

**Ghani and ors. Vs. State**

**Ghani and ors. Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/495897](http://sooperkanoon.com/495897)

**Court :** Allahabad

**Decided On :** Aug-22-1957

**Reported in :** AIR1958All316; 1958CriLJ583

**Judge :** V.G. Oak, J.

**Acts :** [Constitution of India](#) - Article 14; [Code of Criminal Procedure \(CrPC\)](#) , 1898  
- Sections 350

**Appeal No. :** Criminal Revn. No. 1076 of 1957

**Appellant :** Ghani and ors.

**Respondent :** State

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** M.H. Beg, Adv.

**Disposition :** Application dismissed

**Judgement :**

ORDER

**V.G. Oak, J.**

1. The learned Sessions Judge has found that the accused were the aggressors and that the defence story cannot be accepted for a moment. On this view, there is

no scope for applying the rule laid down by the Full Bench of Allahabad High Court in *Parbhoo v. Emperor*, AIR 1941 All 403 (PB) (A).

2. The main contention of Mr. M. H. Beg appearing for the applicants was that, the accused did not get a fair trial in this case. This contention is based on the following circumstances. Evidence was recorded by one Magistrate, Sri Ram Kumar. He was transferred from Muzaffarnagar, and was succeeded by Sri V. N. Tripathi. Sri Tripathi heard arguments, and pronounced judgment convicting the applicants. It has been urged that the trial was improper, inasmuch as Sri Tripathi decided the case without watching the demeanour of witnesses.

3. It was conceded that the procedure adopted by Sri Tripathi is permissible under Section 350 of the Code of Criminal Procedure, as that provision stands now. But Mr. Beg argued that Section 350 of the Code in the present form is unconstitutional.

4. Mr. Beg relied upon a decision of the Supreme Court in '*State of West Bengal v. Anwar Ali Sarkar* : 1952 CriLJ510 . In that case their Lordships had to consider the validity of Section 5 (1) of the West Bengal Special Courts Act (X of 1950). Section 5 (1) ran thus:

'A Special Court shall try such offences or classes of offences or cases or classes of cases, as the State Government may by general or special order in writing, direct.'

It was held by their Lordships by a majority that, the provisions of Section 5(1) of the Act are ultra vires the Constitution by reason of their being in conflict with Article 14 of the Constitution.

5. It will be noticed that, under West Bengal Special Courts Act, the State Government was empowered to choose certain cases for trial by Special Courts. It was, therefore, held that, that provision was unconstitutional. The State Government has not been given any such choice under Section 350, Cr. p. C. As soon as a Magistrate is transferred from a district, Section 350, Cr. P. C. comes into operation. The operation of this section is not confined to any particular class

of offences. This section applies to all cases triable by Magistrates. The section is not directed towards any class of accused persons.

6. In Anwar Ali's case (B) it was pointed out by S. R. Das, J. (as he then was) that, taking away the right of a de novo trial on transfer is a glaring instance of inequality brought about by the impugned Act. It will be readily conceded that, a Magistrate, who decides a case merely upon a perusal of the record without seeing witnesses, suffers from a handicap. To that extent the accused persons may be said to be prejudiced. But it does not mean that the provision under consideration is unconstitutional.

7. As explained above, Section 350, Cr. P. C. comes into operation whenever a Magistrate is transferred. All the accused, whose cases remain unfinished on the date of the transfer, are brought under the rule laid down under Section 350, Cr. P. C. The provision appears to have been made to expedite the disposal of pending cases. The policy underlying Section 350, Cr. P. C. may be open to criticism. But Section 350 is not open to the charge of unconstitutionality. The procedure laid down under Section 350, Cr. P. C. is applicable to all accused persons, whose cases are pending before a Magistrate. So the provision of Section 350, Cr. P. C. does not infringe Article 14 of the Constitution. I hold that Section 350, Cr. P. C. is not unconstitutional.

8. The revision application is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**