

State Vs. Abdullah Shah

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Court : Jammu and Kashmir

Decided On : Jun-12-1957

Reported in : 1957CriLJ1401

Judge : Janki Nath Wazir C.J.,; Jia Lal Kilam and; M.A. Shahmiri, JJ.

Appellant : State

Respondent : Abdullah Shah

Judgement :

Jia Lal Kilam, J.

1. This reference to the Full Bench involves an important question of law pertaining to the powers which a Sessions Judge might use while exercising revisional jurisdiction. It appears that a criminal challan was pending before the Munsiff Magistrate Anantnag who recorded the whole of the evidence produced in the case both by the prosecution and the defence. The case was ripe for judgment when the trial Magistrate was promoted to the post of an Additional District Magistrate in the same district. The accused made a submission to the Additional District Magistrate that since it was he who had recorded the evidence of the parties and had noted the demeanour of the witnesses, he may transfer the case to his own file and decide it himself.

The accused had further submitted in his application that in case the transfer of the case was not ordered, he would be compelled to request re-summoning of the witnesses under Section 350, Criminal P. C., which would lead to a great deal of waste of time and inconvenience to the parties. The Additional District Magistrate therefore issued a notice to the Government Prosecutor who expressed his agreement with the request of the accused. The Additional District Magistrate thereupon ordered the transfer of the case to his own file. The matter somehow came to the notice of the learned Sessions Judge, Srinagar who as he says in his order dated 29th April, 1957 called for the file while exercising his power of revisional jurisdiction. The learned Sessions Judge has observed in his order of 29-4-1957:

Having regard to the interlocutory order passed by the Magistrate who had originally heard the case dated 24-4-1956 while I think it is not necessary for me to submit the record of the case to the Hon'ble High Court, I think it proper to bring the case to the notice of the District Magistrate Anantnag who is vested with the power of transferring cases to criminal Courts subordinate to him so that he may consider whether he should hear the case himself or allow it to be heard by the Additional District Magistrate Anantnag or the case be heard by any other Magistrate subordinate to him.

2. Now the question is as to whether the learned Sessions Judge could have passed the said order. To facilitate a proper understanding of the position, reference may be made to Sections 435, 436 and 438 of the Criminal P. C. Under Section 435 a Sessions Judge has the power to call for the record of an inferior criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order re-corded or passed by such inferior criminal Court. Under Section 436, Criminal P. C., the Sessions Judge may after having persued the record called under 9. 435, Criminal P. C., direct the District Magistrate by himself or by any of the Magistrate sub-ordinate to him to make further inquiry into any complaint which has been dismissed under Section 203 or Sub-section (3) of Section 204 or into the cause of any -person accused of an offence who has been discharged.

From a perusal of Section 438, Criminal P. C., it becomes obvious that this section gives power to a Sessions Judge to order further inquiry under Certain circumstances given therein. But if after perusal of the record called for under Section 435, Criminal P. C., the Sessions Judge is of the opinion that an order passed by the inferior criminal Court needs correction or setting aside, what is he to do? in that case the Sessions Judge has got to follow the procedure laid down in Section 438, Criminal p. C. According to Section 438, Criminal P C., the Sessions Judge, if after examining the record of any proceedings is of the opinion that an order other than of further inquiry is needed, he must report for orders of the High Court the result of such examination.

Now in the present case if the learned Sessions Judge had come to the conclusion that there was something wrong in the order of the transfer made by the Additional District Magistrate, he should have reported the matter to the High Court for orders. This he has not done. On the contrary he has assumed jurisdiction which is vested in Sum by none of the section referred to above. The act result of the learned Sessions Judge's order is that he has set aside the order of transfer made by the learned Additional District Magistrate. This too the Sessions Judge could not do. What he could have or should have done was to report the matter to the High Court for orders.

The Sessions Judge's order in essence means the transfer of the case from the file of the Additional District Magistrate to that of the District Magistrate. In this State the Sessions Judge has no power of transferring criminal cases, though by a recent amendment in Criminal Procedure Code, Sessions Judges have been empowered to do so in other parts of Indian Union. If the Sessions fudge were of the opinion that it would be conclusive to a fair trial if the case were tried by some other Magistrate, all that he could do was to re-port the matter for orders of the High Court. In these circumstances we set aside the order of the learned Sessions Judge, Kashmir dated 29th April, 1957, and direct that the record of the case be sent back to the Additional District Magistrate Anantrag, for taking proceedings according to law.

Janki Nath Wazir C.J.

3. I agree.

M.A. Shahmiri, J.

4. I agree.

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