

Chiranji Lal vs The State Through Ors. on 4 August, 1955

Equivalent citations: AIR1955ALL701, AIR 1955 ALLAHABAD 701

ORDER

James, J.

1. This transfer application raises an important question of principle should a senior advocate be debarred from appearing before a Court merely because he has under training a relative of the presiding officer of that Court?

2. The facts are briefly these. One Chiranji Lal filed a complaint against four persons for an offence under Section 394 read with Section 397, I. P. C. an offence exclusively triable by the Court of Session before the Sub-Divisional Magistrate of Amroha, who transferred it for disposal to Sahu Hari Krishna, Special Magistrate first class of Moradabad. Chiranji Lal's counsel was Mr. R.B. Pandey, a leading criminal lawyer of Moradabad.

During the relevant period he had under training Mr. Jagmohan Krishna, a law graduate, who happens to be the son of Sahu Hari Krishna. The Special Magistrate recorded all the evidence, took the statements of the accused persons, heard the arguments of the parties and fixed a date for pronouncing final orders. But before orders could be pronounced the accused persons applied to the Additional District Magistrate for a transfer of the case from the Court of Sahu Hari Krishna. In their transfer application they took up a number of grounds.

The learned Additional District Magistrate overruled the other grounds as being vague or irrelevant, but he directed a transfer of the case on one ground. This was that Mr. Pandey was training the Special Magistrate's son and this provided a reasonable ground to the accused, persons to apprehend that the Special Magistrate would not decide the case with an unbiased mind. Chiranji Lal has now come up to this Court and challenges the correctness of the Additional District Magistrate's order.

3. There would of course have been no quarrel with the Additional District Magistrate's order had it been based on the ground that the Special Magistrate by his actions had displayed a bias in favour of Mr. Pandey's client or against the accused persons. But the question is whether the mere fact that Mr. Pandey was training the Special Magistrate's son can be deemed to be a reasonable ground for transfer. My answer is emphatically in the negative.

It is necessary to bear in mind that a law graduate who is under training with a senior counsel takes no part whatsoever in the conduct of the case; if he happens to be present at the hearing his sole object is to watch the proceedings and thereby learn legal procedure. There is nothing he can do

which can influence the proceedings in the slightest. Besides, in the case before me it cannot be overlooked that the Special Magistrate was only making an enquiry in an offence exclusively triable by the Court of Session and therefore had no final authority to make any pronouncement on the innocence or guilt of the accused persons.

Moreover, as already mentioned, the transfer application of the accused persons was made at the last possible stage, i.e., when all that remained was the delivery of judgment, and no explanation for this undue delay has been furnished. These grounds are by themselves sufficient to disentitle the accused persons from securing a transfer from the Special Magistrate's Court.

4. But in my opinion the principle underlying the Additional District Magistrate's order is of even greater import. What does the learned Magistrate imply? He implies that if a law graduate seeks legal training and happens to be related to or connected with the presiding officer of a certain Court the senior advocate to whom he attaches himself should never appear before that Court, for the opposite party can always accuse the presiding officer of prejudice against itself.

This is indeed a dangerous principle, and I for one cannot approve it. The Additional District Magistrate does not seem to have realised that a law graduate satisfying the aforementioned conditions would find it almost impossible to persuade a senior or leading counsel to give him training.

5. For the encouragement of presiding officers of subordinate Courts I might add that there have been several similar instances in the High Court, but no one has ever dreamed of suggesting partiality on the part of an Hon'ble Judge merely because some relative of his happened to be receiving training from some leading advocate of the High Court.

6. In view of this discussion I have no hesitation in overruling the Additional District Magistrate. Accordingly I set aside his transfer and direct the re-transfer of the case to Sahu Hari Krishna. He will not take any further evidence but will be entitled to re-hear arguments before pronouncing orders. He must do so as expeditiously as possible, since the case has been pending for a considerable time.