

Shakti Raj Vs. the State

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Court : Delhi

Decided On : Dec-18-1968

Reported in : 5(1969)DLT140

Judge : I.D. Dua, J.

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

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 151 of 1968

Appellant : Shakti Raj

Respondent : The State

Advocate for Pet/Ap. : Madan Bhatia and; V.D. Misra, Advs

Judgement :

Inder Dev Dua, J.

(1) The petitioner, who is serving a sentence of 10 years rigorous imprisonment is also being proceeded against for an alleged offence under section 333/353/186, Indian Penal Code . The commitment proceedings are pending in the Court of Shri K. N. Joshi, Magistrate I Class, Delhi. The present application has been forwarded from District Jail, Hissar, where the petitioner is at present lodged as a convict. In this application he is described to be originally a resident of Amritsar and he seeks to have the commitment proceedings transferred to the Court of some toher

Magistrate. The grounds on which transfer is sought are that the petitioner has, on occasions, been pressurised by the learned Magistrate into making a confession and the Court is treating the accused as if he is a criminal though he is entitled to be presumed to be innocent till proved guilty. The learned Magistrate has also been described to be acting in accordance with the desire of the police authorities of Sabzi Mandi Police Station and not independently of them. The main grievance, however, as stated in the petition, is that he has not been given the documents to which he is lawfully entitled and the Medical Officer's statement and the site plan have been specifically mentioned to be the documents not supplied to him. The copies supplied have also been described not to be legible.

(2) The petitioner's prayer for presence in this Court and for permission to argue the case personally was granted, but on his appearance, I felt that being a layman, he could not distinguish between grounds which would sustain a transfer application and those which are open only on appeals and revisions from impugned orders. In order to secure help to the petitioner, who said that he could not afford a counsel, I requested Shri Madan Bhatia, Advocate, a distinguished member of the bar, to assist the petitioner. Shri Bhatia very kindly agreed to do so and he has said all that could be said in support of the transfer application. To have a clear glimpse of the picture. I sent for the record of the case also and the same was, I am informed, inspected by Shri Bhatia.

(3) Shri Bhatia has concentrated on a new argument not contained in the application forwarded by the accused-petitioner. This argument is based on a report bearing no date purporting to be prepared by Shri Tirath Ram Rukhra, Prosecuting sub inspector, in which after narrating the history of the proceedings before the learned Magistrate, it has been observed as follows :

'THUS from the above facts, it is quite clear that delay in commencing the proceedings is due to the following factors:-

1, it was the duty of the police station to see that proper and complete copies are attached with the challen by the I.O., failing which it was the duty of P.S.I., (Shri P. Pasi) to mention this defect in the scrutiny memo, while checking the challen before forwarding the same, to the court for trial.

2. Secondly it was due to failure of the court of K. K. Sengupta M.I.C. to obtain the acknowledgement from the accused when the copies were allegedly given to them as stated in the order sheet dated 24-2-1968.

3. Thirdly, the delay is due to the lenient view taken by the Presiding Officer in entertaining objection raised by the accused.

It is worth-mentioning that on the date of hearing accused Om Prakash appears in the court from Ambala Jail while co-accused Shakti Raj from Sangrur Jail where they are confined respectively. They wanted to linger on their stay in Delhi under one pretext or the other being life convicts. That is why they do not allow the court to proceed with the case and they try to pick up quarrel on lame excuses.

SUBMITTED please.'

This report is stated to have been enclosed with a covering D.O. letter dated 11-10-1968 written by the Deputy Inspector General of Police (Range) to the District Magistrate for taking suitable action because the proceedings were going on at snail's pace on account of the delaying tactics of the accused. It appears that this D.O. letter along with its enclosure was forwarded to the learned Magistrate. Shri Bhatia has submitted that being faced with the opinion of the Deputy Inspector General of Police based on the report of the Prosecuting Sub-Inspector, which was conveyed to the District Magistrate, the learned Magistrate holding the commitment proceedings would, in all probability, commit the accused and not deal with the case with the requisite judicial impartiality and detachment. The Judiciary and the Executive not being separated in Delhi, according to Shri Bhatia, it requires special courage and judicial independence on the part of the learned Magistrate to remain uninfluenced by the impression of the District Magistrate and of the Deputy Inspector General of Police formed on the basis of the report of the P.S.I. According to him, the present is a fit case in which these proceedings should be transferred to some other competent Magistrate. In support of this plea of transfer, Shri Bhatia has relied on *Mussadi Lal v. Emperor* (1), in which Tek Chand J. allowed the transfer application because of a reasonable belief on the part of the accused that they had by various acts of theirs incurred the displeasure of the District Magistrate and of the other local authorities. The further

circumstances in the reported case was that the Superintendent of Police had conferred with the District- Magistrate with regard to their cases before the prosecutions were actually launched and the legal practitioners there had also evaded taking up cases of the accused. The facts of the reported case are thus not quite similar. The decision of the Patna High Court in *Joti Narayan v. Brijnandan* (2) cited for the purpose of suggesting that such a report may amount to contempt of Court, need not detain me because I am only concerned with the question of transfer of the case in these proceedings.

(4) Shri Misra, the learned counsel for the State, has in opposing the transfer plea submitted that the ground pressed by Shri Bhatia could not have created any apprehension in the mind of the accused as he was never aware of it when he applied for the transfer of the case. The learned counsel has of course expressed his surprise that the report of the P.S.T. along with the letter from the Deputy Inspector General of Police to the District Magistrate should be found present on the record of the case, but according to him, the District Magistrate, being responsible for the proper conduct of criminal cases in the Courts of the Magistrates, could legitimately ask for the Explanation of the learned Magistrate in this case regarding delay in the disposal of the present proceedings. Merely because the District Magistrate forwarded the report of the P.S.I, Along with the letter of the D.I.G. it made no difference in the legal position. As a last resort, the counsel has submitted that, after all, the proceedings sought to be transferred are only commitment proceedings and not trial of the case. Transfer of these proceedings, according to him, is not called for on the grounds pressed at the bar.

(5) I have devoted my most anxious thought to this case, which highlights the disagreeable feature of not separating the Executive from the Judiciary. Section 526, Criminal Procedure Code, empowers the High Court to transfer, inter alia, a case for enquiry or trial from a criminal Court subordinate to its authorities to any other such criminal Court of equal or superior jurisdiction. The grounds for transfer include, inter alia, that an order of transfer is expedient for the ends of Justice. I am not convinced in the present case that the accused could have any reasonable apprehension that the learned Magistrate would not hold the proceedings with the requisite fairness and impartiality. And then, the report purported to have been

recorded by Shri Tirath Ram Rukhra, P.S.I., suggests, that according to the prosecuting counsel, the learned Magistrate is taking lenient view of the case which is favorable to the accused-petitioner. From this also, it would seem to me that the learned Magistrate cannot be held to be guilty of any conduct which may be capable of giving rise to a reasonable apprehension in the mind of the accused petitioner that he would not be dealt with fairly and impartially. If the prosecuting counsel feels that the Magistrate is favoring the accused, then, on the facts and circumstances of this case, I do not think the Magistrate can be held to have favored the prosecution to an extent which may be considered to give rise to a reasonable apprehension in the mind of the accused that he would not get a fair deal in this Court.

(6) The question, however, remains if in view of the report of the P.S.I, and the letter of the Deputy Inspector General of Police which have been forwarded by the learned District Magistrate, to the learned Magistrate holding the commitment proceedings the case falls within clause (e) of section 526(1) and renders the transfer expedient for the ends of justice. One important object in transferring cases, it may be emphasised is, to clear away everything which might engender suspicion and distrust of the Tribunals and to take steps to promote the feeling of confidence in the administration of justice because this is essential to social order and security. In Delhi, where the District Magistrate has complete control over all subordinate Magistrates, both in regard to their executive and judicial functions, the learned Magistrate holding the commitment proceedings in the case in hand may not reasonably be considered to remain completely uninfluenced by the report of the P.S.I, and the covering letter of the Deputy Inspector General of Police, both of which have been forwarded to him by the learned District Magistrate, as has been suggested at the bar. Common human failings and likely reaction of incidents, like the present on an average human mind, may appropriately be taken into account when considering the question of expediency in the ends of justice for the purpose of transferring cases from one competent Court to another. It is not unreasonable to think that the learned Magistrate would look upon the P.S.I, not as an ordinary counsel appearing in his court to prosecute the case on behalf of the State, but as a person whose report may influence the impression of the superior authorities of the learned Magistrate. Such an

impression on the mind of the learned Magistrate cannot advance the cause of justice. And then, the accused person, assuming he has been so far unaware of these communications, may not remain ignorant of them and on coming to know of the report and the letters, he may well have a reasonable apprehension that he would not get an impartial and fair treatment in the Court of the learned Magistrate. The argument that after all these are only commitment proceedings, cannot be conclusive because commitment proceedings have also to be conducted in the same detached judicial atmosphere as trial.

(7) For the reasons foregoing, I am constrained to allow this application and direct that the commitment proceedings be transferred from the Court of Shri K. N. Joshi, Magistrate 1st Class, Delhi, to some other competent Court.

(8) I have not the least doubt that every effort would be made to expedite the commitment proceedings because long delay in such proceedings defeats the cause of justice. The commitment proceedings must conclude before the end of January, 1969 at the latest. It is hoped that transfer of this case would be made by the learned District Magistrate within 10 days from today.