

Hola Ram vs State on 30 March, 1950

Equivalent citations: AIR1950ALL485, AIR 1950 ALLAHABAD 485

ORDER

Wanchoo, J.

1. This is an application by Hola Ram for the transfer of a criminal case pending before a Special Magistrate in Lucknow to the Court of some Magistrate in Allahabad on the ground of convenience to the parties.

2. Two preliminary questions, however, arise in this case. The first is whether the present application for transfer should have been made to the Bench of this Court sitting at Lucknow. The second is whether it is open to the Bench at Lucknow to transfer the case from Lucknow to Allahabad. Article 14 of the United Provinces High Courts (Amalgamation) Order, 1948, provides as follows:

"The new High Court, and the Judges and division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint :

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs, such judges of the new High Court, not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court:

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad."

Section 526, Criminal P. C., empowers the High Court to transfer any criminal case from one criminal Court subordinate to its authority to any other criminal Court of equal or superior jurisdiction also subordinate to its authority.

3. It is clear from Article 14 of the Amalgamation Order that the Judges of this Court may sit either at Allahabad or at Lucknow on the ground of convenience and whether they sit at Allahabad or at Lucknow, all criminal Courts whether they are in areas in Avadh or in the remaining areas of the State are subordinate to them. It is, therefore, open to the Judges of this Court whether they sit at Allahabad or at Lucknow to order the transfer of a case from any subordinate Court in any part of the State to any other subordinate Court in any other part of the State. So far, therefore, as the

second point is concerned, the fact that the Judges of this Court sit partly in Allahabad and partly in Lucknow does not affect the jurisdiction of the Judges to transfer a case pending in any part of the State to any other part of the State, provided the matter comes up before them in due course.

4. Then I come' to the question whether the present application should have been made before the Bench at Lucknow. Under the proviso to Article 14 of the Amalgamation Order, the Chief Justice has nominated certain Judges of this Court to sit at Lucknow in order to exercise, in respect of cases arising in certain areas in Avadh which include the district of Lucknow, the jurisdiction and power for the time being vested in the new High Court. The present application is for transfer of a case pending before a subordinate Court in Lucknow. It is, therefore, a case arising in such an area in Avadh the jurisdiction and power for dealing with which is in the Bench of this Court sitting at Lucknow, The mere fact that the applicant wants the transfer of the case to Allahabad makes no difference, as the present transfer application is a case arising in such an area in Avadh the jurisdiction of which is for the time being vested in the Bench at Lucknow. I am, therefore, of opinion that the present application should be filed before the Bench of this Court at Lucknow and it will be in the power of that Bench, if it so decides, to transfer the case from a subordinate Court in Lucknow to a subordinate Court in Allahabad.

6. I, therefore, dismiss this application on this ground alone and not on the merits and leave it open to the applicant to apply to the Bench of this Court at Lucknow.