

**Bashir Husaln Vs. Ali Husaln and anr.**

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**Court :** Allahabad

**Decided On :** Dec-22-1913

**Reported in :** AIR1914All150; (1914)ILR36All166

**Judge :** George Knox and ;Tudball, JJ.

**Appellant :** Bashir Husain

**Respondent :** Ali Husaln and anr.

**Judgement :**

**Knox and Tudball, JJ.**

1. In this case the accused came first before the Court of Thakur Hanuman Singh, who at the time was the Sub-Divisional Magistrate of Amroha. Thakur Hanuman Singh took cognizance of the case and then transferred it for trial to Babu Bir Narain Singh, a magistrate subordinate to him. Before Babu Bir Narain Singh could try the case he was transferred. There is no formal order on the record, but we are told that on Babu Bir Narain Singh's transfer the District Magistrate, under an order dated the 30th of November, 1912, transferred all cases pending before the court of Babu Bir Narain Singh, which had ceased to exist, to the court of Mr. Panna Lal, who at the time was the Sub-Divisional Magistrate of Amroha. Among the cases so transferred was the present case. Mr. Panna Lal in an explanation furnished by him says that as the case was a petty one he transferred it for trial to Chaudhri Dharam Singh, Special Magistrate of Kanth, and a magistrate

subordinate to the Sub-Divisional Magistrate of Amroha. When this case first came before this Court it seemed doubtful whether Mr. Panna Lal had power to make this last order of transfer, We asked the Public Prosecutor to appear in the case, and after hearing him we are confirmed in the opinion that this last order of transfer was an order ultra vires. When a District Magistrate has referred a case for trial to a Sub-Divisional Magistrate, the latter has no power to transfer it to any other Magistrate who may happen to be subordinate to him. This case was especially called up because frequent cases of transfer from other districts and specially from this district have lately come before this Court, and in some cases transfers have been so frequent and have caused such extraordinary delay as to amount practically to a denial of justice. We might have set aside the proceedings before the Special Magistrate of Kanth as void, but we do not think it necessary to exercise our powers in this particular case and therefore we make no further orders. Let the record be returned.

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