

Birbhan Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/470903

Court : Allahabad

Decided On : Jan-02-1948

Reported in : AIR1948All242

Appellant : Birbhan

Respondent : Emperor

Judgement :

ORDER

Moothan, J.

1. This is an application for the transfer of. certain criminal proceedings, now pending against one Birbhan in the Court of a Sub-Divisional Magistrate of Farrukhabad, to a Court in some other district.

2. The applicant is a Sadh, and it is an unfortunate fact that for many years the Sadh community of Farrukhabad has been divided into two factions, known as the First and Second Parties, which are bitterly antagonistic. There has in particular been a long standing dispute between these rival parties over their respective rights to hold an annual bhandara in the common place of worship of the Sadh community in Farrukhabad known as the Chauki Sadan, and this dispute has led to much litigation between the two parties. The position at present is that each party is entitled to hold a bhandara in the Chauki Sadan, and on 18-8-1947, the date fixed by the District Magistrate of Farrukhabad, the First Party exercised its

right. What actually occurred on that occasion is in dispute, but it appears that there was a good deal of disturbance as a result of which a number of adherents of the Second Party were arrested by the police and proceedings under Section 107, Criminal P.C., were instituted against members of both parties including the applicant. The applicant is a member of Second Party and it is in respect of the proceedings against him that the present application is made.

3. In support of this application various allegations have been made against the District Magistrate of partiality and personal interest, and it is said that as the Sub-divisional Magistrate to whom the proceedings against the applicant have been transferred is subordinate to the District Magistrate, the applicant has reasonable grounds for apprehending that he will not have a fair trial. The allegations of partiality and personal interest have been denied by, the District Magistrate, and I am not satisfied on the evidence before me that there is any substance in them.

4. The matter does not, however end there, for in his explanation the District Magistrate expresses his clear opinion that the members of the Second Party had definitely gone to the Chauki Sadan on the morning of 18th August last for the purpose of committing a breach of the peace and with the object of assaulting members of the First Party, and it has been argued that such an expression of opinion by the District Magistrate does legitimately give rise to an apprehension on the part of the applicant that the trial Magistrate will be influenced thereby and the applicant prejudiced at his trial. No allegation has been made against the trial Magistrate other than this, that he will allow his judgment to be influenced, to the prejudice of the applicant, by the opinion of an officer to whom in the executive sphere he is subordinate. This argument assumes that the question before the trying Magistrate is that upon which the District Magistrate has expressed an opinion. That is not wholly correct, for the applicant has not to answer a charge of having committed or of attempting to commit a specific offence, but only to show cause why he should not be bound down to keep the peace in the future.

5. In *Sergeant v. Dale* (1877) 2 Q.B.D. 558 at page 567, Lush J. said:

The law... has regard not so much perhaps to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant parties. One

important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so promote the feeling of confidence in the administration of justice which is so essential to social order and security.

and in a Full Bench decision of this Court - Vakils of Jhansi, In the matter of : AIR1928 All396 - it was pointed out that

It is the duty of Courts, not only to be impartial, but also to inspire confidence in the administration of justice, it is therefore not necessary, when supporting an application for transfer, to establish that there is any actual bias in the mind of the Magistrate concerned. Incidents which are calculated to raise a reasonable apprehension in the mind of an ordinary accused person that he will not get a fair trial may justify a transfer although no actual bias in the mind of the trying Magistrate can be proved.

6. What therefore I have to decide is whether, upon the facts which have been established, there arises a reasonable apprehension in the mind of the applicant that he is unlikely to have a fair and impartial trial. Now it is nowhere suggested that there are any special reasons why this particular Sub-divisional Magistrate is likely to be influenced by the views of the District Magistrate, nor have any facts been proved from which it might reasonably be inferred that he, or any other Subordinate Magistrate, would allow himself to be influenced in the discharge of his purely judicial duties by the views of a senior executive officer in the district. There is only the assertion that because the trying Magistrate is subordinate to the District Magistrate he is likely to accommodate his own views to those of his superior officer. There is nothing in fact, to warrant that conclusion, and the possibility that the Magistrate might be so influenced is, in my opinion, too remote to give rise, in the mind of an ordinary accused person, to a reasonable apprehension that he will not have a fair trial.

7. The application therefore, fails, and is dismissed. The case will be sent back forthwith to the Sub-divisional Magistrate for disposal.