

Syed Iltaf Husaln Vs. Emperor

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Court : Allahabad

Decided On : Sep-07-1912

Reported in : 17Ind.Cas.414

Judge : Rafique, J.

Appellant : Syed Iltaf Husain

Respondent : Emperor

Judgement :

Rafique, J.

1. This is an application on revision, contesting the order of the learned District Magistrate of Badaun, dated the 1st of July 1912. That order was made under the following circumstances: Azhar Husain filed a complaint against Iltfat Husain alias Altaf Husain, under Section 323, Indian Penal Code, in the Court of the Tahsildar of Sahsawan. Azhar Husain and the person accused by him live in Sahsawan. Altaf Husain filed a counter-complaint against Azhar Husain and others in the Court of Munshi Sharafat Ullah Khan, Deputy Magistrate. The Tahsildar recorded the evidence for Azhar Husain and framed a charge sheet against Altaf Husain. No evidence has yet been recorded in connection with the counter-complaint of the latter. Altaf Husain moved the Sub-Divisional Officer to transfer the case pending in the Court of the Tahsildar to the Court of Munshi Sharfat Ullah Khan. The Sub-Divisional Magistrate, without calling upon Azhar Husain to show cause,

granted the application of Altaf Husain and transferred the case to the Court of Munshi Sharafat Ullah Khan. Thereupon, Azhar Husain filed a petition before the District Magistrate objecting to the transfer of his case from the Court of the Tahsildar. The learned District Magistrate cancelled the order of the Sub-Divisional Magistrate and transferred both the cases from the Court of Munshi Sharafat Ullah Khan to that of the Tahsildar. Altaf Husain has come up to this Court in revision. It is contended on his behalf that the District Magistrate and the Sub-Divisional Magistrate have coordinate powers of transfer under Section 528, Criminal Procedure Code, and that the District Magistrate could not sit in appeal on an order of transfer passed by the Sub-Divisional Magistrate. This contention is supported by *Raghunatha Pandaram v. Emperor* 26 M. 130. The order of the District Magistrate, dated the 1st of July 1912, was, no doubt, illegal. But the effect of the setting aside of that order would be that the case, which was instituted in the Court of the Tahsildar, would remain on the file of Munshi Sharafat Ullah Khan and the other case which was instituted in the Court of the latter would remain on the file of the Tahsildar. For the order of the learned District Magistrate, which related to the transfer of the case which was originally instituted in the Court of Munshi Sharafat Ullah Khan, cannot be questioned on any ground. However, as the order of the learned District Magistrate is illegal, it cannot be upheld and it is set aside. But I think that the two cases should be tried in one Court and as the Court of the Tahsildar is situate in Sahsawan where the parties reside, I direct that both the cases be transferred to his Court for disposal.