

## Chhotey And Anr. vs Ram Singh And Ors. on 11 November, 1953

**Equivalent citations: 1954CRILJ1168, AIR 1954 ALLAHABAD 537**

ORDER

Harish Chandra, J.

1. This is a reference by the Additional District Magistrate of Meerut arising out of a case under Section 145 of the Code of Criminal Procedure. The case was proceeding in the court of a Sub-divisional Magistrate. While the case was proceeding, an application was made to the Additional District Magistrate for the transfer of the case from that court to the court of some other Magistrate. This application was made on the 29th May, 1951, and the Additional District Magistrate passed an order summoning the record of the case from the court of the Sub-divisional Magistrate. This was duly communicated to the Sub-divisional Magistrate on the 31st May, 1951 when he passed an order directing that the record be submitted to the Additional District Magistrate. But the record was not actually sent to that court on that date and on the following day the learned Sub-divisional Magistrate decided the case.

2. The view of the learned Additional District Magistrate is that after the order summoning the record had been communicated to the learned Sub-divisional Magistrate on a transfer application that had been made before him, the Sub-divisional Magistrate had no jurisdiction to proceed with the case. A case of the Bombay High Court --- 'In re Maruti Vithu AIR 1925 Bom 247 (1) (A)' has been relied on by the learned Additional District Magistrate, This case supports the view taken by the Additional District Magistrate. Their Lordships observe as follows:

When the order was made calling for the record and proceedings with a view to withdrawing the case and transferring to another Magistrate, the case was no longer on the file of the Magistrate and his jurisdiction was suspended.

With all respect, I do not agree that whenever an order is passed sending for the record of a case it should be assumed that the Magistrate in whose court the case is proceeding is no longer seized of the case.

3. In another case decided by the Patna High Court - 'Ishar Singh v. Dusadh' AIR 1937 Pat 131 (B) it was pointed out that an order sending for the record in a case for the transfer of the case by a superior court implied that the proceedings in the lower court were to be stayed and that if the lower court continued the proceedings, they were without jurisdiction. In my view it would be difficult to assume that whenever an order has been passed summoning the record in a case in which an application is made for the transfer of that case, it should be deemed to be an order staying the proceedings, for the superior court when it thinks that the proceedings should be stayed, passes a specific order to that effect and when it thinks that the proceedings should not be stayed, it does not

pass such an order. In the present case, however, the proceeding in the court of the Sub-divisional Magistrate had come to an end and all that remained to be done was to deliver the final order. Whether the order passed by the Additional District Magistrate summoning the record also implied an order directing the stay of proceedings or not, undoubtedly it implied that the case should not be finished before the transfer application had been decided by the Additional District Magistrate, For by deciding the case finally, the Sub-divisional Magistrate rendered the proceedings that were going on in the court of the Additional District Magistrate wholly infructuous. In the circumstances my view is that this order of the learned Additional District Magistrate summoning the record contained an implicit direction that the final orders in the case should not be passed pending disposal of the transfer application.

4. In this view of the matter, the order pass-ed by the Sub-divisional Magistrate on the 1st of June, 1951, was without jurisdiction and I, accordingly, set it aside. The case will now proceed in the court of some Magistrate other than Shri A. Pandey by whom it had been previously decided, to whom it may be made over by the learned Additional District Magistrate of Meerut.

5. Let the record be returned.