

Dulchi Vs. Dhani Ram

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Court : Himachal Pradesh

Decided On : Jun-08-1953

Reported in : AIR1954HP19

Judge : Chowdhry, J.C.

Acts : Code of Criminal Procedure (CrPC) - Sections 526 and 528

Appeal No. : Criminal Misc. Petn. No. 5 of 1953

Appellant : Dulchi

Respondent : Dhani Ram

Advocate for Pet/Ap. : K.S. Sauhta, Adv.

Judgement :

ORDER

Chowdhry J.C.

1. This is a petition under Section 526, Cr. P. C. by one Dulchi for transfer of a case pending against him for an offence punishable under Section 498, I. P. C., in the Court of the second class Magistrate at Theog.

2. It was put to the petitioner to show cause why this petition be not dismissed for his failure to have applied first to the District Magistrate under Section 528 of the Code. The learned counsel for the petitioner has cited -- 'Dowlatram Bulchand v.

Thakursee Moti', AIR 1953 Kutch 14 (A). There is no doubt that there is no bar to a petitioner coming direct to a High Court under Section 526 of the Code without first approaching the District Magistrate under Section 528, but in the ruling cited by the learned counsel for the petitioner himself there is a reference to the practice which has grown up in various High Courts according to which a direct approach under Section 526 is discountenanced, That practice is based on sound principles. It is not merely a matter of convenience to the High Court, as argued by the learned counsel for the petitioner. It is also based on the principle that where concurrent remedies exist, one in a higher Court and the other in the lower, a party should first approach the latter. It is also based on the principle that if a party is unsuccessful in the lower Court and then approaches the higher Court, the latter has the benefit of the reasons given by the lower Court for rejecting the application. Then there is the principle that if the parties are encouraged to approach the High Court directly, it is bound to result in considerable loss of time in the highest Court in cases in which relief could well have been obtained in a lower Court. For all these reasons I am of the opinion that the same practice should obtain in this Court also. That this practice prevails in a number of High Courts admits of no doubt. See for instance--'Bhagwat v. Emperor', AIR 1942 Oudh 429 (B);--'Ravichander v. Sunder Singh', AIR 1925 All 640 (C);--'Kamalapati v. Emperor', AIR 1926 All 27 (D);--'In re, A. Fonseca', 6 Bom L R 480 (E);--'Gulam Nabi v. Jamala', AIR 1923 Lah 685(1) (F).

3. The learned counsel for the petitioner sought to make out a special case for the entertainment of the present petition by this Court. He argued that the time granted by the trying Magistrate for obtaining the transfer order was insufficient for applying here and then again to the District Magistrate. If so, the petitioner has himself to thank to have come direct to this Court. For the same reason there is no force in the argument that the bond executed by the petitioner in the Court of the trying Magistrate related to his obtaining the necessary order from this Court rather than from the Court of the District Magistrate. The learned counsel also cited a decision of this Court, -- 'Daulat Ram v. The State', AIR 1953 Him-P 61 (G). Firstly, there is nothing in the ruling to show that a previous application under Section 528, Cr. P. C., had not been made. Secondly, if it be a fact, as contended by the learned counsel for the petitioner, that in fact a direct approach had been

made to this Court in that case, that is an instance against the practice which should prevail in this Court for reasons already recorded. (4) Holding therefore that the proper remedy for the petitioner was to have approached the District Magistrate first, this petition is rejected summarily on that ground. At the same time, in order that the petitioner might not be prejudiced in any way, the trying Magistrate should be directed to extend time to the petitioner to bring necessary orders from the proper Court by a month. A copy of this order, besides being issued in the ordinary way, should also be given 'dasti' to the petitioner or his learned counsel.

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