

Lalta Prasad Saxena vs State on 26 September, 1951

Equivalent citations: AIR1952ALL70, AIR 1952 ALLAHABAD 70

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is an application by Lalta Prasad Saxena under Sections 526 and 561-A, Criminal P. C., for either transferring a criminal case against him under Section 161, Penal Code, from the Court of Sri G. S. Miara, Magistrate 1st class, Uttar Pradesh to the Court of some other Magistrate in the district of Farrukhabad or to direct Sri G. S. Misra to hold his Court in the district of Farrukhabad.

2. The affidavit accompanying the application shows that the applicant was employed as booking clerk in charge at Pakhna railway station in the district of Farrukhabad, that he was alleged to have committed an offence under Section 161, Penal Code on 6-7-1950, and that the police of the Special Police Establishment Branch, Lucknow, investigated the offence and submitted a charge-sheet against the applicant on 6-4-1951, in the Court of Sri G. S. Misra. It is alleged in the affidavit that the notification dated 21-1-1950, conferring powers on Sri G. S. Misra of a Magistrate of the first class to try or commit cases, investigated by the Government of India, Special Police Establishment throughout the United Provinces, was wholly illegal and did not confer any jurisdiction on him in the eye of law and that, therefore, Sri G. S. Misra had no jurisdiction to try the applicant's case. It was further alleged that the trial of the case at Lucknow amounts to an harassment of the accused who has to appear at Lucknow on every date fixed for the case, he getting Rs. 80 per month. All the defence witnesses would be from Farrukhabad district and the applicant expects to produce about ten witnesses. It is further alleged that the notification aforesaid is an abuse of the power conferred by the Criminal Procedure Code on the State Government as this Court had been created to afford facility and advantage only to the prosecution apparently because the headquarters of the Special Police Establishment are at Lucknow, disregarding the facility or the convenience of the accused. It is alleged that the convenience of the parties requires that the case be tried in Farrukhabad district.

3. There is no doubt that it would be much more convenient to the accused applicant that the case be tried at Farrukhabad where ordinarily the case would have been tried as the alleged offence under Section 161, I. P. C., took place at a place within Farrukhabad district. The learned counsel for the State has not been able to suggest that trial at Farrukhabad would not be convenient to the accused. Trial there will avoid his visits to Lucknow on the dates fixed for hearing and on some of the dates on which the case might have to be adjourned for any good reason. He will have to incur more

expenses in summoning witnesses to Lucknow from Farrukhabad. Such witnesses may also feel it inconvenient to go to Lucknow. The learned counsel for the State has not been able to suggest any particular reason which makes it very desirable and necessary that the case should be tried at Lucknow. It appears to me that what is alleged in the affidavit filed with this application is a possible reason for the order of the Government that cases, investigated by the Government of India. Special Police Establishment throughout the United Provinces, should be tried by the Special Magistrate, the reason being that this establishment is located at Lucknow and it might have been considered inconvenient for the limited staff to go to or produce evidence at other places. To my mind this possible inconvenience to the investigating staff does not outweigh the inconvenience to which an accused from another district is subject when he has to undertake his defence in another district. Farrukhabad is not very far from Lucknow, but I can imagine an accused of Dehra Dun or Deoria or other places distant from Lucknow being tried at Lucknow in view of this notification.

4. In this connection I may refer to another aspect of the matter and in that connection would simply quote the observations of Madgavkar J. in *Lakshman Chavji v. Emperor*, A.I.R. (18) 1931 Bom. 313:

"Confidence in the Court administering justice on the part of both parties and of the public is also a vital element in the administration of justice, so much so that a reasonable apprehension, tantamount to lack of confidence, has been held by the Courts to render a transfer advisable. A Special Judge or a special venue directed by the Local Government is apt or at least is capable of being used to destroy this confidence, and except where the supreme need of justice is clearly such as to override these considerations, the ordinary course of justice is best left untouched."

With respect I agree with these remarks and in the absence of any suggested considerations on behalf of the State for the necessity of the trial of this case at Lucknow I am of opinion that this consideration would also justify an order transferring the case to the Court at Farrukhabad, i.e., the ordinary place where the case would be tried.

5. As a much wider question about the legality of the notification itself has been raised and argued, I would like to express my opinion on that question as well. Sub-sections (1) and (2) of Section 14, Criminal P. C., are :

"14 (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases, or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the Presidency towns.

(2) Such Magistrates shall be called Special Magistrate, and shall be appointed for such term as the Local Government may by general or special order direct." The contention for the applicant is that the expression "in any local area" in Sub-section (1) contemplates a defined area within a district and cannot include the entire

province or State and that, therefore a Special Magistrate cannot be appointed for the entire State. The expression is certainly wide enough to include the entire State and it has been so held in *Lakshmi Chand v. Emperor*, 24 PUB. Re. 1901 Cr. p. 59 and *Hira Lal v. Emperor*, 19 Cri. L. J. 310 (Lah.). I am, however, of opinion that the Code contemplated the appointment of a Special Magistrate having jurisdiction within the entire district or a certain area within it: This seems to me to be apparent from the various provisions to which reference will be made hereafter. That, however, should not mean that conferring jurisdiction on a person with respect to cases in the entire State is outside the purview of 3. 14. It is possible that the same person may have conferred on him magisterial powers with respect to cases arising within an area of several districts as well, but in that case he will combine in himself the offices of a Special Magistrate in each district, though as a Special Magistrate for each district he will have a distinct personality I am, therefore, of opinion that the Government can confer magisterial powers on a person in the entire area of the State, but the Magistrate would be considered to be a distinct Special Magistrate for each district.

6. Section 7 provides for the existence of sessions divisions and districts in a province. A sessions division must consist of one or more districts. Section 8 provides for the division of a district into sub divisions. Section 9 provides for the establishment of a Court of Session for every sessions division and for the appointment of a Judge of such Court. Sub-section (2) of Section 9 empowers the State Government, by general or special order in the Official Gazette, to direct at what place or places the Court of Session shall hold its sitting. Sub-section (3) empowers the Provincial Government to appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts. Sub-section (4) provides for appointing a Sessions Judge of one sessions division as an Additional Sessions Judge of another sessions division and also for the Government to direct as to where he was to sit for the disposal of cases in either division. Section 10 deals with the appointment of a District Magistrate in every district and also with the appointment of any Additional District Magistrate who by virtue of Sub-section (3) is to be subordinate to the District Magistrate for the purpose of Sections 192 (1), 407 (2) and 528, Sub-sections (2) and (3). Section 12 deals with the appointment of other Magistrates in any district and empowers the State Government or the District Magistrate, subject to the control of the State Government, to define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code. Sub-section (2) provides that if no such local area be defined such Magistrates will have jurisdiction throughout the district to which they are appointed. Section 13 deals with the appointment of Sub-divisional Magistrates in charge of a sub-division. Section 15 deals with the appointment of Bench Magistrates. It also authorises the State Government to fix the local limits of the jurisdiction of the Bench Magistrates. Section 16 authorises the State Government or the District Magistrate to make rules with respect to several matters including the times and places of sitting of the Benches. Sub-sections (1), (2) and (5) of Section 17, Criminal P. C., are :

"17 (1). All Magistrates appointed under Sections 12, 13 and 14, and all Benches constituted under Section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as

to the distribution of business among such Magistrates and Benches ; and (2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a subdivision shall also be subordinate to the Sub divisional Magistrate, subject, however, to the general control of the District Magistrate.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under Sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided."

7. It should appear that a Special Magistrate appointed under Section 14 is subordinate to the District Magistrate who can give direction about the distribution of work among him and other Magistrates and is also subordinate to the Sub-divisional Magistrate within whose sub-division he exercises jurisdiction. This should mean, to my mind, that when magisterial powers are conferred on a person under Section 14 for cases Within a district he will be subordinate to the various Sub-divisional Magistrates in the district within whose sub divisions he exercises jurisdiction, and that, therefore, each individual Sub-divisional Magistrate will be competent to exercise the various powers which are conferred on a Sub-divisional Magistrate with respect to cases before a Court subordinate to him. Of course, a particular Sub-divisional Magistrate will exercise such powers with respect to the cases which arise in his sub-division and not with respect to such cases pending in the Court of the Special Magistrate which arose within some other sub-division. Similarly, if the local area over which a Special Magistrate appointed under Section 14, exercises jurisdiction extends over several districts he will be subordinate to the District Magistrates of the various districts with respect to the cases arising in their respective districts and also sub- ordinate to the various Sub-divisional Magistrates with respect to the casts arising within their respective sub-divisions and pending before him. This subordination of a Special Magistrate appointed under Section 14 is not dependent on his place of sitting, whether that be a fixed place or not. His subordination is dependent on his exercising magisterial powers within certain sub-divisions and districts. In view of Sub-section (5) such a Special Magistrate is not subordinate to the Sessions Judge except to the extent and in the manner expressly provided in subsequent sections. In whatever circumstances he may be subordinate to the Sessions Judge under subsequent provisions the subordination, to my mind, would be dependent on the same principle, i.e., he will be subordinate to a particular Sessions Judge with respect to the cases of that sessions division and not with respect to the cases of another sessions division if he as a Special Magistrate has jurisdiction over several sessions divisions.

8. Section 177, Criminal P. C., provides that :

"Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed."

It also has reference to the Court and not to the place of sitting of the Court.

9. The various sections dealing with appeals in chap. XXXI Criminal P. C., just mention that certain orders from certain Courts will be appealable to such and such a superior Court and make no reference to the place of sitting of the Court. A superior Court, be it of the District Magistrate or the

Sessions Judge, has also territorial jurisdiction and is competent to hear appeals with respect to cases arising within its territorial jurisdiction. It is not to hear an appeal in a case which related to an offence committed outside its jurisdiction. It was not, therefore, necessary to mention in this chapter that the appeals will go to the Courts of such District Magistrates and Sessions Judges as have jurisdiction. The Code contemplated that trial Courts will have territorial jurisdiction over the cases tried and that appeals from such Courts would go to the District Magistrates and Sessions Judges within whose jurisdiction those Courts exercised jurisdiction and the cases decided by them arose. Exceptional cases can arise when cases are transferred from the Courts having territorial jurisdiction over them to some other Courts by the High Court in the exercise of its powers under Section 526, Criminal P. C. It may be mentioned that Section 526, Sub-section (1) authorises the High Court to order that any offence be inquired into or tried by any Court not empowered under Sections 177 to 184 (both inclusive) but in other respects competent to inquire into or try such offences. It is in view of this particular provision that the High Court can transfer a case to a Court which has no territorial jurisdiction over it. Appeals against original orders in such cases by the Court which had no territorial jurisdiction over them would be entertainable as a special case by the superior Court within whose jurisdiction the trial Court exercises jurisdiction.

10. It was held in *Valia Ambu Poduval v. Emperor*, 30 Mad. 136 that appeals against orders of the first class Magistrate holding his Court at Calicut situate within the local limits of the South Malabar Sessions Court in cases relating to North Malabar will lie to the Court of Session of South Malabar and not to the Court of Session of North Malabar. This decision was arrived at in view of Section 408, Criminal P. C., which simply states that appeals from first class Magistrates would lie to the Court of Session, and Section 435, which dealt with revisions and provided that the Sessions Judge might call for and examine the records of any inferior criminal Court situate within the local limits of his jurisdiction. It was said that the word "situate" meant fixed or located, and when applied to a Court it must be taken to refer to the place where the Court ordinarily sits. I am not inclined to agree with this view. Section 435 is the only section which could have some reference to the location of a criminal Court. Sub-section (1) empowers the High Court or a Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the State Government in this behalf to call for and examine the record of any proceeding before any inferior criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness legality or propriety of any finding, sentence or order recorded or passed, and also provides that "all Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and Section 437.

11. I am of opinion that there should not be any difficulty in interpreting the expression "inferior criminal Court situate within the local limits of its or his jurisdiction" to mean an inferior Court exercising jurisdiction within the local limits of its or his jurisdiction. The Code of Criminal Procedure does not provide for the location of the Courts of Magistrates and does not authorise anyone to order such location. Section 9, Sub-section (2) and Sub-section (4) empower the State Government to direct at what place or places the Court of Session shall hold its sitting or a Sessions Judge who is an Additional Sessions Judge of another sessions division shall sit for the disposal of cases. Section 16 authorises the Government to fix the places of sitting of Bench Magistrates, but Sections 10, 12, 13 and 14, which deal with the appointment of Magistrates and Special Magistrates,

do not authorise the State Government or any one else to fix the place of sitting of those officers, though they do provide for the specification of the area in which those officers will exercise jurisdiction. It should not, however, be taken that Magistrates can hold their Courts anywhere they like. They are to hold their Courts within the area in which they are to exercise jurisdiction. It was observed in the Full Bench case of *Queen-Empress v. Fazl Azim*, 17 ALL. 36, at p. 37 :

"We have no hesitation in saying that the Sessions Judge did commit an irregularity in hearing the appeal outside the local area which constitutes his sessions division, for, it is a general and well known rule that all judicial acts exercised by persons whose judicial authority is limited as to locality should be done within the locality to which such authority is limited. It is an irregularity which should not be allowed to recur."

It follows, therefore, that a Special Magistrate appointed under Section 14 can hold Court anywhere within his jurisdiction. He cannot, however, be ordered by anyone to hold his Court at any particular place, as no such power is given to anyone under Section 14 or any other section of the Code of Criminal Procedure. If the Madras view mentioned above be accepted, it would mean that a Special Magistrate whose jurisdiction extends to several districts or to the entire province will have the freedom to choose his own Court of appeal and revision. I do not think that this could have been contemplated by the Legislature.

12. My view finds support from the case of *Public Prosecutor v. Sadananda Patnaik*, 13 Cr. L. J. 850 (Mad.). The old Ganjam Collectorate was divided into an agency district and a non-agency district and the agency district was also a sessions division, the Sessions Judge of which was the agent himself. The non-agency district was quite distinct from the agency district though the same person was the Sub-divisional Magistrate of both. Similarly, the Gumsoor sub-division consisted of a part of the non-agency district and of a part of the agency district and the same first class Magistrate had jurisdiction in both. It was held that the Magistrates of the agency district were not as such in any way subordinate to the sessions Court of the non-agency sessions division of Ganjam and that the mere fact that the same person was a first class sub-divisional Magistrate in both districts did not make him subordinate to the Sessions Court of the Ganjam sessions division in regard to his jurisdiction in the agency district. It was, therefore, held that the Sessions Judge of the non-agency district had no jurisdiction to hear the appeal, which should have been made not to him but to the agent who was the Sessions Judge of the agency district. The earlier Madras case reported in 30 Mad. 186 was distinguished in this case on the ground that there one district consisted of two sessions divisions. With respect, I am not able to see the distinction but it is clear from this later case of the Madras High Court that if a Magistrate has jurisdiction over two areas, one of which is within the jurisdiction of one Sessions Court and the other within the jurisdiction of another Sessions Court, his orders will be appealable to that Sessions Judge who has territorial jurisdiction over that particular case. The appellate forum was not held to be on the basis of the location of the Magistrate's Court.

13. Considering the question in its various aspects as discussed above, I am of the opinion that there is nothing illegal in the Governor's conferring upon Sri Girja Shanker Misra powers of a Magistrate

of the first class to try or commit cases investigated by the Government of India Special Police Establishment throughout the entire United Provinces for so long as he holds the office of Special Magistrate.

14. In view of the above, I am of opinion that it is desirable on the ground of convenience that the case pending against Lalta Prasad Saxena, the applicant, be transferred from the Court of Sri Girja Shanker Mtsra, Magistrate first class, to the Court of the District Magistrate, Farrukhabad.

15. I, therefore, order that this case be transferred to the Court of the District Magistrate, Farrukhabad, with the direction that he can transfer it for trial to any other competent Magistrate.