

In Re: Smt. Tarulata Kala

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Court : Kolkata

Decided On : Oct-07-1996

Reported in : 1997CriLJ1401

Judge : N.K. Bhattacharyya, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313, 401, 407, 408, 408(1), 409, 409(2) and 482; ;Indian Penal Code (IPC) - Sections 34, 302 and 498

Appellant : In Re: Smt. Tarulata Kala

Advocate for Pet/Ap. : S.S. Roy and ;Prabir Kr. Mitra, Advs.

Disposition : Application dismissed

Judgement :

ORDER

N.K. Bhattacharyya, J.

1. Heard the submission of the learned Advocate for the petitioner Mr. S.S. Roy appearing with Mr. Prabir Kr. Mitra considered the materials on record. This revision under Section 401 /482 of the Cr.P.C. is against order No. 2 dated 5-9-1996 passed in Crl. Misc. Case No. 1354/96 by the learned Additional Sessions Judge, Contai, District Midnapore whereby the learned Sessions dismissed the application of the de facto-complainant for transfer of the case as made under

Section 408 of the Cr.P.C. 1973.

2. The short background of the case is that the de facto complainant is the mother of the deceased Namita Das @ Laxmi Das, who was married to Shaymal Das. Some time on 4-2-1994, the said Namita Das was found hanging in her matrimonial home resulting in filing of an F.I.R. by the de facto-complainant, whereupon Coatai P.S. Case No. 36/94 dated 4-2-1994 was registered for an offence under Section 498/34/302/34 of the I.P.C. The investigation commenced and closed. Thereafter charge was framed against the accused persons by the learned Additional Sessions Judge on 8-4-1996 and the trial commenced. Prosecution adduced evidence through its witnesses. The accused persons were examined under Section 313 of the Cr.P.C. They entered into their defence. Three defence witnesses were examined. At this stage an application by the de facto-complainant, under Section 408 of the Cr.P.C. for transfer of the case from the court of the learned Additional Sessions Judge to some other court of Additional Judge was made and upon that application under Section 408, CrI. Misc. Case No. 1354/96 was registered in the Court of the learned Sessions Judge, Midnapore.

3. After hearing both the parties the learned Sessions Judge rejected that petition on the ground that he has no power to transfer the case under Section 408 after the commencement of the trial as the charge has already been framed,

4. Mr. Roy contended that Sections 408 and 409 of the Cr.P.C. are being two separate and independent provisions, Section 408 will not be governed or regulated by Section 409 as such, the learned Sessions Judge has the power to transfer the case even after framing of the charge. Reliance was placed by Mr. Roy upon a Full Bench decision of the Allahabad High Court in the case of Radhey Shyam v. The State of U.P. reported in (1984) 2 Crimes 50: (1984 All LJ 666), wherein it has been pointed out in paragraphs 15 and 16 that Sections 407, 408 and 409 being the independent sections and not being dependent upon Section 408, the provision of Section 408(1) will not be regulated by Section 409(2) of the Cr.P.C.

5. I have considered the submission of Mr. Roy and the materials as produced before me in the revisional application, I find no conflict in the decision of Radhey

Shyam (supra). The conflict regarding them is interpretation of the same.

Section 408(1) reads as follows:-

Whenever it is made to appear to a Sessions Judge that an order under this subsection is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.(sic).

(Underscoring is by me).

Sub-section (2) of Section 409 reads as under:--

At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal, which he has made over to any Additional Sessions Judge. (sic)

(The underscoring is by me).

So, both the sections speak of two stages, one up to the stage of case and another where the case steps into the stage of trial, that is, with the framing of the charge. The case under reference of the Allahabad High Court only speaks of transfer of the sessions case and not regarding trial. No doubt, the two sections are separate and independent and one is not controlled or regulated by the other. But Sub-section (2) of Section 409 specifically points out two stages in a case, that is, one from pre-trial which is termed as 'case' and very often one comes across with the expression 'till the trial commences before the Sessions Judge' shows that sessions case and sessions trial is not the same. Once the trial commenced the Sessions Judge has not the power to withdraw and transfer the trial to some other court of another Sessions Judge or Additional Sessions Judge. But before that stage of the trial, the Sessions Judge has every power to withdraw the Sessions Case either upon an application Or suo motu and can transfer it to another court of session. In that there is no military between Section 408(1) and Section 409(2) of the Cr.P.C. The Legislature in its wisdom has used two terminology in Sections 408(1) and 409(2) namely, pre-trial stage of Sessions Case and trial stage. There

is no doubt that the learned Sessions Judge has power to withdraw the Sessions case to another Court in pre-trial stage but once the trial commences he has no power to transfer the case to another court of Sessions Judge.

6. In that view of the matter, I find that there is no merit in the argument of Mr. Roy and the application is without any substance. I, accordingly, reject the same.

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