

Amba Prasad Vs. the State

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Court : Allahabad

Decided On : Nov-09-1956

Reported in : 1957CriLJ272

Judge : Asthana, J.

Appellant : Amba Prasad

Respondent : The State

Judgement :

ORDER

Asthana, J.

1. These are two applications under Section 526, Cr.P.C. by one Amba Prasad for transfer of two cases pending against him under Sections 107/117, Cr.P.C. in the Court of Sri A. B. Mathur, Sub Divisional Magistrate, Koel, District Aligarh.

2. The applications have been made on the grounds that during the pendency of these cases the learned Sub-Divisional Magistrate suspended arms licence of the applicant; that thereafter a writ petition was moved against the learned Sub-Divisional Magistrate against his order suspending the licence and that on account of this fact the learned Sub-Divisional Magistrate was displeased with the applicant and made certain remarks during the pendency of the cases on account of which the applicant apprehends that he is not likely to get a fair trial in his Court.

It is alleged in the affidavit on behalf of the applicant that the attitude of the learned Magistrate was very harsh towards the applicant; that the applicant was asked by the learned Magistrate to go to Allahabad and hire a bungalow and file as many

writs as he possibly can; that the learned Magistrate asked the station officer concerned to file cases under the Indian Penal Code or Criminal Procedure Code to harass the applicant; that the learned Magistrate threatened the applicant to ruin his life and compel him to leave Jalali village and Hardwarganj police circle; and that the learned Magistrate also asked the station officer concerned to open the history sheet of the applicant and to bring eight witnesses at an early date so that he might finish the case.

A copy of the affidavit filed by the applicant was sent to the learned Magistrate concerned and he has practically denied all the allegations which have been made by the applicant in his affidavit. As regards the suspension of the arms licence he said that it was not suspended by him but by the District Magistrate and it was in accordance with the orders of the District Magistrate that he had asked the police to take possession of the arms of the applicant and deposit them in the malkhana.

3. It appears that the applicant made an application to the Sessions Judge, Aligarh, for transfer of the cases on the ground that the learned Magistrate had suspended his licence without any reason. From the judgment of the learned Sessions Judge it appears that no other ground was taken by the applicant for the transfer of the cases. The learned Sessions Judge rejected the applications on 17th July, 1956, on the ground that it was not the Sub-Divisional Magistrate before whom the cases were pending who had suspended the licence of the applicant but it was the District Magistrate who had suspended the licence not only of the applicant but also of another co-accused Moolchand and the learned Sub-Divisional Magistrate acted only in pursuance of the orders of the District Magistrate.

The applicant did not make any fresh application before the learned Sessions Judge for the transfer of the cases on the grounds on which it had been made before this Court. According to Section 526 (1-A), no application shall lie to this Court for transferring any case from one criminal Court to another criminal Court in

the same sessions division unless an application for such transfer has been made to the Sessions Judge and rejected by him. In view of this clear provision it was incumbent upon the applicant to apply before the learned Sessions Judge for the transfer of the cases on the same grounds on which the applications have been made before this Court and it is only when such an application has been rejected by him that an application to this Court will be maintainable.

It may be mentioned here that so far as the applications on the ground of suspension of the licence are concerned they have got no force, in view of the fact that the licence was not suspended by the learned Sub-Divisional Magistrate but was suspended by the District Magistrate, As regards other grounds I am not prepared to consider them unless the applications on these grounds are first made before the learned Sessions Judge and he has rejected them.

4. In these circumstances these applications are not maintainable and are, therefore, rejected. It will, however, be open to the applicant to apply before the learned Sessions Judge for the transfer of the cases on the grounds set forth in the applications made before this Court except on the ground of suspension of licence. The stay order is vacated.

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