

Rahul Sharma Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-04-1978

Reported in : 1978CriLJ1276; 1978(11)WLN169

Judge : M.L. Shrimal and; P.D. Kudal, JJ.

Appellant : Rahul Sharma

Respondent : The State of Rajasthan and ors.

Judgement :

M.L. Shrimal, J.

1. This special appeal, under Section 18 of the Rajasthan High Court Ordinance, 1949, is directed against the judgment, dated December 2, 1977, of the learned Single Judge of this Court, dismissing the writ petition, filed by Rahul Sharma, challenging the validity of the order, dated October 4, 1977, passed by the then Administrative Judge, making over Sessions Case No. 19 of 1977, State v. Anil Punjwani and Ors., to the Additional Sessions Judge No. 3, Jaipur City pending in the Court of the Additional Sessions Judge No. 2, Jaipur City.

2. The facts, giving rise to the present special appeal, are that the petitioner, along with other accused persons, was facing trial in the Court of Shri Amar Singh Godara, Additional Sessions Judge No. 2, Jaipur City, in Sessions Case No. 19 of 1977, under Sections 307 and 120B, I.P.C. for attempting to commit the murder of

Aswani Sethi, The learned Judge recorded the statements of 14 prosecution witnesses, out of 47, to be examined by the prosecution in the case. The next dates of hearing were fixed, from 21st to 24th of September, 1977. Prior to that Shri Amar Singh Godara was transferred as Additional Sessions Judge, No. 3, Jaipur City. On September 20, 1977 the learned Sessions Judge, Jaipur City, brought to the notice of the High Court that Shri Amar Singh Godara had left ten part-heard sessions cases, including the case of Anil Punjwani, out of which in five sessions cases material prosecution witnesses had been examined by him and as no Judge had been posted to preside over Additional Sessions Court No. 2 he should be asked to complete the trials of the five cases. Mr. J. K. Mathur, Additional Public Prosecutor, appearing in the case, submitted an application before the Administrative Judge, stating that in the absence of posting of an Additional Sessions Judge to preside over Additional Sessions Court No. 2, Jaipur City, the case of Anil Punjwani was being delayed and there was likelihood of witnesses to be tampered with. He therefore, prayed that the case should be completed by Mr. Godara. In the above circumstances, the then Administrative Judge passed the impugned order (vide Annexure-1).

3. Being aggrieved by that, the appellant filed a writ petition No. 446 of 1977, before this Court. It was, however, dismissed by Hon'ble Jain J. after hearing both the parties, by a detailed order dated December 2, 1977.

4. The arguments advanced before the learned Single Judge were repeated before us. All the points reiterated before us have been dealt with at considerable length in the judgment under appeal. We have carefully read the judgment of the learned single Judge in the light of the criticism levelled and the arguments advanced by the learned Counsel appearing on behalf of the appellant. We do not find any infirmity in the judgment of the learned single Judge warranting interference by us. We adopt the reasonings given by the learned single Judge.

5. Besides the reasons mentioned by the learned single Judge, the writ petition and the appeal are liable to be dismissed on the following additional grounds:

6. Under the scheme of the Criminal Procedure Code, 1973, there can be only one Court of Session for each Sessions Division and there can be only one Judge of

that Court i. e. only one Sessions Judge in a Sessions Division, Under Sub-section (3) of Section 9, the High Court is empowered to appoint any number of Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session, Thus, there is only one Court of Session in each Sessions Division, albeit sitting at different places and manned by a number of Judges. The Additional Sessions Judge exercises the powers of a Court of Session, subject to the limitation prescribed by law, but is not an independent Court of Session, Reference in this connection may be made to Superintendent and Remembrancer of Legal Affairs, Bengal v. Ijjatulla Paikar 1931-32 Cri LJ 842 (Cal). An Additional Sessions Judge appointed to a Court of Session exercises jurisdiction by virtue of Sections 194, 381 and 400 Cr. P.C. 1973.

7. There is no dispute between the parties on the point that the case of Anil Punjwani was committed to the Court of Session at Jaipur City and it was made over to the Additional Sessions Judge No. 2, Jaipur City, Shri Amar Singh Godara, by the learned Sessions Judge. We are unable to agree with the contention of learned Counsel for the appellant that under Section 194, Cr. P.C., the High Court could not have transferred the case and that the powers under Section 194 Cr. P.C. are required to be exercised, subject to the provisions of Section 409, Cr. P.C. or Section 407 Cr. P.C. Section 409 Cr. P.C. nowhere deals with the powers of the High Court to transfer a case. The provisions of Sections 194 and 409 Cr. P.C. are meant to serve different purposes. One does not overlap the other. Section 409 Cr. P.C. deals with the powers of the Sessions Judge to re-call a case; whereas Section 194, Cr. P.C. deals with the powers of the Sessions Judge or the High Court to make over a case or cases. A perusal of Annexure-1 shows that the words 'Additional Sessions Judge' have been used.

The case on hand was made over by learned Sessions Judge, after commitment to Shri Amar Singh Godara, and by the impugned order (Annexure-1) the Administrative Judge asked the same Additional Sessions Judge to complete its trial and decide the same. As a matter of fact it is not the transfer of a case from one Court to another. Mr. Godara, presiding over Court No. 3 Jaipur City had had jurisdiction to exercise the powers of a Sessions Judge, as envisaged by Section 400, Cr. P.C. The Hon'ble Administrative Judge had had also jurisdiction to pass

the impugned order (Annexure 1) in his administrative capacity. Such an order is virtually in the nature of an administrative order, passed for tending convenience to the parties, more specially for the reason that due to paucity of Judges no Additional Sessions Judge could be appointed to preside over Court No. 2 and the delay in the trial of the case would have caused inconvenience to both the parties. Under the circumstances, no possible prejudice to the accused-appellant could be said to have been involved by the impugned order. The learned single Judge was correct in holding that the order of the Administrative Judge was covered by the provisions of Section 194, Cr. P.C. As has already been mentioned above, neither Section 409 nor Section 407, Cr. P.C. are attracted to the impugned order.

8. Equally devoid of merits is the contention of learned Counsel for the appellant that the powers under Section 194, Cr. P.C. and Section 27 of the Rajasthan High Court Ordinance, authorising transfer of any case to itself could have been exercised only by the Court and not by the Administrative Judge. The case of *Anandi Lal v. State of Rajasthan*, 1966 Raj LW 359 relied upon by the learned Counsel for the appellant, is of no avail to the appellant, as it is clearly distinguishable on facts. Primarily it relates to a period when Full Court had not delegated its power under Article 235 of the Constitution to the Chief Justice in connection with the appointment of a Judge of the Court and to act as Disciplinary Authority under Rule 15 of the Rajasthan High Court Rules, 1952. This power was delegated in 1971. The decision in that case was based on the position as it prevailed in the year 1963, when Hon'ble Mr. Justice Bhargava was appointed as Disciplinary Authority. Rule 22 of the Rajasthan High Court Rules, 1952, provides that the administrative business shall be submitted by the Registrar to the Administrative Judge and the same shall be disposed of by that Judge. The administrative order (Annexure-1) does not take away the right of the appellant to move the High Court under Section 407, Cr. P.C., 1973.

9. In an application under Section 407, Cr. P.C., the parties to that case have a right of being heard and if the appellant genuinely felt that he would not get justice at the hands of Shri Amar Singh Godara, then he could have taken recourse to the proceedings under that section.

10. The effect of 42nd Amendment of the Constitution of India is that the High Courts are being vested with restricted jurisdiction. They can exercise jurisdiction in (i) cases where there is a contravention of statutory provisions causing substantial injury to the petitioner; and (ii) in cases there is an illegality resulting in substantial failure of justice and in either case the petitioner has to satisfy the Court that he has no other remedy. An order directing an Additional Sessions Judge posted in the same Sessions Division to try a case in which a substantial portion of evidence has been recorded by him cannot be said to be an illegality resulting in substantial failure of justice. Neither can it be termed to be an injury of substantial character nor can it be said to be an illegality, as envisaged by Article 226 of the Constitution of India.

11. The writ jurisdiction, as has been held in several cases, is an equitable jurisdiction. The exercise of discretion is mainly governed by the consideration of substantial failure of justice. Reference in this connection may be made to *A. M. Allison v. B.L. Sen* : (1957)ILLJ472SC . Substantial justice has been done in this case by the impugned order and no interference is called for in exercise of the extraordinary writ jurisdiction of this Court.

12. The appeal is devoid of merits and it is dismissed summarily.