

**Sushil Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Sep-17-1982

**Reported in :** 1982CriLJ1964; 1983(4)DRJ7; 1982RLR729

**Judge :** Avadh Behari Rohatgi, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 326 and 407

**Appeal No. :** Crl. Misc. (Main) No. 465 of 1982

**Appellant :** Sushil Kumar

**Respondent :** State

**Judgement :**

ORDER

1. This is an application for transfer of the case under S. 407 of the Criminal P.C. Sushil Kumar was being tried by the Court of Mr. S. M. Aggarwal, Additional Sessions Judge on a charge under section 302, I.P.C. The learned Judge recorded the entire evidence in this case. He heard the arguments of counsel for the prosecution. He heard the arguments of counsel for the accused in part. The arguments were not concluded on 23rd August, 1982 by counsel for the accused. He was to continue his remaining arguments on 30th August, 1982. The case was at that stage when the learned Sessions Judge on 26th August, 1982 passed an order transferring this case from the Court of Mr. S. M. Aggarwal to the Court of

Mr. J. D. Kapur, Additional Sessions Judge. The following is the order made by him :

'In pursuance of Delhi High Court letter No. 11680/Ga/VI E. 2(a) 82 dated 20-7-82 the following Sessions cases pending in the Court of Shri S. M. Aggarwal, Addl. Sessions Judge, Delhi are hereby withdrawn and transferred to the Court of Shri J. D. Kapur, Addl. Sessions Judge, Delhi for disposal according to law.

parties	Date	S. No.	Name of
hearing		1.	State v.
Sushil Kumar	30-8-82	29,	Smt. Shakuntla
		30-9-82	and 30-10-
82			Sd/-

(Jagdish Chandra)

Sessions Judge,

Delhi.'

This order apparently was made on the administrative side. The High Court letter to which the learned Sessions Judge refers is in these terms :

'Sub. : Assignment of cases relating to dowry deaths.

I am directed to say that the Hon'ble Chief Justice and Judges of this Court have been pleased to order that all cases pertaining to dowry death presently pending in various Courts at Tis Hazari be assigned to the Court of Shri J. D. Kapur, Addl. District & Sessions Judge, Delhi. The fresh cases pertaining to dowry deaths shall also be assigned to the Court of Shri J. D. Kapur.'

2. The question for decision is whether this case can be transferred from the Court of Mr. S. M. Aggarwal to the Court of Mr. J. D. Kapur in this manner. Counsel for the petitioner strongly relied on the provisions of the Criminal P.C. and in particular on Sections 407 and 326, Cr.P.C. It is said that the power to transfer the case must be exercised within the four corners of the Code of Criminal Procedure. Moreso where a case is at the stage of arguments there ought to be very good

grounds for transferring the case from one Court to another. If this is to be done it must be done on one of the grounds mentioned in S. 407, Cr.P.C.

3. In *Payare Lal v. State of Punjab*, : (1962)ILLJ637SC the Supreme Court has observed that it is an important and well established right of the accused that his case should be decided by a Judge who has heard the whole of it. The impugned order offends this cardinal principle. It is a general principle of law that only a person who has heard the evidence in the case is competent to decide whether the accused is innocent or guilty. Section 326 is an exception to this rule and was introduced purely for administrative convenience. Beyond this it is not permissible to go. If the administrative orders are in conflict with the principles of fair trial the Code will prevail. In the case of Sessions Judges who usually try the more serious offences the departure from the principle that the person who hears the evidence must give judgment should not be permitted, except for compelling reasons. And those grounds are enumerated in S. 407, Cr.P.C.

4. Reference was also made to an order of the Supreme Court in *Tara Chand v. State* (Cr.A. 41/82) decided on January 18, 1982. In that case a learned Judge of this Court in Cr.M.(M) 485/81 refused transfer of a case in very similar circumstances. In that case evidence of 25 witnesses had been recorded by a learned Additional Sessions Judge. Thereafter by an administrative order the case was transferred from that Court to another Court. The petitioner claimed that the first Court ought to try the case because the Judge of that Court had recorded a substantial part of the evidence in the case. This Court refused to transfer the case back to the first Court. The Supreme Court reversing the decision of this Court transferred the case to the file of the first Judge who had recorded the evidence of 25 witnesses.

5. The principles contained in the Code of Criminal Procedure and the authorities cited show that the power of transfer must be exercised within the four corners of the Code. The administrative orders such as in this case are subject to judicial surveillance. Such orders cannot supplant the provisions of the Code. Whether Judges are sitting on the administrative side or in their judicial capacity they are all governed by the law of the land. No matter who sits where the law must prevail. If

the order of transfer is questioned it is duty of the Court to give a ruling on the validity.

6. Counsel for the prosecution has not been able to give any cogent reason why there ought to be a transfer of this case from the Court of Mr. S. M. Aggarwal to the Court of Mr. J. D. Kapur, Additional Sessions Judge. It is not disputed that the arguments were being heard by the Court of Mr. Aggarwal and the case was on its last legs. I see no good reason for the transfer order passed by the learned Sessions Judge. It is true that he merely followed the High Court letter. But that ground ought not to prevail with me, sitting as I do on the judicial side. Dowry death cases can be made over to one particular Court. No one disputes this. But when cases are transferred from one Court to another what has to be seen is whether the transfer is such as is sanctioned by the Code. There is no residual power in the Court to transfer criminal cases. Nor is it expedient to transfer all dowry death cases to one Court regardless of the stage of trial. For this will be sacrificing at the altar of expediency the 'important and well established right of the accused' to be tried by the Judge who had seen and heard the witnesses. (Payare Lal 1962 (1) Cri 688.

7. I, therefore, accept the application and order that the case shall be tried by the Court of Mr. S. M. Aggarwal, Additional Sessions Judge, in accordance with law. The parties will appear before him on 20th September, 1982.

8. Petition allowed.

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