

Daulat Ram Vs. the State

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Court : Himachal Pradesh

Decided On : Aug-20-1952

Reported in : AIR1953HP61

Judge : Chowdhry, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197, 526 and 526(1)

Appeal No. : Criminal Misc. Petn. No. 11 of 1952

Appellant : Daulat Ram

Respondent : The State

Advocate for Def. : L.N. Sethi, Govt. Adv.

Advocate for Pet/Ap. : Bhagat Singh Chawla, Adv.

Disposition : Application allowed

Judgement :

ORDER

Chowdhry, J.C.

(1) This is an application by one Daulat Ram under Section 526, Criminal P. C., for the transfer of a case pending against him under Section 409, Penal Code, in the Court of Sri A.S. Bhatnagar, Magistrate, first class, Rampur Bushahr, district

Mahasu, on the ground that a fair and impartial trial cannot be had in that Court. The petitioner has stated at the end of his application that if the case is transferred he will not claim a trial de novo.

(2) The first information report consists of a letter dated 2-1-1951 addressed by the Chief Conservator of Forests Himachal Pradesh to the Senior Superintendent of Police Kasumpti. The Senior Superintendent of Police entrusted the investigation to a certain Inspector of Police and a charge-sheet against the petitioner was in due course submitted to the said Magistrate on 7-3-1951. The Magistrate summoned prosecution evidence for 6-4-1951, and between the latter date and 22-6-1951 nine prosecution witnesses were examined. Thereafter, leaving out of account two adjournments occasioned by the unavoidable absence of the presiding officer, there were as many as ten adjournments during a period of seven months until 23-1-1952 at the instance of the prosecution on the ground that the opinion of the handwriting expert had not been received. On the last mentioned date the opinion in question was not filed (although it is dated 30-11-1951), but at the request of the P.S.I, prosecution evidence was ordered to be summoned for 7-2-1952. On 7-2-1952 the prosecution witnesses did not appear, and thereafter the presiding officer proceeded on six weeks leave on 11-2-1952. Before the prosecution could proceed any further the present application for transfer was filed on 3-7-1952 and the proceedings were stayed.

(3) In the letter dated 2-1-1951 from the Chief Conservator of Forests to the Senior Superintendent of Police, referred to above as the first information report, it was mentioned that the permission of the Chief Commissioner had been obtained. No such permission was, however, filed in Court. As already stated, the charge-sheet was submitted to the Magistrate on 7-3-1951 and prosecution evidence was summoned for 6-4-1951. In between these dates the Magistrate addressed a letter on 27-3-1951 to the Chief Conservator of Forests, drawing his attention to the fact that sanction of the Chief Commissioner under Section 197, Criminal P. C., was necessary and that, although referred to in the first information report, the same had not been filed either by the addressee or by the police, and requesting the addressee to file the requisite sanction before 6-4-1951 as the case could not proceed unless it was on the file. In response to this letter the Secretary to the

Chief Commissioner in the Forest Department sent a communication to the Magistrate on 30-3-1951, and enclosed therewith the requisite sanction of the Chief Commissioner under Section 197, Criminal P. C. It is noteworthy that this sanction is dated 30-3-1951 although it had been mentioned in the first information report dated 2-1-1951 that the permission of the Chief Commissioner had already been obtained. The first ground urged on behalf of the petitioner relates to this action taken by the Magistrate in securing the sanction of the Chief Commissioner.

It may be stated in passing that the question of the necessity or legality of the sanction in question is quite irrelevant for the disposal of the present application. The argument put forward by the learned counsel for the petitioner was that in acting, as the learned Magistrate did, in order to secure the sanction he arrogated to himself the functions of a prosecutor. The explanation of the Magistrate is that since the evidence had already been summoned and the case could not proceed unless the sanction was on the file, he addressed the said letter to the Chief Conservator of Forests to avoid unnecessary harassment of the prosecution witnesses and the accused. And it was further argued in this connection by the learned Government Advocate that the objection taken on behalf of the petitioner is not tenable since there was already a reference to the sanction in the first information report. It was, however, conceded that the letter in question was sent by the Magistrate at his own instance and without any request in that behalf having been made to him by the prosecution. If the Magistrate considered the sanction necessary, the only proper course for him to adopt as a Court was not to take cognizance of the offence, as laid down in Section 197 of the Code. It was no business of his to try to fill up that lacuna in the prosecution.

It is noteworthy that, although an incorrect allegation to the contrary had been made in the first information report, no sanction had in fact been obtained by the prosecution, and, for all one knows, it might not have been forthcoming but for the said action taken by the Magistrate himself. It may be that this action of the learned Magistrate is attributable to a misapprehension on his part of the proper functions of a Court rather than to any bias in favour of the prosecution or against the accused. It may also be that no apprehensions of the accused were for the time being roused as regards the impartiality of the Court, for it was only a year

and three months later that the present application for transfer was filed by him, but, when this action of the Magistrate is taken into consideration along with certain others, to be mentioned presently, the cumulative effect of them all was no doubt such as to raise a reasonable apprehension in his mind that a fair and impartial trial could not be had before the Magistrate in question.

(4) The next ground relates to the way in which the documents filed in the case were dealt with by the Magistrate. They were filed in Court and proved by the prosecution witnesses and exhibited but allowed to remain in the custody of the police. The explanation of the Magistrate is that there was no provision for safe custody of the documents in Court, and that if the documents were kept in the courtroom he would have had to engage a police guard. An objection in regard to this matter was taken in writing by the accused before the Magistrate on 7-2-1952. The Magistrate did not dispose of this application then and there, as indeed he should have done, but ordered it to be put up for disposal on 22-2-1952. As stated above, the Magistrate proceeded on six weeks leave from 11-2-1952. It is incredible, therefore, that he did not know on 7-2-1952 that he was proceeding on this long leave only four days later.' In spite of that however he ordered that the application be put up for disposal on 22-2-1952. After his return from leave the application was disposed of on 11-6-1952 when, by common consent, it was ordered by the Magistrate that the documents be kept in sealed bundles or boxes in the custody of the police.

It was argued by the learned Government Advocate that although the documents had commenced to be proved and exhibited since 6-4-1951 it was only on 7-2-1952 that an objection was taken by the accused against the documents being allowed to remain in the custody of the police. This is however not so. The petitioner has stated in his affidavit that he had protested against the practice of allowing the documents to remain with the prosecution on the ground that it was likely to prejudice his case as the documents may be substituted or tampered with by the prosecution, but the Court paid no heed to it and therefore the petitioner was constrained to file a regular petition to that effect on 7-2-1952. The Magistrate says in his explanation that the fact was brought to his notice for the first time on 7-2-1952 'so far as he remembered'. If it be a fact that the objection was taken for

the first time on 7-2-1952, and not before, there was no question of the Magistrate not being definite about it.

In the circumstance, I must accept the said allegation made by the petitioner in his affidavit. It appears therefore that the said irregular procedure as regards the custody of documents during trial (and these documents have been described by the Magistrate as very precious) was persisted, in despite the accused's protests, and that when the accused filed a written objection in regard thereto on 7-2-1952 the learned Magistrate put off its disposal to a date on which he was presumably aware that the matter could not be disposed of.

(5) The third ground relates to one other prayer made by the petitioner in his said application dated 7-2-1952. Reference, was made in the application to the numerous adjournments which had been obtained by the prosecution since June 1951 on the ground of non-receipt of the opinion of the handwriting expert. It was further stated by the accused in that application that production of further prosecution witnesses had been stayed by the prosecution on the same ground, but that on 23-1-1952 the P. S. I. had requested the Court to summon those remaining witnesses. The accused, therefore, prayed that the P. S. I. should be examined to ascertain whether the opinion in question had been received, and that if it had been received he should be asked to file it in Court. The P. S. I. was present on that date, and his statement on the point could have been recorded by the Magistrate then and there, for it needed no previous preparation to supply the information in question; but the disposal of this matter was also put off by the Magistrate in the same way as was the disposal of the question of proper custody of documents. The opinion in question was eventually filed on 11-6-52.

(6) Another ground put forward on behalf of the petitioner relates to the manner in which the Magistrate allowed the case to hang on for seven months from 22-6-1951 to 23-1-1952 on the mere ground that the P. S. I. stated that the expert opinion in question had not been received. The main complaint, of the learned counsel for the petitioner was that the examination of the remaining prosecution witnesses should not in any case have been postponed simply on the ground that the expert opinion had not been received. His contention was that the prosecution

was withholding the remaining prosecution witnesses simply to fit their evidence in with the expert opinion. The learned Government Advocate replied that the prosecution witnesses were not produced because if the expert opinion turned out to be in favour of the prosecution the testimony of those witnesses would have become unnecessary. This argument was met, and with much reason behind it, by the learned counsel for the petitioner contending that it is most improbable that production of the direct evidence of witnesses should have been attempted to be dispensed with merely because the opinion of the expert witness might be favourable.

(7) To sum up, while, on the one hand, the learned Magistrate went out of his way to procure a piece of evidence, i.e. the Chief Commissioner's sanction under Section 197, Criminal P. C., without which in the opinion of the Magistrate the cognizance of the offence was barred, and which piece of evidence it was the duty of the prosecution to furnish, he, on the other hand, adopted an irregular procedure with regard to the custody of important documents in the case (the accused naturally thinking the procedure to be prejudicial to his interest), continued to put off the trial at the instance of the prosecution on a ground which on the face of it seemed to afford an opportunity to the prosecution to mould evidence according to the opinion of the expert witness, and finally dealt with the accused's application dated 7-2-1952 with regard to the custody of documents and discovery of facts relating to the expert opinion from the prosecution in a manner which was capable of creating the impression in the mind of the accused that the Magistrate wanted to give such latitude to the prosecution as would nullify the very purpose of that application.

In these circumstances, even though the learned Magistrate may in fact have been actuated by motives other than a bias in any direction, the cumulative effect of his aforesaid behaviour was no doubt such as to have given legitimate ground for fear to the accused, the present petitioner, as laid down in -- 'Ghassoo v. Emperor', AIR 1930 All 737 (A). It may be that such an impression might not be created in the mind of a normal person, but in the case of a person who is being tried of a serious offence the behaviour adopted by the Magistrate in the present case throughout was no doubt such as to raise a reasonable, and not a mere fanciful,

ground for apprehension in his mind that the Magistrate had a bias in favour of the prosecution. 'Chunni Lal v. Emperor', AIR 1948 Oudh 103 (B), and -- 'Ko Ko Gyi v. Emperor', AIR 1936 Rang 114 (C). These are rulings which were cited by the learned Government Advocate himself.

(8) The application is allowed and it is hereby directed that the case against the petitioner at present pending in the Court of Sri A.S. Bhatnagar, Magistrate, first class, Rampur Bushahr be transferred to the Court of the Magistrate first class Theog. The trial shall proceed from the stage where it was left off. The petitioner is directed to present himself before the Magistrate first Class Theog on 8-9-1952 or if the Magistrate be not present in Court on that date for some reason, on the next date after 8-9-52 on which the Magistrate holds Court at Theog. The record must be returned and the two Magistrates informed of this order without delay.

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