

Chintamoni Palai Vs. State

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Court : Orissa

Decided On : Sep-08-1950

Reported in : AIR1952Ori167

Judge : Ray, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 526

Appeal No. : Criminal Misc. No. 13 of 1950

Appellant : Chintamoni Palai

Respondent : State

Advocate for Def. : Assistant Government Adv.

Advocate for Pet/Ap. : G.C. Das, Adv.

Judgement :

ORDER

Ray, C.J.

1. This is an application for transfer of a criminal case pending in the Court of the Stationary Sub-Magistrate, Russelkonda. The petition was filed in this Court on the 6th of February and was moved on the 7th of February, after due notice, to the Government Advocate. Mr. Dube, the then Government-Advocate, appeared and wanted time in order to get instructions for opposition. He, however, agreed that in

the meantime interim order of stay of further proceedings in the Magistrate's Court should be passed. An order was passed accordingly,, and was duly communicated to the District Magistrate of Ganjam, and to the Sub-divisional Magistrate of Russelkonda for necessary action. The order was received by them on the 9th February. The next date of hearing that was fixed in the case was 13th February. By that time the learned Stationary Sub-Magistrate was in possession of a telegram from the learned Government Advocate, dated 6-2-1950, intimating that the High Court had been moved for transfer, of the case and that he wanted records and instructions in the matter. Unfortunately, the statutory practice of sending post-copy of the telegram had not then obtained in the 'Advocate General's Office. The Magistrate, therefore, thought that telegram, was a misleading one. The accused persons appeared before him on that date and wanted further adjournment in the case on the ground that they had already moved the High Court. The learned Sub-Magistrate took an unusual attitude on that date. He disbelieved the telegram of the learned Government Advocate and the allegations in the petition of the accused persons. He re-fused adjournment and forfeited all the bonds executed by the accused persons in pursuance of the provision of Section 526, Criminal P.C. Besides he taxed the accused persons each with a penalty of Rs. 10/-, it being noted that they were 19 in number before him.

2. This action, rather, I should say, the conduct of the learned Sub-Magistrate is quite sufficient to raise a reasonable apprehension in the mind of the petitioners that they (sic) are not going to get a fair trial at the hands of the Stationary Sub-Magistrate. The Magistrate further labours under the mistake, as put by the Assistant Government Advocate, that one who does not succeed in getting an order of transfer from the High Court has to forfeit the bond. This is a serious lack of knowledge on his part. It must be mentioned here that the learned Magistrate concerned, and the learned Sub-divisional Magistrate are sitting within a few yards apart. I cannot understand, under what circumstances, if the order of the High Court was received by the Sub-divisional Magistrate on the 9th February, it could not be communicated immediately or even till the 13th to the Stationary Sub-Magistrate, particularly when it contained the interim order of stay of further proceedings before him. It is clear that notwithstanding an order of stay by this

Court, the Stationary Sub-Magistrate proceeded with the criminal case and thereby committed contempt of Court. The learned Sub-divisional Magistrate should realise that failure of communication on his part lands the Stationary Sub-Magistrate in inextricable difficulty. Such slackness ought to be brought to the notice of his superior. With very great reluctance I have to accept that it is the Sub-divisional Magistrate who failed to convey the order of this Court to the Stationary Sub-Magistrate. To hold otherwise would amount to holding that the Sub-Magistrate disobeyed this Court's order. I would for the time being refrain from holding like that.

3. In this background it is no longer necessary to consider the petition of the petitioners as to the merits of the grounds for transfer. The circumstances stated above are sufficient to lead me to hold that the petitioners are entitled to an order of transfer. I would, therefore, direct that this case should be transferred not only from the file of the Stationary Sub-Magistrate but also from that Sub-Division and should be tried at the Head Quarters by another Magistrate competent to try it as the District Magistrate directs. The rule is made absolute. The records should be sent down to the District Magistrate. All orders of forfeiting the bonds and fixing the penalty on the accused persons passed on 13-2-1950, when the interim order of stay of this Court was in force, are set aside as void and without any effect.