

Dharma Ram Vs. Ram Karan and the State

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Court : Rajasthan

Decided On : Mar-10-1969

Reported in : AIR1970Raj129; 1970CriLJ984; 1969()WLN105

Judge : B.P. Beri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 526A, 528 and 528(1C); [Probation of Offenders Act, 1958](#) - Sections 3 and 6; [Indian Penal Code, 1860](#) - Sections 354

Appeal No. : Criminal Revn. No. 36 of 1969

Appellant : Dharma Ram

Respondent : Ram Karan and the State

Advocate for Def. : Ranamal, Adv. for Non-Petitioner No. 1 and; G.M. Mehta, Dy. G.A.

Advocate for Pet/Ap. : N.U. Khan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

B.P. Beri, J.

1. This is a criminal revision application directed against the order of the Sessions Judge, Jodhpur, dated the 27th November, 1968, whereby he ordered the transfer of a case from the Court of the Munsiff-Magistrate, Bilara, to the Court of the Munsiff-Magistrate, Jodhpur District

2. The criminal case, out of which the present revision-application arises, has had a chequered career. The case was initiated at the instance of the police on the 18th November, 1965, before the Munsiff-Magistrate, Bilara. The allegations were that the accused Dharma caught hold of the breasts of Mst. Gomati in a field where this woman was working at about noon on the 15th September, 1965. The learned Munsiff-Magistrate Bilara convicted the accused under Section 354, I. P. C. but gave him the benefit of the provisions of the Probation of Offenders Act by merely admonishing him. The husband of Mst. Gomati preferred an appeal in the Court of the learned Sessions Judge, Jodhpur. After treating the appeal as a revision application under Section 11 of the Probation of Offenders Act the learned Sessions Judge set aside the judgment of the Munsiff Magistrate and directed him to comply with the provisions of Section 6 of the said Act.

When the case was sent back to the Munsiff-Magistrate. Bilara, the learned Magistrate on the 8th June, 1967 recorded the statement of the defence witness Pancharam about the age of the accused and came to the conclusion that he was above 21 years of age but as he had no previous conviction and the District Probation Officer had also not made any adverse comments against the accused, he gave him the benefit of Section 3 of the probation of Offenders Act and merely admonished him. This order was again assailed by the husband of Mst. Gomati, and the learned Additional Sessions Judge No. 2, Jodhpur, in his order dated the 14th June, 1968, held that the order of the learned Munsiff-Magistrate Bilara was not a full-fledged judgment as envisaged by the Code of Criminal Procedure and, therefore, he set aside that order and asked the learned Munsiff-Magistrate Bilara to hear the parties and write a judgment afresh. Mst. Gomati's husband continued to be dissatisfied and he preferred a transfer application in the Court of the learned Sessions Judge, Jodhpur, asking for the transfer of the case under Section 354, I.P.C. pending before the Munsiff-Magistrate Bilara to some other Court on the ground that the learned Magistrate had already expressed his opinion on the

circumstances of the case. This application for transfer was accepted and this is how the case was then transferred to the Munsiff-Magistrate, Jodhpur District, for being heard.

3. The learned counsel appearing for the applicant has raised certain interesting questions on behalf of the accused applicant. His first submission is that it is only when a case is pending for an inquiry or trial that a transfer can be ordered under Section 528, Criminal P.C. All that remained to be done in this case was to write a judgment as required by Section 367, Criminal P. C. and it was no stage for transferring the case. He placed his reliance on *Murugappa Thevan v. Emperor*, AIR 1936 Mad 163. His second submission is that even if a transfer at this stage is permissible under Section 528, Criminal P. C., the original case having been initiated by the police, the husband of the victim Mst. Gomati had no locus standi to present a transfer application. In support of his submission, he relied on *Ahmed Moideen v. Inspector, 'D' Division*, AIR 1959 Mad 261. Lastly, he argued that there was no justification for the learned Sessions Judge to hold that the ends of justice require the transference of this case because prima facie it is going to cause undue inconvenience to the accused as he will have to engage another counsel if the case is heard at Jodhpur.

4. Mr. Ranamal appearing for the husband of Mst. Gomati argued that under Section 528 (1-C) the stage of a transfer, application is not confined to the stage of inquiry or trial. He placed reliance on *In re, Kannian*, 1957 Cri LJ 139 (Mad) and *Abdus Subhan v. Gajanan Patrikar*, AIR 1943 Nag 236. Meeting the argument of locus standi, the learned counsel argued that any person interested can move a Court for transfer of a case regardless of the fact that the original case may have been initiated by the police. He placed reliance on *N.C. Bose v. P. D. Gupta*, AIR 1955 Assam 116; *Jag Bhushan v. State*, AIR 1962 All 288 and *Shivasharan Reddy v. State*, AIR 1968 Mys 119. Combating the third point, the learned counsel argued that it is the apprehension of the applicant which must be taken into account and the learned Munsiff-Magistrate having twice given the benefit of the Probation of Offenders Act to the accused, he was not likely to change his mind and this did give birth to a reasonable apprehension in the mind of his client. He further submitted that Section 354, I. P. C. was not one of those sections wherein the

benefit of the Probation of Offenders Act ought to be given and he placed reliance on two decisions of this Court in *Kamji v. The State*, 1963 Raj LW 288 and *Krishnanand v. Harbans Singh*, 1967 Raj LW 101.

5. The learned Deputy Government Advocate who participated in the discussion submitted that in the present case the opinion of conviction having been twice expressed, the only small territory on which the dispute seems to have concentrated is the question of sentence and more on the ground whether the benefit of the Probation of Offenders Act should or should not be given to the accused. His contention is that this is not a fit case in which transfer ought to have been ordered on that small ground and if the learned Magistrate again gave the benefit of the provisions of that Act and if any party felt aggrieved by it it was always open to that party if it had any legal remedy to seek it.

6. Mr. Khan for the applicant rejoined by submitting that even the Supreme Court in *Rattan Lal v. State of Punjab*, AIR 1965 SC 444 thought of the provisions of the Probation of Offenders Act in a case under Sections 354 and 451, I.P.C.

7. The first question is whether a transfer at this stage is permissible under Section 528 (1-C), Criminal P. C. This Sub-section reads:

'Any Sessions Judge, on an application made to him in this behalf, may, if he is of opinion that it is expedient for the ends of justice, order that any particular case be transferred from one Criminal Court to another Criminal Court in the same Sessions division.' No limitation is contained in the wordings of the section to suggest that it is only at the stage of inquiry or trial that an application for transfer is tenable. It is correct that AIR 1936 Mad 163 supports the learned counsel for the applicant but the same High Court in 1957 Cri LJ 139 (Mad) has not taken notice of the earlier decision of its own Court. In Section 526-A, however, the words 'inquiry' and 'trial' find place, which the legislature has advisedly not used in Section 528 (1-C), and I am not in favour, therefore, of importing restrictions which the legislature never intended to impose. I respectfully dissent with the view taken in *Murugappa's case*, AIR 1936 Mad 163 (supra) and follow the one which is contained in 1957 Cri LJ 139 (Mad) (supra). It is not necessary to decide the exact stage of the case before me although some argument is also possible in that

direction.

8. So far as the question of locus standi is concerned, Section 528 does not circumscribe its operation at the instance of any particular party. The transfer of a case from one Court to another usually affects the parties who are directly interested in the outcome of the dispute. Under Section 526 of the Code of Criminal Procedure, any person interested has been permitted to move transfer applications. Such a language is not contained in Section 528; but on the doctrine of the natural course of human conduct it will be permissible to construe Section 528 to be available for seeking justice in matters of transfer by parties who are directly interested in the upshot of a controversy. Mst. Gomati was the victim of an indecent assault. The husband of Mst. Gomati was certainly an interested person and he had every locus standi to move for transfer under Section 528 (1-C). The cases cited by learned counsel relate to Section 526 and need not be discussed.

9. The third point is with regard to the question of the existence or otherwise of reasonable apprehension in the mind of the applicant. It is apparent from the various steps taken by the husband of Mst. Gomati that he is not satisfied only with the conviction of the accused which has in fact been recorded twice but he is interested in enhanced punishment and he is motivated on that account to take the trouble of litigating at several stages. It is neither proper nor necessary for me to decide whether Section 354 should or should not attract the applicability of the Probation of Offenders Act because each case will be regulated by its own circumstances. I have no doubt, in my mind, that the learned Munsiff-Magistrate will not feel hampered by his previous decisions and can still apply his mind judicially to this question.

10. The question of sentence is regulated by a number of circumstances and no hard and fast rule can be laid down. But the spirit of vindictiveness on the part of the complainant cannot be permitted to operate as, a lever to effectuate transfers. More so, when it is likely to cause inconvenience to an accused who has already been facing so many stages of this litigation. I do not think that this is a fit case in which the husband of Mst. Gomati can be said to have reasonable apprehensions at the hands of the Munsiff-Magistrate. Bilara, The learned Magistrate will now

apply Ms mind afresh instead of writing a 'post-script judgment' and decide the case after hearing the parties.

11. Since the case has taken such a long time, Mr. Ranamal is anxious that a date be fixed. I think the request is reasonable and it must be allowed. The case is fixed for the 16th April, 1968, which is a mutually agreed date. Mr. N. U. Khan is notified of the date and he undertakes to inform his client. Accordingly this revision application is allowed.

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