

Vishwa Nath Vs. Nemo

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Court : Delhi

Decided On : Dec-19-1969

Reported in : 6(1970)DLT226

Judge : Prilam Singh Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 526(1)

Appeal No. : Criminal Miscellaneous Petition (Main) No. 88 of 1969

Appellant : Vishwa Nath

Respondent : Nemo

Advocate for Pet/Ap. : B.B. Vaid, Adv

Judgement :

Pritam Singh Safeer, J.

(1) This is an application under Section 526 of the Code of Criminal Procedure. The learned counsel appearing for the petitioner has placed precise reliance on clause (e) of sub-section (1) of the said Section. That provision is an enabling one and is to the effect that whenever it is made to appear to the High Court that an order of transfer is expedient for the ends of justice or is required to be made by any provision of the Criminal Procedure Code then a case may be ordered to be transferred from the Court trying it to another Court. Clause (e) which has been

referred to above runs into two parts. The first part indicates that the High Court may be persuaded on good reasoning that it would be expedient for the ends of justice to transfer the case. The second part of the foregoing clause contains a kind of compulsion which is to the effect that if any provision contained in the Code of Criminal Procedure indicates that a transfer is merited then the case may be ordered to be transferred. No provision of the Code of Criminal Procedure is pleaded in terms whereof counsel may have been able to submit that the case deserves to be transferred. It is urged that it is expedient in the interest of justice to transfer the case.

(2) A transfer application was first dealt with by the learned Sessions Judge, Kinaaur. The allegations made before him have been repeated before this Court. Those allegations are two fold. The first is that Kumarsain is a place where no local lawyer is available and lawyers have to go to that place either from Theog or from some other nearby place where they may be available. It is an acknowledged fact that the Court of the Magistrate Second Class does function at Kumarsain. If the first contention is accepted that no lawyers are available at Kumarsain and for that reason the case may be transferred then instead of causing the transfer of this case every criminal case which is being tried at Kumarsain would merit to be transferred from that Court. I do not see any reason why that Court should not be abolished merely because no lawyer is available there. I have deliberately used the foregoing phraseology in the preceding sentence in order to clearly expose the absurdity involved in this type of contention.

(3) I must observe that in these particular areas of this country which are hilly areas and which are populated by poor people cheap and expeditious justice ought to be available at their door. I am inclined to imagine that a time might arrive when the Courts of justice may be sprinkled over these areas at smaller geographical stretches than those at which they are available today, it is the citizens' right to get justice expeditiously and nearer home without being put to greater expense, exertion and delay. No democratic set up can provide a comfortable answer to the sovereign will of the people if their bare necessity of achieving expeditious disposal of their civil and criminal disputes is not made available to them. No Court of law, much less this Court can afford to sustain a

negation of democracy. The first contention raised, therefore, stands repelled. So long as the Court of competent jurisdiction is available at any place it cannot be shorn of its powers on flimsy pretexts.

(4) I had sent for the comments furnished to the learned Sessions Judge by the Magistrate in this case for the reason that the second contention raised was that the Magistrate had used strong language in expressing his views against the present petitioner. It is very significant that throughout these proceedings the petitioner has made the choice of keeping secret, the words allegedly used by the Magistrate. He has nowhere stated, either before the Sessions Judge or before this Court, as to what were the exact words which were used by the Magistrate so as to establish a judicial prejudice which may legitimately be held to have given the petitioner an apprehension that he will not obtain justice. Even in the absence of clear allegations I wanted to peruse the comments furnished by the Magistrate to the learned Sessions Judge. The reason was that in case I had come across anything in those comments disclosing any effort on the part of the Magistrate to keep the case to himself then I would have taken it out of his hands. It is, however, very significant that the comments offered by the Magistrate contain a request in the following words: -

'HOWEVER, if the applicant feels that he would not get justice from this Court, his case may kindly be transferred to some other Court.'

(5) I cannot desist from holding that such a request could emanate only from a fair and just mind. That being the situation I am reminded of the observations which the Judges of this Court as well as of the Hon'ble the Supreme Court of India, of which I do claim some experience, make in the course of hearing of the cases. Sometimes the observations are quite strong but it is a quality of the judicial mind to always remain aloof while pressing out arguments in a particular direction. Strong observations are often made to compel the counsel to come out with substantial arguments which may firmly establish his case so as to lead sometimes to ultimate success. Stray observations made by any Court of justice cannot form the basis of any successful transfer application. It would be a bad day indeed if the cases are lightly transferred because by implication that - would mean

that the officers from whose Courts cases are transferred are not quite capable of exercising the judicial capacity of their mind which is expected of them as a prerequisite to their holding of their respective offices. I have made these detailed observations in order to unsaved many aspects which may otherwise remain behind the smoke-screen.

(6) The learned counsel who has pleaded this application efficiently, has drawn my attention to the judgment of Hon'ble Mr. Justice T. V. R. Tatachari in a case which arose under Section 408 and 409 of the Indian Penal Code and which involved intricate interpretation of lengthy accounts on the basis of which alone it could be inferred whether there were any fabrications in the account books leading to the ultimate conclusions regarding any misappropriations that may have been made. That Judgment does not provide any parallel to the instant case where the charge is one under Section 182 of the Indian Penal Code and the Court at Kumarsain is to determine on facts whether the present petitioner before this Court had lodged or not lodged any false report at the police station. The case of this type depending upon simple facts can have no similarity with the case which was before Hon'ble Mr. Justice T. V. R. Tatachari. Another case relied upon by the learned counsel appearing for the petitioner is *Lalta v. Zahoor*. That case depended upon peculiar circumstance which was to the effect that no practitioner in a particular district was willing to act for the accused. That situation has not been pleaded here. No instance has been cited at the Bar showing that in any particular case at Kumarsain has gone unattended by counsel although the assistance of the counsel had been sought by a client. In such a situation if any affidavit had been filed I would have called for the files of decided cases even and searched for truth. It has not been mentioned at all on affidavit or otherwise that any particular counsel who is practicing as an advocate of this Court has ever refused to conduct the case at Kumarsain. I would have liked the mention of any lawyer practicing at this Bar who may have refused a brief for Kumarsain.

(7) In the foregoing circumstances I find no merit in this application and the same is hereby dismissed.

(8) While recording the foregoing dismissal I am inclined to observe that the petitioner who is residing at Simla should not be put to any inconvenience in respect of the trial against him which may start at Kurnarsain as from the 16th of March, 1970. This part of the order is being made on account of a request specifically made by the learned counsel appearing for the petitioner and the date indicated is also the one requested for by him. As from the 16th of March, 1970, however, the hearing must be so expedited so as to conclude the case within a period of three months. The petitioner is directed to appear before the trial Court on the 16th of March, 1970. Petition Dismissed Chand had no independent right surviving to him after the Corporation declines to contest its liability, the question of his locus standi could not be decided against Hari Chand. As a general rule, a party to a legal proceeding, feeling aggrieved by an order made against him, is entitled to go up in appeal and unless it is considered on the merits that his right had, as a matter of law being lost because of something happening in the interval, otherwise, his right of appeal could not, on general principles, be taken away. As to how far the Court to grant such relief in favor of the respondent would be applicable to a case where the principal party whom a decree is made, which is rendered binding on the subsidiary party, has not chosen to appeal from the impugned order or decree would also have to be considered by the Tribunal judicially after bearing proper arguments and coming to the necessary conclusion. This equitable doctrine empowering the appellate Court grant relief to non-appealing party, requires proper balancing of several rules of law in the light of the facts of each case. Settled broad general principles can easily be found adumbrated in the law reports

(8) As a result of the foregoing conclusion, I am constrained to allow this appeal and setting aside the order of the learned Rent Control Tribunal, send the case back to it for a fresh election of the appeal in accordance with law and in the light of the observations made above. This order is not to be construed an expression of any considered opinion on the merits of the points in controversy. The parties are directed to appear before the learned Tribunal on 21 July, 1969 and it is hoped that the appeal would be disposed of within two weeks thereafter. This controversy seems to have been somewhat unduly prolonged. There will be no order as to costs of these proceedings.

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