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Court : Rajasthan

Decided On : Jul-24-1957

Reported in : AIR1958Raj282; 1958CriLJ1349

Judge : I.N. Modi, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 526, 526(1A), 528 and 528(1C)

Appeal No. : Criminal Revn. No. 63 of 1957

Appellant : Pratinga

Respondent : The State

Advocate for Def. : Deputy Govt. Adv. and; Shrikishenmal, Adv.

Advocate for Pet/Ap. : Chandmal, Adv.

Disposition : Application dismissed

Judgement :
ORDER

I.N. Modi, J.

1. This so called revision is directed against the order of the District Magistrate, Jalore, dated 1-5-1957, by which he transferred a case against the petitioner

under Section 411, I.P.C., pending in the Court of the First'Class Magistrate, Jalore.

2. It is contended that the application for transfer before the District Magistrate was made by the complainant Harji and not by the State and further that the application was opposed by the State, and yet the learned District Magistrate, for reasons whieh are not very clear or cogent, has ordered the transfer of the case from the Court of the Magistrate where it had been pending right up to the stage of arguments.

3. A preliminary objection has been raised before me that this application should not be entertained here because it is the invariable practice of this Court not to entertain revisional applications unless, the party coming up in revision has first approached the Sessions Judge or the District Magistrate as the case may be. Reliance is placed in support of this contention on my decision in Sukhlal v. The State, ILR (1955) 5 Raj 523: (AIR 1955 Raj 177) (A). I may point out at once that that was a slightly different case. In that case, the accused was committed by a Magistrate to stand his trial in the Court of the Additional Sessions Judge, Banswara.

The accused came up to this Court with a prayer that the order of commitment be quashed on the ground that there was no evidence worth the name on the basis of which the Magistrate could have committed the accused. A preliminary objection was raised on behalf of the State that the accused should have submitted his application in the first instance to the Sessions Judge concerned. It was held by me that this Court undoubtedly had the jurisdiction and authority to hear such an application direct, and that the objection raised on behalf of the State was not intended to question that authority.

The question nevertheless arose whether this Court should insist on such an application being filed before the Sessions Judge in the first instance before the petitioner came up to this Court, and I came to the conclusion that there was a good deal in favour of the practice followed by this Court because that would enable it to have the considered opinion of the Sessions Judge in the matter when this Court was called upon to exercise its own authority therein. Consequently, I

took the view that the petitioner should make his applications before the Sessions Judge in the first instance and then come up to this Court if necessary. I also held that Section 215, Cr. P. C. was no bar to such a procedure being followed.

4. So far as the present case is concerned, however, the contention of learned counsel for the petitioner is that the matter has already gone to the District Magistrate, though at the instance of the complainant, and the District Magistrate having concurrent authority with the Sessions Judge in the matter of transfers, the petitioner should not still be required to go to the Sessions Judge and his revision should be heard and disposed of on the merits by this Court. In the alternative, learned counsel has further taken up the position that if this Court does not feel disposed to entertain this revision, his application may be treated as an application under Section 526, Cr. P. C., and disposed of on that footing.

5. The first question which thus arises is whether the present application should properly be treated as a revisional application or as an independent application for transfer. I am aware that there has been a divergence of judicial opinion on this point --some Courts holding that a revision against a wrong order of transfer lies, and other Courts holding that there is no real scope for revision in such a matter and that an application under Section 528 (as it then was) was the only appropriate remedy. With great respect, I consider that such a controversy has not much significance in the state of law as it obtains at this date.

I would invite attention first to Sub-section (1C) of Section 528, Criminal P. C. which lays down that only 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. This provision has been newly introduced into Section 528 by the Code of Criminal Procedure Amendment Act (No. XXV) of 1955. The earlier provision which empower-ed the District Magistrate to transfer a case from the Court of any Magistrate subordinate to him within his district is retained in tact by Sub-section (2) of Section 528.

Having regard to this change in the law relating to transfer, it clearly seems to me that where a case is sought to be transferred from one criminal Court to another

criminal Court but in the same sessions division, the party seeking the transfer must make an application to the Sessions Judge of his division before he should be allowed to come up to the High Court. The argument that the authority of the District Magistrate and that of the Sessions Judge in this regard is concurrent is, to my mind, without much force. The reason is simple and would be obvious from the following example.

Where a party has applied to the District Magistrate for transfer and has failed he may still file an application for transfer to the Sessions judge, and for ought one knows, he may succeed in his application in the Court of the Sessions Judge. And in such a case he need not come to the High Court at all. Where, however, his application has been rejected and he still feels aggrieved by such order, it would be open to him to come to the High Court. The question, however, is whether he should be allowed to come to this Court directly without having to go to the Sessions Judge as a necessary step before he may come up to this Court. The answer to this question is clearly to be found in Sub-section (1A) of Section 528 which runs as follows :

'Notwithstanding anything contained in Sub-section (1), no application shall lie to the High Court for the exercise of its powers under the said sub-section for transferring any case for one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.'

This provision definitely enjoins that before a petitioner applies to the High Court for transfer of a criminal case from one Court to another in the same sessions division, he must first apply to the Sessions Judge and seek his relief there. A comparison of the provisions contained in Section 528 (1C) and Section 526 (1A) clearly shows that they are complementary to each other, and the net effect is that in matters of transfer, a party should first apply to the District Magistrate and then to the Sessions Judge, and it is only thereafter that he should seek his remedy in the High Court.

This position must of course be taken subject to this exception that where a transfer is sought from a Court in one district to another district, then an application

should be made in the first instance to the Sessions Judge, but where an applicant seeks the transfer of a case from a Court in one sessions division to a Court in another sessions division, such an application would lie straight to the High Court without going to the Sessions Judge. Where, however, such is not the case, and a criminal case is sought to be transferred from one Court to another Court in the same district, as is the case here, then such application should be made to the District Magistrate concerned in the first instance. If a party feels aggrieved by the order of the District Magistrate, he should then make an application to the Sessions Judge, where the transfer is sought to a Court in the same sessions division. It is only when he has ex-hausted all these steps that he should come to the High Court and not before.

6. In this connection, I may also refer to the decision of a Division Bench of this Court in Nathu-ram v. The State, ILR (1951) Raj 208: (AIR 1951 Raj 158) (B), wherein the learned Judges held that a party applying to tiie High Court for transfer under Section 526 must in the first instance go to the District Magistrate in cases pending in Courts subordinate to such District Magistrate. The learned Judges laid down the rule in that way, on the grounds of cheaper and quicker relief and expeditious disposal, and held the opinion, that, by so acting, it may not be necessary for the parties in many cases to come up to the High Court at all, and that even in cases where it was so necessary, there would generally be an explanation of the Magistrate or an affidavit of the other side already on the record and the disposal in the High Court would become speedier to that extent.

It may be contended that this decision does not require an aggrieved party to go to the Sessions Judge from an adverse order passed against him by the District Magistrate. It should, however, be remembered that as the law stood at the time when this decision was given, the Sessions Judge was not vested with authority to transfer cases pending in the Courts in his division except to a very limited extent namely where a Sessions Judge had made over a case to an Assistant Sessions Judge subordinate to him, or where a case was pending before an Additional Sessions Judge and the trial of the case or the hearing of the appeal had not commenced.

The recent change in the law by which a Sessions Judge has been authorised to order transfer of cases from one criminal Court to another in his own division taken with the corresponding change in Section 526 makes it obligatory in rny opinion that a person seeking the transfer of his case from one criminal Court to another in the same sessions division must first go to the Sessions Judge of his division, and he may come to the High Court only if he is aggrieved by his order and not before.

7. This being the state of the law as brought about by the recent changes in Sections 526 and 528, Cr. P. C., I am definitely of the opinion that the petitioner should not be allowed to get round it on the reasoning that he is seeking his remedy not by means of an independent application in this Court but by a revisional application against the order of the District Magistrate. If the submission contended for is allowed to prevail, I have no doubt that the object of Section 526 (1A) would be completely defeated.

8. In this view of the law, I hold that the preliminary objection must prevail. Consequently, I hereby dismiss this application without going into its merits and leave it to the petitioner to make an application to the Sessions Judge concerned if he feels so advised for the transfer of his case to the Court where it was formerly pending.

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