

Abdul Naseer

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Court : Allahabad

Decided On : May-06-1937

Reported in : 171Ind.Cas.934

Judge : Ganga Nath, J.

Appellant : Abdul Naseer;emperor

Respondent : ;ghulam and anr.

Judgement :

ORDER

Ganga Nath, J.

1. This is an application by Abdul Naseer for the transfer of Criminal Case No. 575 of 1926 King-Emperor v. Ghulam and Anr.--which is pending in the Court of Mr. P.C. Misra, Magistrate, First Class, Cawnpore, to any other Court. The chief ground on which the transfer is sought is that the learned Magistrate did not allow the Prosecuting Inspector to put certain questions in re-examination to the complainant who was examined as one of the witnesses for the prosecution. The learned Magistrate has given reasons in detail for disallowing the questions. The chief reason was that the question which the Prosecuting Inspector wished to put to the witnesses had not arisen from any ambiguity in any answer in the cross-examination. The witness, it appears, had made some damaging admissions which the Prosecuting Inspector wished to get over and consequently he wished to

put certain questions which did not arise from the cross examination. The learned Magistrate was quite justified in disallowing such questions. Thereafter it appears that a friction arose between the Prosecuting Inspector and the learned Magistrate and on account of it this application for transfer has been made. The learned Magistrate has noted some observations as regards the demeanour of the witness which go against his credibility. This fact by itself is not sufficient to show that there will be no impartial or fair trial.

2. A preliminary objection was taken by the learned Counsel for the accused that the applicant had no locus standi to make an application for the transfer of the case. The applicant had lodged a complaint with the Police. The case has been started on the complaint by the Police. Before the amendment in Section 526, Criminal Procedure Code, there might have been some room for doubt on the point as the words used in Clause (8) in the section were: 'The Public Prosecutor, the complainant or the accused.' Clause (3) lays down:

The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

3. It, therefore, provided for an application being made by a party interested to the 'High Court for the transfer, of a case. Clause (8), as amended, is as follows:

If, in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon.

4. The words 'any party interested' therefore appear now in Clause (3) as well as in Clause (8). So there can be no doubt that a person interested can make an application for the transfer of the case as well as intimate to the Court before which the case is at any stage before the defence closes its case that he intends to make an application under this section. A person who makes a report to the

Police of a certain offence is a person who is interested in the prosecution which may be started by the Police within the meaning of Clause (3) and Clause (8) of Section 526, Criminal Procedure Code. The applicant, therefore, has a locus standi to make the present application. The application is opposed by the learned Government Advocate on behalf of the Crown. There is thus a conflict between the Crown and the applicant. The prosecution is being conducted on behalf of the Crown by the Public Prosecutor, and he does not think that there will not be any fair or impartial trial. The rights of the applicant must be subordinate to those of the Crown because the Crown is responsible for the prosecution. In *Sheodhari Rai v. Jhingur Rai* 26 Cr.L.J. 1249 : 88 Ind. Cas. 993 : A.I.R. 1925 Pat. 818 : 7 P.L.T. 49, it was held:

A person at whose instance a criminal case is lodged is a party interested within the meaning of Clause (3) of Section 526, Criminal Procedure Code, and is 'entitled to apply for transfer of the case; but his rights are subordinate to those of the Crown; in other words if the Public Prosecutor or the person who is conducting the prosecution on behalf of the Crown is unwilling to have the case transferred, the person at whose instance the case was started has no power to get the case transferred.

5. The same view was adopted in *Bag Ali v. Mohammad Din* 27 Cr.L.J. 411 93 Ind. Cas. 75 : A.I.R. 1926 Lah. 156 : 6 Lah. 541 : 27 P.L.R. 80. There is no ground for the transfer of the case. The application is rejected. The record be returned.

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