

Emperor Vs. Kanver Sen and ors.

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Court : Allahabad

Decided On : Nov-06-1929

Reported in : AIR1930All206

Appellant : Emperor

Respondent : Kanver Sen and ors.

Judgement :

Sen, J.

1. Kanver Sen, Ram Lal, Sat Narain, Gopal Krishna Consul, Kashi Ram Madan, Kishanchand and Beliram, who, with two others, are on their trial before a Magistrate of the First Class of Benares under Section 420, I.P.C. applied to this Court under Section 526(1), Criminal P.C. for the transfer of the case to some other criminal Court of equal jurisdiction on the ground that a fair and impartial trial could not be had in the Court where the case was pending.

2. The learned Government Advocate was instructed by the Local Government to oppose the application. The applicants were represented by counsel. The parties were heard and the application was eventually dismissed on the ground that it was frivolous and vexatious.

3. The learned Government Advocate moved this Court to exercise the power contained in the provision of Section 526(6-a), Criminal P.C. On behalf of the

Crown, an affidavit was filed by Mohammad Fariduddin, which showed that the costs incurred by the Local Government in opposing the application amounted to Rs. 585-1-6.

4. It was not controverted that the application for transfer was opposed by the Crown nor was it disputed that the costs claimed had been reasonably incurred by the Crown in consequence of the application for transfer.

5. Two arguments appear to have been advanced on behalf of the applicants. It was argued that the words any person who has opposed the application' in Section 596(6a), Criminal P. C, are not of sufficient amplitude to include either the Crown or the Local Government having regard to the context of the entire section. It was further argued that Section 526, Criminal P.C., must be taken to have been founded upon the doctrine of the English Common Law according to which the Crown neither receives nor pays costs in criminal matters.

6. The question which has been referred to this Bench for determination is: Does the word 'person' in Section 526, Clause 6(a), Criminal P.C., include the 'Local Government?' If the answer to this question be in the negative there is an end of the matter and the case need not be canvassed any further. If the answer to the question be in the affirmative, the consequence of our finding will be that we must direct the applicants to jointly and severally pay a sum of Rs. 585-1-6 to the Local Government being the costs of opposing the application for transfer, which has already been adjudicated upon as frivolous and vexatious.

7. Applications for transfer generally fall either under one or other of three categories. Cases do occur at times which fit in with the provisions of Section 526(1), Criminal P.C. Justice demands that in such cases, this Court should be moved to step in and make an order of transfer. There may also be some cases not exactly on the border line but in which either the complainant or the accused person may be under a bona fide apprehension that the trial was likely to be affected by either pre-possessions or prejudices on the part of the tribunal having the seisin of the case but that in truth and in fact, his alarms were not justified and there were no sufficient or valid reasons to necessitate a transfer. The grounds for the application may have been insufficient and yet the application may well have

been an arguable one, An application belonging to this class cannot be described as either frivolous or vexatious. In these two classes of cases, this Court has always been studiously careful in not interposing any barrier in the way of the applicants, which directly or indirectly may have the effect to either discourage or have a tendency to discourage such applications. The third class of cases stands upon a different footing altogether. These applications, not uncommonly, are founded upon actual and sometimes patent falsehoods or contain either half truths or even grave distortion of facts. Not uncommonly, the object of the application is to procure an adjournment of the trial to enable the party concerned to parley with witnesses, to try tricks with them and even to tamper with their evidence or in the expectation that the particular Magistrate may be transferred. When applications of this class are made to this Court and are opposed by the Government, ex facie, it appears to be reasonable in the highest degree that the Government successfully opposing the application should be entitled to recover their costs.

8. In Act 5 of 1898, as originally passed, there was no provision corresponding to Section 526(6a) of the present Criminal P.C. The aforesaid clause was placed upon the statute book under the Amending Act 18 of 1923. This amendment led to consequential changes in Section 526(5) of the original section.

9. Section 526(6a), Criminal P.C. provides as follows:

Where any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of costs to any person who has opposed the application any expenses reasonably incurred by such person in consequence of the application.

10. It has been argued that the Crown or the Local Government is not a 'person' within the meaning of that term in the Criminal Procedure Code, that the legislature consciously intended to exclude the Crown or the Local Government from the operation of Clause (6a) and that where it contemplated that the Crown or the Local Government should be referred to, the words used in the text are 'a party interested,' Reliance has been strongly placed upon Clause (3) which provides that

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.

11. It is not denied that the expression 'a party interested' is wide enough to include the Crown or the Local Government. But it is contended that the words 'any person who has opposed the application' are not of such wide significance as the words 'a party interested' 'so as to include the Local Government and that if the legislature intended to allow costs to the Government for opposing the application it ought to have introduced in Clause (6a), Section 526, Criminal P.C. the words 'to any party interested' and 'such party' in place of the words 'any person' or such 'person' occurring in the said clause.

12. We are clearly of opinion that the word 'person' in Section 526, (6th), Criminal P.C. is of a wider import than the words 'a party interested' in sub-Section (3).

13. In criminal law, as a branch of public law in jurisprudence, the Crown is a necessary party in view of the immediateness of the public interest involved. Unlike private law, individual interests are not allowed to predominate; but the public interest balances or in some cases even outweighs the private. The commonwealth can be directly represented by the proper officers of the State and vindicated by them in the name of the State or of its titular head. It is in the highest degree fallacious to consider that the State or the Local Government is an obstruction.

14. The term 'person' has not been defined in the Criminal P.C. but Section 4, Sub-section (2), of the Code Provides that

all words and expressions used herein, and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code,

15. Section 11, I.P.C. provides that

the word 'person' includes any company or association or body of persons whether incorporated or not.

16. Under Section 17, said Code, the word 'Government' denotes

the person or persons authorised by law to administer executive Government in any part of British India.

17. The Government which evidently means the Local Government is therefore either a person or persons with a definite function. Where there is a constituted authority consisting of a person or a number of persons, having a definite function it would be impossible to hold that the said authority has for some inscrutable reason ceased to be a person within the meaning of Section 526(6a), Criminal P.C. In all serious offences, it is the Government which is the actual prosecutor. Even in minor offences, theoretically, the Government is the complainant. Where an application for transfer is made, the Government is vitally concerned in the result and Section 526(6) is imperative that notice of such application shall be given to the Public Prosecutor. The Public Prosecutor has a right to oppose the application and in many cases, the application is opposed by the Local Government through its Crown Officer. In a great majority of cases, more specially in cases of serious magnitude, the only party which steps in to oppose the application is the Crown. In enacting 8. 526, (6a) Criminal P.C. the legislature could not have intended to shut out from its purview the one party, which was materially interested in opposing the application. We are of opinion that the word 'any person' in the subsection aforesaid is comprehensive enough to include (1) the Crown or the Local Government (2) any private individual who has an interest in the subject matters of the complaint as also (3) all or any one of the accused persons.

18. The words 'any person who has opposed the application' are general enough to include the Local Government can also be inferred as the result of the amendment of the original Sub-section (5). This subsection, as it originally stood, ran as follows:

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

19. By the Amending Act, 1893, the words convicted, pay the costs of the prosecutor' were substituted by the words:

so ordered, pay any amount which the High Court has power under this section to award by way of costs to the person opposing the application.

20. There can be no manner of doubt that the scope of this subsection has been considerably enlarged by the amendment, and the substitution of the words 'person opposing the application' in place of the words 'the prosecutor' clearly indicates that it was intended to extend the benefit of the subsection to persons opposing the application who need not necessarily be the prosecutor.

21. Our attention was drawn to a large number of sections of the Penal Code with the intention of establishing the postulate that the word 'person' had been used in those sections in contradistinction to the word 'party.' We do not think it necessary to examine this part of the argument in detail. The word 'person' in the various sections that we were referred to is bound to have the meaning as given in Section 11 unless the said meaning is repugnant to the subject or context.

22. It may be observed, in passing, that if the argument of the learned advocate for the applicants be accepted in its entirety and pushed to its logical conclusion, it would be beyond the province of the criminal Court to enforce the production of a vital document from the possession of the Local Government under Section 94, Criminal P C., if Local Government was not a 'person' in whose possession or power such a document was believed to be.

23. As a last resort, the applicants took their stand upon what is generally known as the common law rule that the Crown neither pays nor receives costs; and our attention was drawn to certain observations of Lord Atkinson, *In re, Vaithinatha Pillai v. Emperor* [1013] 36 Mad. 501. In this case, the applicant by special leave had appealed to the Privy Council against the order of the Additional Sessions Judge of Tanjore convicting him of the abetment of the murder of his daughter-in-law and sentencing him to death. On the appeal being allowed, Sir Robert Finlay for the appellant made a motion for costs in favour of the successful appellant. This motion was disallowed and reliance was placed upon the headnote of

Johnson v. Reg [1004] A.C. 817(at p. 825) which runs thus:

In future the Board will adhere to the practice of the House of Lords; and their rule as to costs in cases between the Crown, and a subject will be-that the Crown neither pays nor receives costs unless the case is covered by some local statute or there are exceptional circumstances justifying a departure from the ordinary rule.

24. It is clear from this pronouncement that the common law rule is not of such wide import as claimed by the applicants and that there is not and there cannot be a cast iron rule that the Crown neither pays nor receives costs. Exceptions may be grafted upon this rule by local statute. The peculiar circumstances of the case may also necessitate a departure from the said rule. In England, this common law rule has been trenched upon by the Costs in Criminal Cases Act (1908, 8th Edn. 7 C. 15), Section 6 of which provides that:

The Court by or before which any parson is convicted of an indictable offence may, if they think fit, in addition to any other lawful punishment, order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction including any proceedings before the examining Justices as taxed by the proper officer.

25. Under the Judicature Act, 1925, Section 25(3) the Court has the power to award costs on the hearing of an appeal from Quarter Sessions, both in the appellate Court and the primary Court, though such, power did not exist prior to the Judicature Act of 1894.

26. In this country, where we have got statutory provisions relating to costs, payable in a criminal case, we cannot go by the English Common law rule even if the rule had been quite as general as has been claimed for it. There is nothing in the language of Section 250, Criminal P.C., to make that section non-applicable to the case of the Crown. We mention the aforesaid section, not because it has any application to the point under our consideration but because it was referred to us in the course of the argument. The language of Section 526(6 a), Criminal P. C, appears to us to be clear, explicit and unequivocal. From a consideration of the

plain language of the context and the policy underlying the frame work of the entire section, we unhesitatingly come to the conclusion that where an application for transfer of a case has been made to this Court and has been thrown out on the ground that it is frivolous or vexatious, the Local Government opposing the application is entitled to recover its costs from the applicants. Our answer to the reference is in the affirmative and we hold that the word 'person' in Section 526. Clause (6a), Criminal P. C, includes 'the Local Government.' We direct that Kanver Sen and seven others referred to above by name jointly and severally do pay a sum of Rs. 585-1-6 to the Local Government.

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