

Shafiq-ud-dIn Vs. State

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SooperKanoon Citation : sooperkanoon.com/688710

Court : Delhi

Decided On : Feb-28-1968

Reported in : 1968CriLJ1536

Judge : I.D. Dua, C.J.

Appellant : Shafiq-ud-din

Respondent : State

Judgement :

ORDER

I.D. Dua, C.J.

1. This is an application under Section 526, Criminal P.C. for the transfer of the case State v. Shafiq-ud-din from the Court of Shri K.N. Joshi, Magistrate 1st Class, to some toher Court of competent jurisdiction. Ntoice of this application was given on 9.2.1968 and it wag directed that a copy of the application be also Bent to the learned Magistrate for his comments. No comments have been forwarded by the learned Magistrate for reasons best known to him. The learned Counsel for the State bas, however, submitted that on similar grounds, an application for transfer of the case was made in the Court of the learned Sessions Judge and in that Court, the learned Magistrate had submitted his comments. Those very comments, submits Shri V.D. Misra, be considered to be the comments in regard to the application presented in this Court. I have, thereforee, as agreed at the bar,

proceeded to dispose of the application on the basis of the comments submitted by the learned Magistrate in the Court of the learned Sessions Judge. It is unnecessary to go into toher allegations because on the allegations contained in paragraphs 3 and 4 of the affidavit filed by the petitioner, the case requires to be transferred.

According to the allegations of the petitioner, when the case came up for hearing on 9.8.1967, to which date it was adjourned for recording prosecution evidence, Dr. G.S. Chaudhry was again examined and he again repeated that the accused were nto the assailants. On this, the Prosecuting Sub-Inspector requested that the witness be declared hostile and the learned Magistrate without giving any reasons for such a declaration, permitted the prosecution to cross-examine the said witness. During the cross examination, the P.S.I. took out from zimni a document said to bare been signed by Dr. Chaudhry according to which be bad fixed the identify of the assailants. The learned Magistrate, in spite of the prtoest of the counsel for the accused, allowed, that document to be produced, though Shri G.S. Chaudhry denied his signatures thereon. The learned Magistrate thereupon ordered the document to be sent to the Government Examiner of Questioned Documents without any snob request by the prosecutor. A reply from the Government Examiner was received on 18.9.1967 suggesting that the material wm nto sufficient to form an opinion. The case had, however, been fixed for 18.8.1867 on which date the learned Magistrate without bearing arguments and without any application by the prosecution ordered that standard writings be obtained from the office and thus the Court played the role of a prosecutor and started investigating in the matter.

The Learned Magistrate in his comments submitted to the Court of the learned Sessions Judge, has nto made any reference to the happenings on 18.9.1967, when it is urged by the petitioner that the learned Magistrate without hearing the arguments and without there being any application by the prosecutor, ordered the standard writings to be obtained from the office and thus started playing the role of a prosecutor and started investigating into the matter nto only to the prejudice of the deponent but also started taking action against the witnesses. Paragraph in which these allegations are made, has been replied to in the following words:

It is admitted that the signatures of Dr. G.S. Chaudhry were sent to the Government Examiner of Questioned Documents and a reply was received from him on 13 Sept, 1967 stating that the material was not sufficient to form an opinion. This reply was known to both the parties and on this the P.S.I. presented another application dated 10.10.67 requesting that he may be allowed to take the signatures of Dr. G.S. Chaudhry in the normal course of his working. A copy of this application was supplied to the accused and arguments were heard. My order to this effect is available on the application dated 10.10.67 and case was adjourned for arguments for 28.10.67. On 23.10.67 the arguments were heard and during the course of the arguments the accused presented an application that he wants to get his case transferred from this Court. * * * *

It is obvious that the learned Magistrate has not dared to give any reply to the assertion supported by an affidavit that on 18.9.1987 the Magistrate had, without any application from the prosecution, ordered that standard writings be obtained from the office. Since it is neither replied to nor denied, I am constrained to accept the petitioner's assertion on oath. Once I accept this assertion, I cannot help concluding that there is sufficient material which may justifiably give rise to a reasonable apprehension in the mind of the accused, petitioner that he is not likely to get a fair and impartial trial in the Court of the learned Magistrate. It may be repeated what is by now axiomatic and has been judicially accepted on all bands that in dealing with an application for transfer, the Court has to consider, not the actual existence of bias in the mind of the Presiding Judge against the applicant, but his reasonable susceptibilities. One important object in criminal trials is that Court should be careful that nothing happens during the proceedings which may engender its suspicion and distrust and the conduct of the Court should be such that feeling of confidence in the administration of justice is promoted, such feeling, it is worth noting, is essential to social order and security; nothing indeed should be done by a Court which may be calculated to create in the mind of an accused person a justifiable apprehension that he would not get an impartial trial.

In the present case, I am satisfied that there are justifiable grounds for the accused petitioner to have a reasonable apprehension that he would not get a fair and impartial trial in the Court of the learned Magistrate, though I must not be

understood to hold that the learned Magistrate is actually biased against the accused-petitioner in Delhi, where there is no far no separation of Executive from the Judiciary though its justification is recognised and the people are devoutly wishing and anxiously waiting for its consumation. Some of the learned Magistrates, in their administrative enthusiasm or excessive zeal, have not infrequently been found to be (sic) moments to act in a manner which may, without doubt, give rise to a reasonable apprehension in the mind of the accused persons that they would not get an impartial and fair trial in their Courts. This attitude of mind on the part of such Magistrates, sub-conscious as it is, cannot be considered to be wholly unexpected, for when, ever the executive officers are entrusted with strictly judicial functions, they are prone, to some extent, to be sub-consciously dominated in their approach by administrative require, mental but this, if anything, is one reason the more for this Court to be fully watchful in the interest of healthy growth of our judicial process.

2. For the reasons foregoing, I am constrained to allow this petition and direct that the case against the petitioner be transferred from the Court of Shri K.N. Joshi, Magistrate 1st Class, Delhi, to some other competent Magistrate. Parties are directed to appear before the learned District Magistrate on 11.3.1968 when they would be directed to appear before the transferee Court on a date to be fixed.

3. Before closing I consider it proper to point out that the learned Magistrate would have reflected a more satisfactory judicial Background and training if he had duly submitted his comment to this Court as required and his omission to do so is a matter which, cannot be favored and certainly not approved by this Court.