

Budhya and ors. Vs. State of Uttar Pradesh

Budhya and ors. Vs. State of Uttar Pradesh

SooperKanoon Citation : sooperkanoon.com/478694

Court : Allahabad

Decided On : Sep-28-1989

Reported in : 1990CriLJ64

Judge : S.I. Jafri, J.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149, 303, 307, 504 and 506;
Code of Criminal Procedure (CrPC) , 1974 - Sections 83

Appeal No. : Criminal Misc. Transfer Appln. No. 7585 of 1989

Appellant : Budhya and ors.

Respondent : State of Uttar Pradesh

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : D.N. Pandey, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.I. Jafri, J.

1. This is an application for transfer moved on behalf of Budhya alias Budhi Ram and six others praying therein to transfer the entire case and all the proceedings

connected with it including the bail matter to some district other than Basti.

2. On this transfer application officer was directed by this Court to fix the aforesaid application along with the report of Sessions Judge on 31-8-1989 for orders. Later on, an application was presented before me on behalf of applicants Budhiya and others on 27-9-1989 seeking this court to fix an early date for taking up the matter for hearing and disposal out of the exigencies that the Chief Judicial Magistrate allegedly had avowed in the Court that he would reject all the proceedings connected with the case as against the applicants and further that amongst the persons detained in Jail in the aforesaid case, there is a child aged about 13 years of age and in view of the facts aforesaid that the applicants are apprehensive of the justice being dispensed to them at Basti courts, they prayed for transfer of the aforesaid case to some other District and further for hearing of their applications for bail by this Court. The case was directed to be taken up today on 27-9-1989 for hearing and disposal.

3. I have gone through the application, the affidavit and annexures thereto. A resume of the case bearing on the merits of the facts of this case which would be necessary for proper appraisal of the facts involved in the case is that initially a case at Crime No. 134 of 1989 under Sections 147, 148, 149, 307, 303, 504 and 506 I.P.C. was registered at Police Station Dudhara, District Basti at 3.30 p.m. on 1-6-1989 as a sequel of a report lodged by Smt. Hayatunnissa against the applicants Budhiya alias Budhi Ram, Sukhram, Haji Anis, Abdullah Salah Uddin alias Jallauddin, Yar Mohammad and Races, all residents of village Rudhauri, Police Station Dudhara District Basti. Subsequently as is testified by the Pairokar appearing on, behalf of the applicants, a charge-sheet was submitted in the court of Chief Judl. Magistrate, Basti on 16-8-1989 in the aforesaid Case Crime No. 134 of 1989 against the applicants. It transpires from a perusal of the record that Chief Judl. Magistrate, Basti had embarked upon proceedings under Section 83, Cr.P.C. against the applicants on motion by the Investigating Officer in order to secure surrender of the applicants. In passing, it may be mentioned that all the applicants excepting Sukhram had surrendered themselves in the court of Chief Judl. Magistrate Allahabad on 14-6-1989. So far as Sukhram is concerned, he was arrested by the Police at Basti. As of now all the applicants are incarcerated in the

district Jail at Basti. The Pairokar of the applicants states that the case has not been committed to the court of Sessions so far.

4. The above case later on transferred to the court of 1st Judicial Magistrate. Basti where it is pending at present.

5. However, without embarking into each and every detail in the case, I deem it proper to jump to the events before the Sessions Judge. An application for bail was made before the Sessions Judge. Basti which is reportedly pending for consideration. Meanwhile, the learned D.G.C. (Crl.) preferred a revision before the Sessions Judge, Basti as a result of the order passed by Addl. Munsif Magistrate, Basti rejecting the application for police custody, which is as stated before this court, is pending disposal before the Sessions Judge.

6. From an over all survey and gleaning of the papers on record, what I gather is the fact that the case has got a chequered history As has also been observed by the Sessions Judge, that one party or the other has got objection with the case being tried by one or the other Addl. Sessions Judges posted at Basti and hence the learned Sessions Judge was constrained in his report addressed to the register of this Court, to write observing therein that it would be desirable if this Court may transfer the case to any district other than Basti in the circumstances enumerated above. It is really a shocking state of affairs and my conscience is in consternation that both the parties did not feel satisfied with the Judges and Magistrates trying their case at Basti and on the other hand, they aspersed on them in some way or the other. I appreciate that there must be a justice oriented approach to a matter and it should assure fairness in the dispensation of justice. To criticise a Judge merely that one particular Judge appears to be leaning in the favour of one party, is reprehensible. I am really pained to notice that in a hotly contested case, parties are prone to resort to all types of aspersions on the Judges and Magistrates unmindful of its consequences visiting on the system. The parties must bear in mind that Judges, are fire-tested impervious to any influences and avarice.

7. Now upon a report dated 31-8-89 of the Sessions Judge Basti, who has recommended for transfer of the case to some other district for the facts and

circumstances enumerated above, where all the Addl. Sessions Judges have been aspersed upon and they are not favourably disposed to do the aforesaid case, it would be proper and in the interest of justice that all the matters connected with the case which is at present pending in the court of Addl. Munsif Magistrate, Basti (Case Crime No. 134 of 89) be transferred to the court of Sessions Judge, Gorakhpur from the Court of Sessions Judge, Basti and other courts at Basti wherever the matters connected with the aforesaid case may be pending for, disposal.

8. In the result, the transfer application is allowed. The entire case and all proceedings including the bail matters springing out of case Crime No. 134 of 1989 under Sections 147, 148, 149, 307, 302, 504 and 506, I.P.C. P. S. Dudhiya District Basti pending in the court of Addl. Munsif Magistrate, Basti as well as in the Court of Special Sessions Judge, Basti or wherever else it may be pending, (State v. Budhiya alias Budhi Ram and Ors.), are hereby transferred to the Court of Sessions Judge, Gorakhpur. The Sessions Judge Gorakhpur may either try the case himself or send it to some other Court of Competent jurisdiction within his sessions Division for trial and disposal. On receipt of the record of the case the Sessions Judge. Gorakhpur shall send the file of the case to the Chief Judl. Magistrate Gorakhpur for committal proceedings. Subject to the above. this application is finally disposed of.

9. Let a copy of this order be sent to the District Judge Basti as well as to the District Judge. Gorakhpur for compliance Sessions Judge. Basti is directed to send the record of the aforesaid case to the Court of Sessions Judge. Gorakhpur through Special Messenger in order to enable the Sessions Judge. Gorakhpur to take up the bail matter of the applicants at the earliest and also for initiations of committal proceedings by the C.J.M., Gorakhpur.

10. Let a copy of this order be supplied to the Pairokar of the applicants within 24 hours on payment of usual charges