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**Sham Singh Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/888558

**Court** : Himachal Pradesh

**Decided On :** May-27-1964

**Reported in** : AIR1965HP16,1965CriLJ442

**Judge** : Om Parkash, J.C.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 344, 526 and 526(8)

**Appeal No.** : Criminal Reference No. 17 of 1963

**Appellant** : Sham Singh

**Respondent** : State

**Advocate for Def.** : Jaswant Singh, Adv.

**Advocate for Pet/Ap.** : Harish Chander, Adv.

**Disposition** : Reference accepted

**Judgement** :
ORDER

Om Prakash, J.C.

1. This is a reference, made by the learned Sessions Judge, Mahasu, Sirmur, Bilaspur and Kinnaur, Sessions Division.

2. Sham Singh, petitioner, and others, were proceeded against, under Section 107, Criminal Procedure Code in the Court of the Magistrate First Class, Bilaspur. Before any evidence was recorded in the proceedings, the petitioner, under Sub-section (8) of Section 526, Criminal Procedure Code, intimated to the Magistrate that he intended to make an application for getting the case transferred to some other Court. The Magistrate adjourned the case to enable the petitioner to move the transfer application. He burdened the petitioner with costs of Rs. 28/-, as the expenses of the prosecution witnesses, who were present, but were not examined, because of the adjournment of the case. The petitioner went up in revision to the learned Sessions Judge, against the order, directing payment of Rs. 28/-, as costs. The learned Sessions Judge has recommended that the order, imposing costs, be quashed, as it is illegal, being in contravention of the provisions of Sub-section (8) of Section 526, Criminal Procedure Code.

2a. The aforesaid Sub-section reads as follows :

'If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the) defence closes its case that he intends to make an application under this section or under Section 528, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees, that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall; require the Court to adjourn the case upon a second or subsequent intimation from the same party if the application is intended to be made to the same Court to which the party has been given an opportunity of making such an application, or, where an adjournment under this Sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused.'

3. A plain reading of the Sub-section makes it abundantly clear that as soon as any party interested, whose case is not hit by the proviso to the Sub-section, intimates to the Magistrate that he intends to move an application for transfer, it

becomes imperative for the Magistrate to adjourn the case. The only term which can be imposed on such a party is that he can be required to execute a bond, without sureties, of an amount not exceeding two hundred rupees, that he will make the transfer application within a reasonable time, to be fixed by the Magistrate. No other terms, such as payment of costs, can be imposed on the party. The learned counsel for the respondent referred to the Explanation, appended to Sub-section (9) of Section 526, Criminal Procedure Code, which provides that nothing contained in Sub-section (8) or Sub-section (9), restricts the powers of a Court under Section 344, Criminal Procedure Code and contended that the Explanation leads to the inference that a Magistrate can, while granting adjournment under Sub-section (8), for making an application for transfer, direct the payment of costs, in exercise of the powers, under Section 344.

The contention of the learned counsel does not appear to be sound. The Explanation simply means that Sub-section (8) or Sub-section (9) does not, limit or otherwise affect the powers of a Court under Section 344, Criminal Procedure Code, to postpone or adjourn an inquiry or trial. In other words, the Court may, even in those cases, in which it is not bound to adjourn the inquiry or trial under Sub-section (8), grant adjournment, in exercise of its powers, under Section 344, for making an application for transfer, if the circumstances of the case constitute a reasonable cause for adjournment within the meaning of that section. If the adjournment is granted under Section 344, then, the Court may impose such terms, including the payment of costs, as it may think fit. This is the true import of the Explanation. The Explanation cannot be interpreted to mean that a Court can, while granting adjournment, under Sub-section (8), order payment of costs, in exercise of its powers, tinder Section 344.

The view that a Court, granting an adjournment, under Sub-section (8), cannot make an order for payment of costs, is supported by a decision of the Madras High Court, In re Venkatarama Chetti, AIR 1942 Mad 178. The facts in that case werethat the petitioner had intimated to the Sub-Divisional Magistrate that he intended to move the High Court for the transfer of his case from his Court. The Sub-Divisional Magistrate, thereupon, passed an order, under Section 526 (8) Criminal Procedure Code, adjourning the case and requiring the petitioner to

execute a bond for Rs. 200/-. The Sub-Divisional Magistrate, further directed that the petitioner should pay Rs. 39/8/- as the costs of the day to the prosecution. The order, directing the payment of costs was held to be illegal, and was quashed, by the High Court. It was observed that:--

'Under Section 344, Criminal P. C., the Court has power to grant an adjournment at the request of a party upon such terms as it thinks fit and 'such terms' would, of course, include payment of coststo the other side. Where however a party to a proceeding is desirous of moving the High Court for transfer, it is not necessary for him to ask for an adjournment. All he has to do is to intimate to the Court that he intends moving the High Court for a transfer. The Court then has to fix a day within which the applicant has to move the High Court and the security which the applicant has to furnish. If he executes the bond, then the Court is bound to grant an adjournment. In doing so, he does not grant an adjournment under Section 344, which permits the imposing of terms, but under Section 526 (8), which leaves no option to the Court to adjourn when once it has been intimated to the Court that the applicant intends to move the High Court for a transfer. The Sub-Divisional Magistrate had therefore no power to order the petitioner to pay the costs of the day to the prosecution.'

Page, 179.

4. The learned counsel for the respondentcited Ram Rakshpal v. Ram Nath, AIR 1938 All 112, wherein the view was expressed that a Court is competent to pass an order for the payment of costs, while granting an adjournment under Sub-section (8). I am unable, with great respect, to concur in that view.

5. For the reasons, already stated, I am of the view that a Court, granting an adjournment,under Sub-section (8) of Section 526, Criminal Procedure Code, to an interested party, for making an application for transfer, has no power to make an order for payment of costs. The order of the Magistrate, in the instant case, imposing costs of Rs. 28/- on the petitioner, while granting an adjournment under Sub-section (8), for making an application for transfer, is without jurisdiction and illegal and liable to be quashed.

6. The reference is accepted. The order of the Magistrate imposing costs of Rs. 28/- on the petitioner is set aside. The costs, if paid, shall be refunded to the petitioner.

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