

## **Brahmdutt vs State on 21 February, 1950**

**Equivalent citations: AIR1950ALL483, AIR 1950 ALLAHABAD 483, 52 BOM LR 38**

**Author: Raghubar Dayal**

**Bench: Raghubar Dayal**

ORDER

Raghubar Dayal, J.

1. This is an application in revision against the order of the Sessions Judge of Mirzapur confirming the order of the District Magistrate, Mirzapur, transferring the case against Lalta Prasad and Banarsi Das from the Court of the City Magistrate to the Court of Shri S. L. Nigam, Judicial Magistrate, and transferring the case against Brahmdutt, applicant, to that Court in the following circumstances.

2. A case Under Section 409, Penal Code, was proceeding against Lalta Prasad and Banarsi Das in the Court of the City Magistrate. The applicant Brahmdutt was a witness in that case. After he had been examined, the Prosecuting Inspector moved the Court to proceed against Brahmdutt also in that case. This prayer was rejected.

3. Subsequently on the application of Lalta Prasad and Banarsi Das that case was transferred by the District Magistrate on 1st August 1949 to the Court of Shri S. L. Nigam. The reasons, which influenced the District Magistrate to transfer the case, were that the police was going to submit a charge sheet against Brahmdutt as well, and that if the case be transferred to another Court that Court would proceed de novo against all the accused, namely, Lalta Prasad, Banarsi Das and Brahmdutt.

4. Subsequently a charge sheet against Brahmdutt was filed. It was also transferred to that Court by the District Magistrate on 5th August 1949.

5. I do not see any reason why Brahmdutta has a grievance against the transfer of the case of Lalta Prasad and Banarsi Das. Those accused wanted the transfer of their case. The transfer was not objected to on behalf of the State. A third person has no right to object to the transfer of a case. He may, in certain circumstances, be considered to be an interested party. Even then his objection to the transfer of the case will not get precedence over the desires of the two main parties to the case, namely the accused and the State. The interest which the applicant had at the time when the District Magistrate ordered the transfer of the case on 1st August could not be more than the interest of an

ordinary witness. He was not even the complainant. Of course, any person can bring facts to the notice of this Court for it to take action in revision or for transferring any case, but that does not mean that every person has any right to claim transfer of a case or to object to the transfer of a case. I need not say anything about the merits of the order of the District Magistrate transferring the case from the Court of the City Magistrate to the Court of the Judicial Magistrate.

6. The District Magistrate transferred the case against Brahmdutt to the same Court. The main contention in this connection is that the case against Brahmdutt cannot proceed after the City Magistrate had rejected the prayer of the Prosecuting Inspector to proceed against Brahmdutt in the same case against Lalta Prasad and Banarsi Das. It is contended that the order of the City Magistrate amounted to a discharge in view of the provisions of Section 351, Criminal P. C. I do not agree. Section 351, Criminal P. C., is just an enabling section authorising the criminal Court to detain any person who attends the Court for the purposes of an enquiry into or trial of any offence. The City Magistrate's refusing to take action, when moved by the Prosecuting Inspector to take action Under Section 351, Criminal P. C., against Brahmdutt, does not, to my mind, amount to a discharge of Brahmdutt, who was never summoned to appear as an accused, or was treated as an accused. It does not appear that he was even present on 15th July 1949 when the Prosecuting Inspector applied to summon him as an accused.

7. I am referred to the case of *Ajab Lal v. Emperor*, 32 Cal 783 : (2 Cr. L. J. 524), in support of the contention that the order of the City Magistrate refusing to take action against the applicant on the application of the Prosecuting Inspector amounted to an order of discharge. In that case a Magistrate to whom a case had been transferred for trial convicted the accused sent up. He was then moved to summon certain other persons for trial for the same offence. He refused to issue process against those persons. Subsequently the joint Magistrate, on the representation of the District Superintendent of Police, ordered that summonses be issued to those persons. Henderson J., on a consideration of the cases reported in *Golapde v. Queen-Empress*, 27 Cal. 979:(4 C.W.N. 827), *Moul Singh v. Mahabir Singh*, 4 C. W. N. 242 and *Radhabullav Roy v. Benode Behari*, 30 Cal. 449, expressed the opinion that the order passed by the Magistrate refusing to issue process against those persons amounted to a discharge, and that the District Magistrate had no power to make any order save an order for further inquiry Under Section 437, Criminal P. C., until he had withdrawn the case which had been made over from the file of the Magistrate to his own file. He accordingly set aside the order for the issue of summonses to those persons. Geidt J. agreed in the order in view of his opinion that the joint Magistrate had no jurisdiction to pass that order after the case had been transferred to the other Magistrate. It cannot, therefore, be said that this case holds that a person against whom a party wants a process to issue is discharged if the Court refuses to issue the process. The cases referred to by Henderson J. do not really hold so. I need not discuss the point and will simply refer to the later case of *Panchu Ghosh v. Khosdel Sarkar*, 12 C. W. N. 68, where an accused for whose arrest a warrant had been issued and who had surrendered in Court was not held to have been discharged by an order of the Court saying that the warrant and other process be withdrawn, it being considered not necessary that the accused be proceeded against. It was observed at p. page 70 :

"As the order of the Deputy Magistrate was not either Under Section 203 of the Code of dismissal of the complaint or an order of discharge of the accused, the District Magistrate had no jurisdiction Under Section 437 of the Code to make an order for retrial."

I really fail to see how an accused can be discharged when he is not even before the Court.

8. Lastly! I may make it clear that the expressions in the District Magistrate's order of 1st August 1949 with respect to the case of Brahmdutt to be tried along with the accused Lalta Prasad and Banarsi Das do not amount to orders and are not binding on the Judicial Magistrate, who can exercise his own discretion in the matter of conducting the trial in the two cases,

9. I accordingly reject this application.