

**Hemsingh and ors. Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/753931](http://sooperkanoon.com/753931)

**Court :** Rajasthan

**Decided On :** Feb-27-1956

**Reported in :** 1957CriLJ156

**Judge :** Dave, J.

**Appellant :** Hemsingh and ors.

**Respondent :** The State

**Judgement :**

ORDER

**Dave, J.**

1. This is an application in revision by Hemsingh, Kolia and Thania against an order of the Additional Sessions Judge, Jodhpur, dated 21-4-1955.

2. The facts giving rise to it are that six accused including the three petitioners were challaned by the police in the Court of the sub-divisional Magistrate, Jodhpur, under Section 397, I. P. C, The case was transferred to the Court of Additional First Class Extra Magistrate, Jodhpur. After making an inquiry, he committed Kanaram, Surja and Kheraj to the Court of the learned Sessions Judge, Jodhpur, for standing their trial under Sections 395 and 397, I. P. C.

The petitioners were discharged by him. After committal, the learned Sessions Judge transferred the case to the Additional Sessions Judge on 8-1-1955. On 15-1-1955, the Public Prosecutor presented an application to the Additional Sessions Judge under Sections 436 and 437, Cr. P. C. It was urged that the three petitioners were wrongly discharged by the committing Court, that its order should therefore be set aside and it should be directed to commit the petitioners also to the Court of Additional Sessions Judge.

On a notice being given to the petitioners, they raised an objection that the Additional Sessions Judge had no jurisdiction to entertain the application unless it was first filed before the Sessions Judge and then transferred to the Court of the Additional Sessions Judge. This argument was turned down by the Additional sessions Judge and it was held that by virtue of Section 438 (2), Cr. P. C., he could hear the application. The petitioners are dissatisfied with this order and, therefore, they have come to this Court.

3. It is urged by learned Counsel for the petitioners that the Additional Sessions Judge could exercise the powers of a Sessions Judge only in respect of a case which was transferred to him by the Sessions Judge, that the learned Sessions Judge had only transferred the case : of the three accused who were committed to his Court, that he had not transferred the case of the three petitioners who were discharged by the committing Court and. therefore, the view taken by the Additional Sessions Judge is incorrect.

In support of his contention, learned Counsel has referred to Emperor v. Lama Shah AIR 1934 Oudh 86 (A). In that case, two persons Ghulam Qadir and Zama Shah were convicted under Section 379, I. P. C. Ghulam Qadir alone preferred an appeal to the Court of the Sessions Judge, Sitapur who transferred it to the Additional Sessions Judge, Kheri, for disposal. The Additional Sessions Judge allowed Ghulam Qadir's appeal and set aside his conviction. At the same time, he made a reference to the Oudh Chief Court recommending that the conviction and sentence passed on the other accused Zama Shah should also be set aside.

The reference was ooposed by Government Advocate on the basis of Section 438 (2), Cr. P. C. This argument found favour with the Court and it was held that the

case of Zama Shah not having been transferred to the Court of the Additional Sessions Judge, Kheri, he was not competent to make the reference. This case supports the argument raised by the petitioners' counsel. It appears that it was not pointed out to the learned Additional Sessions Judge before he passed his order. Section 438(2) of the Cri. P. C. on which learned Additional Sessions Judge has relied, runs as follows:

438(2), An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

4. According to this sub-section, an Additional Sessions Judge can exercise all the powers of a Sessions Judge under Chap. XXXII in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge, The point for determination, therefore, is, whether the case against the petitioners was transferred to the learned Additional Sessions Judge. The petitioners' learned Counsel is correct in saying that the learned Sessions Judge had transferred to him only the case against the accused Kanaram Surja and Kheraj who were committed to the Court of Sessions for standing their trial,

The case against the petitioners came to an end in the committing Magistrate's Court when they were discharged. There was no case pending against them thereafter. The State has now Bled a revision petition, but it should have been first presented before the learned Sessions Judge. If the learned Sessions Judge had transferred the revision petition to the Additional Sessions Judge, then he could exercise all the powers under Chapter XXXII. The revision application would be a new case against the petitioners in the Sessions Court and unless it is transferred to the Additional Sessions Judge, he does not get any jurisdiction to hear and decide the same.

It may be pointed out here that Section 193(2) allows the Additional Sessions Judges to try such cases only as the State Government may by general or special order direct them to try or as the Sessions Judge of a division may by general or special order make over to them for trial. This is with regard to original Sessions cases. Then Section 409(2) of the Criminal P. C. provides that an Additional

Sessions Judge or an Assistant Sessions Judge shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

Thus, in the matter of appeals also, the Additional Sessions Judge is to hear only such appeals as may be made over to him by the Sessions Judge or as the State Government may direct by general or special order. Section 438, Cr. P. C. is included in Chapter XXXII which deals with Reference and Revision. Sub-section (2) is meant to provide corresponding powers to Additional Sessions Judges in matters of reference and revision, but again, that power is to be exercised only when a case is transferred to the Additional Sessions Judge by or under any general or special order of the Sessions Judge.

Thus, the entire scheme of the Criminal Procedure Code is that an Additional Sessions Judge is to try only those original cases, appeals, references and revisions which respectively came to him under Sections 193, 409 and 438 of the Criminal P. C. In the present case, the revision application was not transferred to the learned Additional Sessions Judge and, therefore, he could not exercise his powers under Chapter XXXII. The petitioners' contention is therefore allowed and the order of the learned Additional Sessions Judge is set aside.