

Har Dev Sharma Vs. Bal Mukund

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SooperKanoon Citation : sooperkanoon.com/478009

Court : Allahabad

Decided On : Aug-29-1952

Reported in : 1953CriLJ145

Judge : Chowdhry, J.C.

Appellant : Har Dev Sharma

Respondent : Bal Mukund

Judgement :

ORDER

Chowdhry, J.C.

1. This is an application under Section 526, Criminal P.C. by one Pt. Har Dev Sharma for the transfer of the case pending against him and one Bhawani Shankar under Section 501, Penal Code, in the Court of a first class Magistrate at Bilaspur on the complaint of one Pt. Bal Mukand. The co-accused Bhawani Shankar has to-day associated himself with this application. The application has been opposed on behalf of the complainant.

2. The present complaint was filed on 28.3.1952. On 6.3.1952 a complaint had been filed by the present petitioner against the said Pt. Bal Mukand and the latter's brother Pt. Sada Nand for an offence under the aforesaid section of the Indian Penal Code in the Court of the Magistrate first class, Solan in the State of Himachal Pradesh, An application for transfer of that case was filed by Pt. Bal

Mukand on 15.7.1952. The present application was also filed on the same date, and the ground for transfer alleged in the present petition is that the two cases are more or less identical and the ends of justice and the convenience of the parties require that both the cases be tried by one and the same Magistrate. The present petitioner therefore prays that both the cases be transferred to the Court of some Magistrate of competent jurisdiction at Kasumpti in Himachal Pradesh.

3. I have just allowed the petition of Pt. Bal Mukand, transferring the case against him and Sada Nand from the Court of the Magistrate first class, Solan to another Magistrate first class at Kasumpti, but I do not find it possible to allow the present application. I do not find it possible to grant the present application in view of the provisions of Section 526(1)(ii), Criminal P.C. which lays down that the High Court may order that any particular case be transferred from a criminal Court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction. In other words, both the Court from which the case is transferred and that to which it is transferred must be Courts subordinate to the High Court concerned. That being so, while I, as Judicial Commissioner, Bilaspur, can transfer the present case from a subordinate Court in the State of Bilaspur to another subordinate Court in that State, I cannot transfer it to any Court outside the territorial limits of that State. There is no doubt that I also exercise jurisdiction as Judicial Commissioner, Himachal Pradesh, but as such I am not empowered to entertain the present application, relating as it does to the transfer of a case pending before a criminal Court in the State of Bilaspur. The mere fact that I happen to be both Judicial Commissioner, Himachal Pradesh and Judicial Commissioner, Bilaspur does not therefore solve the difficulty. A case like this could only be transferred, provided, of course, there were sufficient reasons for transfer, under the provisions of Section 527, Criminal P.C. by the Hon'ble the Supreme Court. The prayer for transfer of this case outside the State of Bilaspur cannot therefore be granted.

4. The application is rejected. The parties are hereby directed to present themselves before the trying Magistrate at Bilaspur on 15.9.1952.