

**Chander Prakash and ors. Vs. State**

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**Court :** Delhi

**Decided On :** Aug-07-1995

**Reported in :** 1995IIIAD(Delhi)578; 59(1995)DLT618

**Judge :** A.K. Srivastava, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 326

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 1564 of 1995

**Appellant :** Chander Prakash and ors.

**Respondent :** State

**Advocate for Pet/Ap. :** K.K. Sud,; K.Vohra and; G.S. Sharma, Advs

**Judgement :**

**A.K. Srivastava, J.**

(1) By this petition under Section 407 of the Code of Criminal Procedure, the petitioner has prayed for transfer of sessions case State v.Chander Prakash & Others relating to FIR377/93, Ps Paschim Vihar, u/Secs. 498A/304B/34 Indian Penal Code from the Court of Shri G.D. Dhanuka, Additional Sessions Judge to the Court of Shri Dinesh Dayal, Special Judge.

(2) It appears that the aforesaid sessions trial was allocated to a Court of Additional Sessions Judge presided over by Shri Dinesh Dayal who after framing charges recorded statements of three witnesses. It is the case of the petitioner that Shri Dinesh Dayal has been transferred from that Court of Additional Sessions Judge to another Court of Special Judge in the same division. The prayer for transfer is on two grounds - firstly, that the case being part heard of the Additional Sessions Judge Shri Dinesh Dayal it has to be concluded by him, and secondly, that since three out of four material witnesses have been examined by him, it will be in the interest of justice that trial should be concluded by him alone because he is well acquainted with the case and that he has seen the demeanour of the witnesses examined.

(3) This petition has been vehemently opposed by the State. It is said that there are 24 witnesses in the case and yet 21 witnesses are to be examined.

(4) An application for transfer was moved before the learned Sessions Judge but the same was rejected vide his order dated 2.6.95.

(5) Heard the Counsel for the petitioner and the State. The petitioner has relied on : (1962)ILLJ637SC , Pyare Lalv. State of Punjab and , Punjab Singh and Others v. State of Uttar Pradesh. In addition to the above, he has also relied on 1990 (2) Clr 93, Ram Singh v. The State & Ors. and one unreported judgment in Cri.Writ 538/91 decided by the High Court of Delhi on October 23, 1991. The petitioner has also filed copies of some orders passed by this Court which are Annexures A and P

(6) So far as the orders of this Court, Annexures A and B are concerned, no doubt, this Court directed .transfer of cases but the stage at which they were transferred is not the same as against the present case before me. In one of the aforesaid cases the stage of the trial was that of recording of statement of the accused under Section 313 Cr.P.C. and in the other the stage of trial was hearing of arguments. In the present case only 3 witnesses have been examined and 21 are yet to be examined. therefore, in my view Annexures A and B do not help the petitioner.

(7) Air 1990 (2) C.L.R 93 (supra) is not directly related to the present petition torn transfer of a case. That case related to interpretation of Sub-section (2) of Section 409 of the Code of Criminal Procedure. In the present case there is no withdrawal of a part heard case from one Court to another and thereforee the aforesaid Section 409(2) is not attracted. The cited case : (1962)ILLJ637SC (supra) also does not apply to the present case because that case relates to old Cr.P.C. whereas the present petition will be governed by the provisions of the new Cr.P.C. The new Section 326 has some changed provision as compared to old Section 350.

(8) Judgment in CrI.Writ Petition No. 538/91 dated October 23, 1991 does not apply to the present transfer petition because that case related to administrative transfer of sessions cases. So far as the present petition is concerned, there is no case that the Sessions Judge has transferred any part heard case from the Court of Additional Sessions Judge presided over by Shri Dinesh Dayal.

(9) Learned Counsel for the petitioner has not cited any ruling of this Court nor of the Supreme Court whereby it may be said that any Additional Sessions Judge who is transferred from one Court of Additional Sessions Judge to the other Court of Additional Sessions Judge does not cease to have jurisdiction over a part heard case and that an Additional Sessions Judge who succeeded the earlier Additional Sessions Judge cannot exercise jurisdiction over a case allotted to that Court of Additional Sessions Judge. In the present case Shri Dinesh Dayal has been transferred from the Court of that Additional Sessions Judge to which the aforesaid sessions trial was allocated and Shri G.D. Dhanuka, Additional Sessions Judge has taken over charge of the Court of Additional Sessions Judge in which the aforesaid sessions trial is there for disposal. Shri G.D. Dhanuka has succeeded Shri Dinesh Dayal. thereforee, in view of the provisions of Section 326 Shri G.D. Dhanuka on so succeeding as a Judge may act on the evidence so recorded by his predecessor and if he is of the opinion that further examination of any of the witnesses whose evidence has already been recorded, if necessary, in the interest of justice, he may re-summon any such witness for further examination, cross-examination or reexamination. This power vests with the successor Additional Sessions Judge and in my view no prejudice would be caused to the petitioner

accused. Every presiding officer is expected to act fairly and to impart justice. therefore, I am not in agreement with the request of the petitioner accused persons that the sessions trial against them should be tried only by Shri Dinesh Dayal and not by any other Additional Sessions Judge.

(10) In view of the aforesaid discussion the petition is rejected. The stay order dated July 14/18, 1995 is hereby vacated.

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