

Abdul Aziz vs State on 20 April, 1950

Equivalent citations: AIR1950ALL611, AIR 1950 ALLAHABAD 611

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. This is an application by Abdul Aziz praying for the transfer of a case under Section 323, Penal Code, pending against him in the Court of Bench Magistrates, Hapur, to some other Court having jurisdiction to try the same or for the passing of such order as may be considered expedient. The application is described as one under Section 526, Criminal P. C., read with Article 227, Constitution of India.

2. Under Section 52, U. P. Panchayat Raj Act XXVI [26] of 1947, an offence under Section 323, Penal Code, is cognizable by a Panchayati Adalat within whose jurisdiction it is committed. Section 56 of the Act is :

"If at any stage of the proceedings in a criminal case pending before a Magistrate it appears that the case is triable by a Panchayati Adalat, he shall at once transfer that case to the Panchayati Adalat which shall try the case de novo."

It is, therefore, clear that the Magistrates concerned should have transferred this case under Section 56 of the aforesaid Act to the Panchayati Adalat having jurisdiction over it. They had no choice to go on with the trial of this case.

3. The applications which were presented to the Bench Magistrates for the transfer of the case to the Panchayati Adalat were rejected. The orders are not before me, but from the explanation of the Bench Magistrates it appears that those prayers were refused because, when the Bench Magistrates sent other cases to the Sub-Divisional Magistrate for transferring them to the Panchayati Adalat, they were received back by the Bench Magistrates for disposal. The Bench Magistrates appear to have concluded from this that they were competent to try those cases and that the Sub-Divisional Magistrate had returned them for trial. I do not know what reasons, if any, the Sub-Divisional Magistrate had given in those orders, but it appears to me that he did not pass orders transferring them to the Panchayati Adalat because he had no power to transfer them. The power of transferring was to be exercised by the Magistrate before whom the case is pending. As the Sub-Divisional Magistrate appears to have returned the cases to the Bench Magistrates for disposal according to

law, it meant that the Bench Magistrates themselves, could transfer the cases to the Panchayati Adalat.

4. This Court cannot pass orders transferring this case because Section 526, Criminal P. C., does not provide for the same. Sub-Section (1) of Article 227, Constitution of India provides that every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. In view of the power of superintendence this Court can give directions to the Bench Magistrates to act in a certain manner justified by law.

5. I, therefore, direct that the Bench Magistrates will transfer this case under Section 323, Penal Code, to the Panchayati Adalat having jurisdiction over it.