

Ram Kishan Das Vs. Emperor

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Court : Allahabad

Decided On : Aug-05-1912

Reported in : 17Ind.Cas.567

Judge : Rafique, J.

Appellant : Ram Kishan Das

Respondent : Emperor

Judgement :

Rafique, J.

1. The applicant, Mahant Ram Kishen Das of Akhara Ram Bagh, sub-division Kanwi, has filed three applications in this Court under Section 526 of the Code of Criminal Procedure, with regard to three criminal cases pending against him in the Court of the Joint Magistrate of Karwi, praying that those cases be transferred to some other Court outside the District of Banda on the allegation that the District Authorities are prejudiced against him. The Mahant stands charged with the offences of rash and negligent driving, enticing away of a married woman with criminal intent and committing riot in the course of the abduction of the woman. The allegations on which the transfer is sought are to put briefly:

(1) that on the 5th of June 1912, the Joint Magistrate at first refused to see the applicant and when on the latter's repeated request an interview was allowed, the

Joint Magistrate told him that the applicant was a badmash and ordered him to go away;

(2) that the Joint Magistrate has sanctioned the prosecution of the applicant for rash and negligent driving;

(3) that the Joint Magistrate received information of the alleged abduction at his bungalow in the middle of the night of the 27th of June 1912, and went at once to the Railway Station and issued orders to the Police to make inquiry;

(4) that the District Magistrate of Banda cancelled the applicant's license for arms and declined to see him when he called to pay his respects on the 8th of July 1912. No explanation appears to have been submitted by the Joint or the District Magistrate in reply to the allegations of the applicant. The learned Government Advocate appears to oppose the applications for transfer. He says that he does not oppose the transfer from the Court of Mr. Muir, the Joint Magistrate, not because the allegations made against him are true, but because the defence might possibly call him as a witness in the abduction case. In the case of transfer from the District Magistrate's Court, he opposes it strenuously on the ground that no case has been made out for imputing prejudice to the District Magistrate. For the applicant, it is contended that what the Court has to consider on an application for transfer is 'not merely the question whether there has been a real bias in the mind of the presiding Magistrate against the accused but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial.' The withdrawal of the applicant's license for arms and the Magistrate's refusal to see the applicant before he was found guilty by a Court of law are circumstances, it is said, which are calculated to create in the mind of the applicant a reasonable apprehension that he may not have a fair and impartial trial. In support of his contention, the learned Counsel for the applicant relies on a case of this Court, namely, Farzand Ali v. Hanuman Prasad 19 A.

64. The learned Government Advocate replies that the cancellation of the license for arms is a matter purely discretionary with the Magistrate and his refusal to see a man, who is standing his trial in a Criminal Court, is not improper and that neither circumstance implies a prejudice in the mind of the Magistrate, nor can it be said to create a reasonable apprehension in the mind of an ordinary man that he would not have a fair and impartial trial at the hands of the Magistrate. Moreover, it is said that the case of Farzand Ali v. Hanuman Prasad 19 A. 64 has not, as a rule, been followed in this Court. The correctness of the order of the Magistrate canceling the license for arms, or the propriety of his conduct in refusing an interview to the applicant is not and could not be in question in the present application. Nor is it contended by the learned Counsel for the applicant that the District Magistrate is, as a matter of fact, prejudiced against the applicant. What is advanced for the applicant and has to be considered is whether the said two circumstances would create in the mind of the applicant a reasonable apprehension of not getting a fair and impartial trial in the Court of the District Magistrate. The position of an accused person is always one of great anxiety and suspense, and incidents, though susceptible of explanation, and which would perhaps pass unnoticed, but for the trial he is undergoing, alarm him and lead him to think that his guilt is already believed and that his conviction is a fore-gone conclusion. It is quite possible that such an impression has been produced in the mind of the applicant by the circumstances referred to above as they very likely led him to infer that the District Magistrate was displeased with him. It would, therefore, be advisable to grant the applicant's request for transfer. The suggestion that the principle enunciated in the case of Farzand Ali v. Hanuman Prasad 19 A. 64 has not been followed in this Court has no force, as I find on similar considerations transfers were allowed in the following cases, namely Krishna Nath Tewari v. King-Emperor Decided on the 3rd March 1910; Inayat Ali Khan v. King-Emperor Decided on the 18th October 1910 and Mohammad Fazal Ullah v. King-Emperor Decided on the 1st April 1912. I think it is expedient in the ends of justice that the three cases pending against the applicant in the Court of the Joint Magistrate of Karwi should be transferred to another District. I am told that Allahabad is as far from Manikpore where most of the witnesses live as Banda is, and that it would be convenient to both parties to have the case tried in Allahabad.

I order that the three cases, against the applicant, be transferred from the Court of the Joint Magistrate of Karwi to that of the District Magistrate of Allahabad, who will either try the cases himself or send them for trial to some other Magistrate subordinate to him competent to try them.

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