of Kheri but is also detained at Kheri. This application should, therefore, have been made at Lucknow. The application is not entertainable here. It will be returned to the learned Counsel for presentation to the Bench at Lucknow.