

Walidad Khan Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/461741

Court : Allahabad

Decided On : May-25-1928

Reported in : AIR1928All660; 110Ind.Cas.223

Appellant : Walidad Khan

Respondent : Emperor

Judgement :

Dalal, J.

1. I have informed the learned Government Advocate that I am determined to enforce the mandatory provisions of a statute, and shall transfer the hearing of a case from any Magistrate who appears to disobey a statutory mandate. In the present case there was an application for transfer put in before the District Magistrate who dismissed it on 20th April 1928. On 23rd April the applicant applied to the Deputy Magistrate for postponement in order to move this Court for transfer. The Deputy Magistrate had the temerity to refuse this application. This flagrant disobedience of a statutory mandate is sufficient, in my opinion, to entitle the applicant to obtain a transfer of the case from this Magistrate. There can be no doubt whatsoever as to the interpretation of Clause (8), Section 526:

If, in the course of any inquiry or trial... the accused notifies to the Court before which the case... is pending his intention to make an application under this section in respect of such case... the Court shall adjourn the case... for such a period as

will afford a reasonable time for the application to be made and an order to be obtained thereon.

2. I regret to notice that in the present case the Magistrate has submitted an explanation which I consider to be a prevarication instead of an apology. He says that

time was not granted because the complainant has had sufficient time and also because he was to get further time even without the sanctioning of his last-mentioned application.

3. The applicant had not sufficient time because his application was dismissed by the District Magistrate on 20th April and in three days he could not come here all the way from Bulandshahr and obtain an order of transfer. By reason of this disobedience to a definite direction of law I direct that the proceedings shall be transferred to the Court of some Magistrate other than that of Babu Man Mohan Dayal. The District Magistrate is requested to transfer the case for hearing to some other Magistrate having jurisdiction. The proceedings shall start again from the point where they had been broken off.