

Ram Singh Vs. State and ors.

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Court : Delhi

Decided On : Dec-05-1989

Reported in : 41(1990)DLT28

Judge : Charanjit Talwar and; Malik Sharief-ud-Din, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 409

Appeal No. : Criminal Writ Petition No. 610 of 1989

Appellant : Ram Singh

Respondent : State and ors.

Advocate for Pet/Ap. : P.P. Grover and; S.T. Singh, Advs

Judgement :

Charanjit Talwar, J.

(1) The petitioner herein Ram Singh is standing trial under Section 302 read with Section 34 of the Indian Penal Code in the court of an Additional Sessions Judge, Delhi. That case was pending before Shri Lokeshwar Prashad, one of the Addl. Sessions Judges, who had examined a number of prosecution witnesses. On 31st August, 1989, during the pendency of the trial, by an administrative order, the Sessions Judge withdraw the said case Along with a number of other cases pending in the court of Shri Lokeshwar Prashad and assigned them to the court of

Shri S.L. Bhayana, a newly appointed Additional Sessions Judge. The petitioner being aggrieved of the order of 31st August, 1989 has challenged the same on the ground that it violates mandatory provisions of Section 409 of the Code of Criminal Procedure.

(2) There is no dispute regarding the facts. It is admitted by Mr. Sodhi that trial had in fact started and it was during its pendency that the impugned order was passed withdrawing the case against the petitioner on 31st August 1989 from the court of Shri Lokeshwar Prashad. A copy of the impugned order has not been produced but we are informed that on the formation of a new court presided over by Shri Bhayana, a number of cases were withdrawn from various courts and assigned to that court. We are further informed that quite a few of them at the stage of recording of prosecution evidence. Section 409 of the Code of Criminal Procedure forbids the transfer of a case 'at any time after the trial has started'. It is useful to quote that provision:

'409. Withdrawal of cases and appeals by Sessions Judges:-(1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him. (2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge. (3) Where a Sessions Judge withdraws or recalls a case or appeal under Sub-section (1) or sub-section (2), he may either try the case in his own Court or hear the appeal himself,, or make it over in accordance with the provisions of this Code to another court for trial or hearing, as the case may be.'

(3) Under Sub-section (2) of the above quoted provision, it is open to the Sessions Judge to withdraw or recall any case before its trial and assign the same to any other Addl. Sessions Judge. In view of the admitted position, the action taken by the Sessions Judge in withdrawing the cases particularly the case of the petitioner at the stage when the prosecution evidence was being recorded, is in contravention of the said provision. We have no option but to quash the same. We direct that the case entitled State v. Ram Singh and anr (FIR No. 192/84) or

offence under Section 302 read with Section 34 of the Indian Penal Code be re-assigned to the court of Shri Lokeshwar Prashad, Addl. Sessions Judge, Delhi. We are informed that after its recall on 31st August, 1989, no further evidence has been recorded by Shri Bhayana. The case would proceed from the stage it was assigned to Shri Bhayana.

(4) During the course of argument, Mr. Grover, learned counsel for the petitioner relied on *Amrithappa-v. State of Karnataka*, reported in : ILR 1981 KAR1135 . not appears that in that case the Addl. Sessions Judge had expressed his inability to continue with the trial and, therefore, it was withdrawn from his court by the Principal Sessions Judge. Yet the Karnataka High Court was of the view that under Section 409 of the Code of Criminal Procedure, the action taken, i.e., of transferring the case was illegal. We are afraid that we do not subscribe to that view. The provisions of Section 409 of the Code would not be applicable to a case where the trial, Judge has himself expressed his inability to continue with the trial. The legal position would remain the same whether the trial judge has given any reasons for his inability to continue with the trial or not.

(5) We allow the petition and make the rule absolute.

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