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Shadab. Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-30-2010

Judge : Raj Mani Chauhan,J.

Acts : Code of Criminal Procedure (CrPC) - Section 407, Indian Penal Code (IPC) - Sections 307, 506, 504, 120-B.

Appeal No. : U/S 407 CR.P.C. No. - 54 of 2010.

Appellant : Shadab.

Respondent : State of U.P.

Advocate for Pet/Ap. : Narendra Kumar Tripathi, Adv.

Judgement :

1. Learned A.G.A. files counter affidavit, which is taken on record. Sri Siddiqui holding brief of Sri Narendra Kumar Tripathi and learned Additional Government Advocate are present before the Court. The complainant-opposite party no. 2 despite service of notice did not turn up before the court.

2. Heard learned counsel for the petitioner and learned Additional Government Advocate for the State as well as perused the documents available on record. This petitioner under Section 407 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been filed by the accusedpetitioner to transfer the Sessions Trial No. 28 of 2008 (State v. Moin @ Bablu & Other) arising out of case Crime No. 656/2009, under Sections 307, 506, 504, 120-B IPC relating to P.S.

Aliganj, District Ambedkar Nagar pending in the Court of learned Additional Sessions Judge/F.T.C. Court No. 2, Ambedkar Nagar to some other District Court.

3. The allegation of the petitioner is that in this case the injured-Akhlaq Ahmad is a practicing advocate in the District Court, Ambedkar Nagar. The complainant-opposite party no. 2 is the nephew of the injured. The District Bar Association, Ambedkar Nagar passed a resolution that no advocate practicing in the District Court, Ambedkar Nagar will defend the case of the accused as the injured of the case is a practicing advocate.

4. The court, thereafter, appointed Sri Prem Chand Srivastava, Advocate as Amicus Curie. He too moved an application before the Trial Court that he does not want to defend the case of the accused on the ground that the injured is practicing advocate. None of the practicing advocates at Ambedkar Nagar District Court is ready to defend the case of the accused while the accused has got fundamental right to engage advocate of his choice to defend his case.

5. In case, the trial is not transferred from Ambedkar Nagar to any other District, the accused will be deprived of the right to defend through counsel of his choice.

6. The submission of learned counsel for the petitioner is that no practicing advocates of Ambedkar Nagar District Court are ready to defend the case of the accused. The Court had appointed Sri Prem Chand Srivastava, Advocate as Amicus Curie to defend the accused but he had refused to defend the case of the accused on the ground that the injured is a practicing advocate in the District Court, Ambedkar Nagar. The accused has got the right to defend his case through lawyer of his choice. None of the lawyers of Ambekdr Nagar District Court is ready to defend the case of the accused, therefore, the trial pending against the accused-petitioner in the Court of learned Additional Sessions Judge/F.T.C. Court No. 2, Ambedkar Nagar be transferred to any other District Court.

7. Learned A.G.A. opposed the petition. I have considered the submissions advanced by learned counsel for the petitioner and learned Additional Government Advocate as well as gone through the documents available on record. The notice was issued to the complainant to file counter affidavit, he despite service of the

notice did not turn up before the Court. The ground set forth by the petitioner is supported by affidavit and other documentary evidence which is unrequited. The ground set forth by the petitioner appears to be sufficient.

8. The petition is, therefore, allowed. The Sessions Trial No. 28 of 2008 (State v. Moin @ Bablu & Other) arising out of case Crime No. 656/2009, under Sections 307, 506, 504, 120-B IPC relating to P.S. Aliganj, District Ambedkar Nagar pending in the Court of learned Additional Sessions Judge/F.T.C. Court No. 2, Ambedkar Nagar is transferred to the Court of Sessions Judge, Faizabad who may try the case himself or transfer the same to any Additional Sessions Judge for trial.

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