

Azeem Son of Mohd. Rasheed Vs. State of U.P. and

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Court : Allahabad

Decided On : May-05-2006

Reported in : 2006CriLJ2956

Judge : K.N. Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 302, 307 and 504; Criminal Law Amendment Act - Sections 7; Code of Criminal Procedure (CrPC) - Sections 408

Appeal No. : Criminal Misc. Transfer Application No. 161 of 2006

Appellant : Azeem Son of Mohd. Rasheed

Respondent : State of U.P. And; Saddiq Son of Kundan

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : R.S. Shukla, Adv.

Disposition : Application allowed

Judgement :

K.N. Sinha, J.

1. The present transfer application has been moved on behalf of Azeem who is an accused in Session Trial No. 198/02, State v. Azeem under Section 302/307/504 IPC and Section 7 of Criminal Law Amendment Act, Police Station Rosa, District

Shahjahanpur.

2. The allegations set forth in the application are that the above noted trial was pending in the court of Special Judge (EC Act) Court No. 9m, Shahjahanpur, which was presided over by G.S. Chandel, who recorded the evidence of six witnesses. Thereafter Sri Chandel was posted in the court of Third Additional Sessions Judge and one Rajveer Sharma took over in the court; of Special Judge (EC Act) in place of Sri G.S. Chandel. The contention of learned Counsel for applicant is that as the major part of evidence was recorded by Sri G.S. Chandel and he is at the same Sessions division, i.e. the same district hence the case should be transferred and tried by Sri Chandel.

3. He approached the Sessions Judge for transfer but the prayer was declined and transfer application was rejected by order dated 21.3.2006.

4. Learned Counsel for the petitioner has relied upon Punjab Singh v. State of U.P. reported in 1983 (20) page 37 in which it was held that where whole or part of the evidence has been recorded by a particular judge who is available in the district the case may be transferred to that court.

5. Learned Counsel for the applicant relied upon Radhey Shyam and Anr. v. State of U.P. reported in 1984 ACC 240 in which it was held that the Sessions Judge was empowered under Section 408 Cr. P.C. to transfer a part heard appeal from the court of Additional Sessions Judge to another Sessions Division, if it was expedient in the interest of justice and lastly he also relied upon Abdul Nazar Madani v. State of Tamil Nadu 2006, SCC 204

So far as the case of Abdul Nazar Madani (Supra) is concerned, it was held in this case that the relevant consideration for transfer should be the public confidence.

This is not the ground of the present application.

The case of Radhey Shyam and Anr. v. State of U.P. (Supra) relates about the power of the Sessions Judge, This is also not the ground for transfer of the present case. So far as the case of Punjab Singh (Supra), is concerned the evidence of six witnesses was recorded by Sri G.S. Chandel when he ceased to

have jurisdiction over that court. The Sessions Judge rejected the application on the ground of heavy pendency. This can not be a ground for rejecting the Transfer application, We as evidence in the case has already concluded and there was nothing much to be done.

6. Consequently, the transfer application is allowed and it is hereby directed that the Session Trial No. 198/02, State v. Azeem under Section 302/307/504 IPC and Section 7 of Criminal Law Amendment Act, Police Station Rosa, District Shahjahanpur, be transferred to the court of Additional Sessions Judge where Sri G.S. Chandel is presiding who shall conclude the trial and decide it according to law.

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