

# **Girishnarain Awasthy vs The State Through V.N. Misra on 31 May, 1950**

**Equivalent citations: AIR1951ALL355, AIR 1951 ALLAHABAD 355**

**Author: V. Bhargava**

**Bench: V. Bhargava**

ORDER

V. Bhargava, J.

1. These are two transfer applications by the same person, Girish Narain Avasthi, against whom two cases under Section 500, Penal Code, are pending in the Court of Shri R. P. Singh, Magistrate, 1st Class, Etawah. One complaint was brought by Shri V. N. Misra, Muncif of Etawah and criminal Miscellaneous case No. 480 of 1950 relates to that case. The other complaint was brought by Shri Kedar Nath Shukla, Secretary, District Board of Etawah and criminal Miscellaneous case No. 481 of 1950 relates to that case. The appellant, in support of his transfer applications, gave a long affidavit mentioning a large number of grounds which, according to him, gave him an apprehension that he would not get justice from the Magistrate before whom the cases are pending. During the course of arguments on these applications, the learned counsel for the applicant took me through the affidavit and, while doing so, mentioned that he would press only some of the grounds mentioned therein and would not press others. I, therefore, proceed to deal with only those which have been pressed by the learned counsel for the applicant.

2. The first ground mentioned was that since the two complainants were important officials of the district and the applicant was the Editor of an important local paper, member of the local District Board and the son of the local Member of the Legislative Assembly, the cases were much talked of and their trial in a calm atmosphere in the District of Etawah in these circumstances was not possible. So far as this ground is concerned, it was taken in exactly the same form in the previous transfer application which was moved by the applicant for the transfer of the case brought by Shri V. N. Misra against him. That previous application for transfer was dismissed by this Court on 19th October 1949. The complaint was brought some time in the month of July 1949. It is obvious that if three months after the complaint was filed it was held that the transfer would not be justified on the ground that there was sensation in the district there can be still less justification for transferring the case on such a ground after the lapse of another 7 or 8 months. If there was a sensation, it must have been more acute soon after the filing of the complaint than it can possibly be at the present time when the case has been pending for such a long time.

3. The second ground urged by the learned counsel for the applicant is that the Magistrate wrongly refused to consolidate the two cases and hold only one trial of the applicant. Under the Code of Criminal Procedure, separate trials are held under the general rule and joint trials have only been permitted under certain circumstances. There is no mandatory provision of the law laying down that, where separate trials can be held under the general rule, the Court must hold a joint trial, if the case does fall within one of the provisions that permit the holding of a joint trial. The explanation of the Magistrate also shows that the request for a joint trial was made at a stage when the two cases were pending in two different Courts and it does not appear that any request was made before this trying Magistrate for a joint trial after both the cases had come on his file. In any case, the proceedings taken by the Magistrate, treating these two cases as separate cases, cannot be said to be against any provision of law.

4. The third ground mentioned is that both the complainants, their counsel, most of the prosecution witnesses in the case of Shri V. N. Misra and two of the prosecution witnesses in the case of Shri Kedar Nath Shukla are members of the same club, while the learned trying Magistrate himself is its Secretary. It is alleged that on this ground the applicant apprehends that the Magistrate would not be able to hold a fair and impartial trial. This is again a ground which was considered in almost the same form at the time of the previous transfer application. In the previous transfer application it was alleged by the applicant that Shri V. N. Misra, his prosecution witnesses and the District Magistrate as well as the trying Magistrate were all members of the same local club and often met one another there. These facts were admitted by the Magistrate and were considered by this Court but they were not considered sufficient to justify an order of transfer. The only change that has come into being since that time is that the trying Magistrate has become the Secretary of the Club. I do not see how this circumstance can give rise to an apprehension that there would be no fair trial of the case in the Court of this Magistrate. Mere fellow-membership of the same club and the fact that the trying Magistrate is the Secretary of the Club cannot be held to be circumstances which would indicate or would give a reasonable apprehension that the trying Magistrate would not try the case fairly and impartially.

5. The fourth ground pressed was that when the applicant wanted the case to be adjourned from 1st March to 15th March 1950, his prayer was wrongly refused by the Magistrate and it was later on granted by him on the recommendation of the District Magistrate which was sent when the applicant approached the District Magistrate. In the affidavit it was alleged by the applicant that his counsel, Shri Ladli Lal, had retired from his case and he wanted ample time to engage another counsel. The explanation sent by the Magistrate shows that Shri Ladli Lal never appeared as counsel for the applicant at any stage during the proceedings so that there was no question of his retirement from the case. Shri Ladli Lal had not even filed his vakalatnama or memo of appearance on behalf of the applicant. It may be correct that the applicant may have privately arranged with Shri Ladli Lal that the latter will appear for him on 1st March 1950, but if this was so, it was his duty to engage another counsel when Shri Ladli Lal refused to appear for him. The Magistrate actually did grant one day's time to the applicant in order to enable him to engage another counsel. Subsequently, the District Magistrate sent an order to the Magistrate directing him to postpone the case for a longer period. The applicant has wrongly called it a recommendation. The order was passed by the District Magistrate (it is immaterial whether rightly or wrongly) while dealing with a revision application

presented on behalf of the applicant himself. Thus in this conduct of the Magistrate also there is nothing to indicate that he would not try the case impartially.

6. The next ground urged is that the learned Magistrate had failed to grant the request of the applicant to summon the club register from its Secretary on the pretext that its relevancy had to be shown. The Magistrate's explanation shows that when the request was put up before him to summon the club register, he asked the applicant and his counsel to explain how the register was relevant. No explanation to the satisfaction of the Magistrate was given. The Magistrate could have competently rejected the application but he kept the application pending with the object of giving an opportunity to the applicant again at a later stage to show the relevancy. It is unnecessary at this stage to consider whether the order rejecting the application was a correct or an incorrect order. If it had been passed and had been an incorrect order, it would even then have provided no ground for transfer as it would have been a judicial order passed by the Magistrate after hearing the applicant and his counsel and the mere fact that a judicial order happens to be passed against a party cannot be considered to be a ground for transfer. As no order has yet been passed, the applicant) has still an opportunity of showing that he has a right to summon the club register in evidence in this case.

7. The last ground pressed on behalf of the applicant is that generally all cases under the Indian Penal Code are being tried by judicial Magistrates and there is no justification in insisting that the trial of these two cases should take place before an executive Magistrate. This is again a ground that existed at the time of the previous application for transfer though it was not taken at that time. Further, the Government may have made an arrangement of distributing work between the Magistrates calling them judicial and executive Magistrates. There is nothing in law to prevent a case from being tried by one Magistrate or the other. In this case, unless there were other circumstances to show that the trial in the Court of the so-called executive Magistrate would not be fair and impartial, the mere fact that the case could have gone to a judicial Magistrate is no ground for transfer. The application for transfer is dismissed.

8. On behalf of the opposite party, an argument was advanced that this was a fit case where costs should have been awarded to them under Section 626 (6-A), Criminal P. C. I do not think there are any special circumstances in this case which would justify award of costs.