

Abdul Rab Vs. Azmat Ali

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Court : Allahabad

Decided On : Sep-20-1920

Reported in : AIR1920All277; 59Ind.Cas.376

Judge : Gokul Prasad, J.

Appellant : Abdul Rab

Respondent : Azmat Ali

Judgement :

Gokul Prasad, J.

1. This is an application for the transfer of a case under Section 500 of the Indian Penal Code from the Court of Pandit Sheo Charan Lal, Magistrate of the First Class of Allahabad, in which one Azmat Ali is the complainant and Abdul Bab and others are accused. It appears that, on the day fixed for hearing of this case and before any witnesses were examined the applicant put in an applications for adjournment under Section 526 of the Code of Criminal Procedure, Clause (8), on the ground that he intended to make an application for transfer to the High Court. This application was summarily rejected. The Deputy Magistrate examined four of the prosecution witnesses and took down the statement of the accused. This was on the 23rd of July 1920. After this the Deputy Magistrate adjourned the case for the 27th of July and permitted the complainant to put in a fresh list of witnesses and for the summoning of certain records. On the same day the applicant applied

for a copy of the application for adjournment with the order passed thereon and also for copies of the statements of the prosecution witnesses. The order passed thereon was that only copies of the statements of the prosecution witnesses should be allowed. On the 27th of July the statements of the other three accused were taken. The applicant on the 30th of July 1920 applied to the District Magistrate for transfer and he stayed proceedings pending the disposal of the application. The District Magistrate, for reasons recorded by him, dismissed this application on the 12th of August. The applicant comes here in revision. It has been argued before me by Mr. Saila Nath Mukerji for the applicant that all proceedings in the case should have been stayed as soon as the application under Section 526, Clause (8) of the Code of Criminal Procedure was put in and subsequent proceedings were illegal, and reliance has been placed on certain rulings of the Calcutta High Court, viz., Wahed Molla v. Shaik Basaraddi 11 O. W.N. 507 : 5 Cr. L.J. 291 and Kishori Gir v. Ram Narayan Gir 8 O. W.N. 77 : 1 Cr. L.J. 46. On the other hands the case of Vaithinatha Iyer v. Kuppu Thevan 17 Ind. Cas. 572 : (1912) M.W.N. 1121 : 13 Cr. L.J. 828; takes the other view. No case of this Court has been put before me in which this point was decided. Having regard to the wording of Clause (8) of Section 526 of the Code of Criminal Procedure, I am of opinion that the Court is only bound to give such an adjournment as will afford a reasonable time for the application being made and an order being obtained thereon before the accused is called on for his defense. In the present case the accused had not been called on to enter into the defense and had ample time to move the higher Courts for transfer of the case to the Court of some other Magistrate so that the legality of the proceedings of the Magistrate is not open to question. I have now to decide on the facts and circumstances of the case whether this is a fit case in which the powers of transfer should be or could be properly exercised. The facts alleged by the accused on which he asked for a transfer are as follows: Azmat Ali, complainant, is the nephew of one Abdul Hai and is in other ways related to him. In June 1919 Abdnl Hai aforesaid and his son Manzur Ahmad were tried for the murder of the son of the accused-applicant Abdul Rab. They were both convicted in the Sessions trial and, later on, Abdul Hai alone was acquitted by the High Court on the ground that the case against him had not been proved beyond reasonable doubt. It will thus appear that Abdul Hai and the

accused applicant are on inimical terms with each other. This Abdul Hai was for a long time a peshkar in this very Court and is an active pairokar in the present case, that the accused being afraid of the influence of the said Abdul Hai ex-peshkar and Altaf Husain, the present peshkar of the Court of Pandit Sheo Charan Lal, wanted the transfer of the case from the Court of Pandit Sheo Charan Lal, the Deputy Magistrate, which resulted in the application and the order which I have already mentioned above. I have before me a counter-affidavit filed in reply to the affidavit put in by the accused (which I have detailed at length) and also the explanation of the Trying Magistrate. I do not think that the Deputy Magistrate would be in any way influenced in the decision of this case because of his ex-peshkar Abdul Hai or the present peshkar Altaf Husain, but the very explanation of the Deputy Magistrate to the effect that it was not brought to his notice that the application, for copy put in on behalf of the applicant was for copy of the application for transfer with the order passed thereon goes to show that there is something underhand being done in his office to prejudice the case of the accused, or at least to hamper it. The explanation of the Trying Magistrate that, when he passed the order, he did not know of what papers the copy was required, shows the necessity of particular care being taken in the proceedings connected with this case. Of course, I do not for a moment mean to suggest that the Trying Magistrate in this particular case refused the application for copy intentionally or that he has any prejudice against the accused, but I am not at all surprised that, having regard to the connection of Abdul Hai with the office of the Trying Magistrate, plus the refusal of the application for copy and the further fact that the Trying Magistrate, although he might have been justified in proceeding to examine one of the prosecution witnesses, viz., Babu Gokul Narain Tandon who had come from Bara Banki (he does not name any other Government officer who had come from out station), hurried in taking down the statements of the accused before all the evidence for the prosecution had been finished was enough to create an apprehension in the mind of the accused that he would not have a fair trial. Having regard to cumulative effect of all what I have stated above, I think the apprehension in the mind of the accused was justified. This being so, having regard to the law laid down in *Jafar Husain v. Emperor* 26 Ind. Cas. 648 : 12 A.L.J. 736 : 18 Cr. L.J. 56 and *Farzand Ali v. Hanuman Prasad* 19 A. 64 : A.W.N. (1896)

177 : 9 Ind. Dec. (N.S.) 41, I think that this case should be transferred to the Court of some other Deputy Magistrate competent to try the fame in this district. I order accordingly.

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