

Genesh Dass Vs. State

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Court : Delhi

Decided On : Mar-01-1967

Reported in : 3(1967)DLT289

Judge : H. Hardy, J.

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

Appeal No. : Criminal Miscellaneous Appeal No. 77 of 1967

Appellant : Genesh Dass

Respondent : State

Advocate for Pet/Ap. : S.N. Anand and; P.P. Grover, Advs

Judgement :

Hardy, J.

(1) The petitioner in this case is being tried in the Court of Shri A. C. Kher, Magistrate 1st Class, Delhi for an offence under section 420 of the Indian Penal Code. He seeks the transfer of that case to the file of some toher Magistrate of competent jurisdiction on the ground that he has reasonable apprehension that a fair and impartial trial cann'to be had at the hands of the said learned Magistrate. In support of his application he alleges that the complainant in the case against him is the real brtoher of one Chaudhry Om Parkash, Deputy Superintendent of Police,

currently posted at Kamla Market Delhi and that the learned Magistrate is on friendly terms with the said Chaudhry Om Parkash as he was sometime back connected with the Kamla Market Police Station in his capacity as Ilaqa Magistrate. He further alleges that the learned Magistrate has been putting pressure on him to enter into a compromise with the complainant and that since he has been resisting that pressure the learned Magistrate has started harassing him in various ways. In his application he has mentioned five different instances that occurred on 6th September 1966, 13th September 1966, 15th September 1966, 26th September 1966 and 10th October 1966 from which he wants me to deduce that the learned Magistrate has been passing illegal orders as a result of the bias against him.

(2) The learned Magistrate has, in the comments submitted by him to this Court, denied the petitioner's allegations regarding pressure and bias etc. He has also explained the circumstances under which the bailbonds of the petitioner were forfeited and nonbailable warrants were issued on 6th September 1966 which is one of the so-called illegal orders by which the petitioner feels aggrieved. The learned Magistrate's Explanation with regard to the other instances also denies the suggestion of any bias in his mind or the orders having been motivated by any considerations other than those permitted by law.

(3) The petitioner's allegations and the explanation of the learned Magistrate were duly considered by the learned Sessions Judge and the application for transfer was rejected by his order dated the 1st December 1966. Ordinarily, therefore, I would have been reluctant to accede to the request made by the petitioner for transfer of the case. But I find that on 10th October 1966 when the petitioner informed - the learned Magistrate about his intention to make an application for transfer of the case from his file, the learned Magistrate recorded the following order :-

'the accused is present. Suraj Bhan and Darshan Singh PWs are present. The accused moved the transfer application without any sound reason just delaying tactics. The accused has been asked to file the Machalka for Rs. 200.00. He is to move the application in the Sessions Court by 24. 10. 66'

(4) I am of the view that the learned Magistrate went out of his way in stating in his order 'The accused moved the transfer application without any sound reason just delaying tactics.' It may be that in the circumstances of the case this observation of the learned Magistrate was not wholly unjustified. But sub-section (8) of section 526 of the Code of Criminal Procedure confers a right on the accused to obtain an adjournment of the case if he intimates to the Court that he intends to make an application under that section for transfer of his case and all that the Court is entitled to require is that the accused shall execute a bond without sureties of an amount not exceeding Rs. 200.00 to the effect that he will make such application within a reasonable time to be fixed by the Court. The learned Magistrate had no right to comment upon the conduct of the petitioner and to observe that the application for transfer was being sought to be moved without any sound reason and merely as a part of the delaying tactics. In saying so, the learned Magistrate entered the arena of controversy in which he arrayed himself as a party against the accused.

(5) The learned Magistrate has also admitted that he does know Chaudhry Om Parkash, Deputy Superintendent of Police, but he explains that his acquaintances with that gentleman cannot have any effect on the present case. I quite appreciate that the mere fact that the brother of the complainant happens to be a Deputy Superintendent of Police who is acquainted with the learned Magistrate, is not sufficient to warrant the inference that the learned Magistrate will not do justice in the case. But what is to be seen is the cumulative effect of the various incidents alleged in the petition inspire of their denial by the learned Magistrate and the last order made by him on 10th October 1966. All these, in my opinion do create a reasonable apprehension in the mind of the petitioner that he will not receive a fair trial at the hands of the learned Magistrate. The susceptibilities and the apprehension of the accused have an important bearing on the question as to whether a particular case should be ordered to be transferred from one Court to the other. The apprehension has necessarily to be a reasonable one and it is not the reaction of a hypersensitive or overwrought mind that should weigh with this Court. It is no doubt true that it is not for the accused to determine by which Court he should be tried, but it is equally true that justice should not only be done; it should also appear to have been done.

(6) On taking into consideration all the circumstances, I am satisfied that this case be transferred from the Court of Shri A. C. Kher, Magistrate 1st Class, Delhi to another Criminal Court of competent Jurisdiction at Delhi. The file of the case be sent to the learned District Magistrate Delhi with a view to its being entrusted to some other Magistrate of competent jurisdiction.

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