

Ram Sarut Vs. Emperor

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Court : Allahabad

Decided On : Oct-26-1918

Reported in : 49Ind.Cas.111

Judge : Tudball, J.

Appellant : Ram Sarut

Respondent : Emperor

Judgement :

Tudball, J.

1. This is an application for the transfer of the case of King-Emperor v. Ram Sarup pending in the Court of the Sessions Judge of Farrukhabad to some other Court either in that district or any other district. The ground on which the application is pressed is based on the facts to be found stated in paragraph 9 of the affidavit filed with the application. It is an allegation to the effect that in the week between the 9th and the 14th of September last the Presiding Judge adopted a practice in regard to the disposal of his work which made it very difficult, if not impossible, for an accused person to properly defend himself. The allegations are that the Sessions Judge fixed only one day for each Sessions case, whatever the number of witnesses to be heard; that he commenced very early in the morning, sat through the day and continued the case till late in the evening; with the result that the Counsel engaged on both sides were reduced more or less to a state of

exhaustion and were unable to do justice to their cases. The case which is now in question was called for hearing at about 11-15 a.m. There were twelve witnesses for the prosecution and twenty-seven for the defence. The (date was the 13th of September, for the 14th of September was fixed another heavy case. It was, therefore, dearly impossible for the present case to have been tried and completed on the 13th of September. An application was then made to the Court on the same day when the case was called, asking for an adjournment in order to enable the accused to apply to this Court for transfer of the case. The grounds on which the application was intended to be made were also set forth at the request of the Judge below in the application for adjournment. Two grounds were mentioned therein, one of which requires no consideration at the present moment as it is admitted that it was stated in error. The second ground was as follows: 'Moreover only one day has been fixed for this case in which twelve witnesses have been summoned for the prosecution and a large number (I believe over twenty-five) for the defence. The case can begin sometime about 11-15 a.m. and the witnesses for the prosecution can be finished late in the afternoon about 4 or 5 p.m. If the Court sits after that hour and takes the evidence for the defence, the lawyers engaged would be too tired to do their duty by their client and his interests would suffer if the evidence is prolonged late in the evening.' There is an order below this granting the application for adjournment and fixing the 9th of October with a note on this ground. In regard to the second ground the order runs as follows: 'A further reason given is that the case would begin about 11-15 a.m. and the Vakil thinks there would not be time for all the witnesses to be heard today. In that case an application for adjournment could have been made at the end of the day but no such application or request has been made. There was time between the 30th of August and to-day to move the Hon'ble High Court to transfer the case, but no steps have been taken till to-day.' The learned Sessions Judge in answer to this application has submitted a note in which he has given his reason for fixing the 13th of September for the hearing of this case. He says: 'it seemed best to fix the 13th of September for this case and if that date proved insufficient, to give further dates for hearing on 9th October and subsequent dates.' Admittedly the 13th of September was the only vacant date on his list. It seems equally clear that one day was an utterly insufficient allowance of time for the trial of this case. Ordinarily

a Sessions trial once begun should be continued de die in diem until it is finished. No such case should be adjourned for hearing except for very good reasons. It necessitates a further attendance on the part of both the witnesses and the assessors (whose memory of the evidence is bound to fail in consequence), and it has repeatedly been laid down by this Court that when once a case has begun, even in civil litigation, it should, if possible, be heard de die in diem. The learned Judge's fixing of the 13th of September for the trial of this case was obviously inadvisable. He refers to an application which had been made for the transfer of the criminal case fixed for the 14th of September. He remarks that it appeared likely that the 14th of September would also be free. On this he obviously could not count, for in the result the case fixed for the 14th of September was not transferred. In paragraph 0 of his note the Sessions Judge remarks: 'The learned Vakil for the applicant was informed, when the case was called on in the morning of the 13th of September, that if more time was required for the case it would be heard on further dates beginning from the 9th October/' This may have been so, but the practice in adjourning such a case is obviously 'an improper one, as I have already pointed out above. The learned Judge further remarks that the learned Vakil intimated that he did not want to do any work during the vacation, which remark appears to have been based upon something said not by the learned Vakil but by another gentleman in Court. The latter part of this clause ends with a surmise that the learned Vakil was not prepared in the case and was not prepared to go on with it. This appears to be pure surmise and without any basis whatsoever and seems to have arisen out of remarks which passed between the Bench and the Bar on the day in question. In regard to the allegation made in paragraph 9 of the affidavit, the Judge has merely remarked that this allegation dealt with the trial of other cases in the previous four days and had nothing to do with the present case and that he is prepared to furnish an explanation if called upon. This is rather avoiding the point which has been raised in the affidavit, and that point is that the practice of the Court for the four preceding days had been such as to show to the accused and his learned Vakil that it would be practically impossible on the 13th of September to place the accused's case properly before the Court. If the learned Sessions Judge would only think, he would see that it was obviously impossible for Counsel engaged in the case to work from early morning

till late in the evening. The hours during which his Court should be open have been laid down by this Court, and it is only in exceptional cases and for exceptional reasons that any deviation should be made from the rule-The actions of the Judge, in my opinion, has been decidedly inadvisable and in a certain sense improper. The 13th of September ought never to have been fixed for the trial of this case. It obviously could not be tried on that date and if he had been well advised the Judge would, on the 13th of September without any further question, have adjourned the case straight away as it was impossible for him to finish it. The Judge's vacation was to begin on the 15th of September, Saturday the 14th of September being the last working day. It is obviously unfair to the public as well as to the Bar to adopt the procedure which the learned Judge did adopt on this occasion and the accused was justified in putting in his protest. In the circumstances, therefore, and in view of the friction which has arisen in the matter, I think it advisable to transfer this case and I hereby direct that it be transferred to the Court of the Assistant Sessions Judge of Farrukhabad for trial.

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