State vs Ram Sia And Ors. on 3 July, 1950

Equivalent citations: AIR1950ALL727, AIR 1950 ALLAHABAD 727

JUDGMENT

Sapru, J.

1. This application, on behalf of the Uttar Pradesh Government is of a rather unusual nature. "The prayer embodied in this application is that this Court may be pleased to transfer Sections 395/397/412, Penal Code case pending in the Court of the learned Scissions Judge of Banda to some other Court of equal status. We have described the application as unusual because it is very rarely, if indeed ever, that applications for transfer of cases from the Court of one Sessions Judge to another are made on behalf of the State to this Court. Sessions Judges occupy a position of distinct importance in our judicial hierarchy. It is after years of service that a judicial officer reaches the position of a Sessions Judge. The Criminal Procedure Code vests Sessions Judges with vast powers. They can pass a sentence of death, subject to confirmation by this Court, Very rightly both this Court and the State repose complete confidence is their ability, integrity and character, A transfer application on behalf of the State stands on a somewhat different footing from that of a private complainant or an accused person. Before a transfer application is presented on behalf of the State, it is not unreasonable to assume that care is taken on the part of the department responsible for law and order, that there is substance in the allegations on which the transfer application is bared. What may disturb the equanimity of mind of an ordinary villager is not likely to disturb the trained mind of men who have to deal with State matters. The State is represented in all trials by experienced counsel in all the districts in this province and it strikes us that they bring to bear upon their work an intelligent mind. The question, therefore, which we have to ask in this case is whether a trained mind could reasonably entertain an apprehension that the party it is representing is not likely to have a fair trial before the learned Sessions Judge. With these observations of a general character, we propose to deal with the specific allegations seriatim which have been made against the learned Sessions Judge in this cast.

2. It appears that a dacoity case in which 15 accused persons were involved was fixed for hearing in the Court of the learned Sessions Judge on 29th November 1949. On that date only two formal witnesses, i.e., one Badri and another Shri N.K. Roy, Judicial Magistrate, first class, were examined. Badri wag a recovery wifcnes.1 and so far as Shri N.K. Roy was concerned, he was the Magistrate who had conducted the identification proceedings. The first grievance against the learned Sessions Judge is that, during the course of the recording of the statements of these witnesses, the remark was made by him more than once that there was nothing in the case. In his explanation the learned Sessions Judge has categorically denied that he ever made that remark. The affidavit has been filed in this case by the station officer police station Naraini who had investigated the case. We do not know how the station officer came to be present in Court. According to the affidavit, the contents of paras, 1 to 6 and 13 are true to his personal knowledge. There is no counter-affidavit on behalf of the

State to challenge the version of the learned Sessions Judge and, in these circumstances, we are bound to accept the version that the learned Sessions Judge has given as correct.

3. The second grievance against the learned Sessions Judge is that during the statement of Shri N.K. Roy, Judicial Magistrate, first class, the learned Sessions Judge made the observation that the second identification has got no legal value and was useless. It is urged that by this remark be expressed a definite opinion about the identification evidence upon which the prosecution was relying. The learned Sessions Judge denies having made any such observation. His explanation is that during the course of the examination of the Magistrate who had conducted the identification proceedings it appeared to him in the case before him that the identification proceedings of some of the accused by the same witnesses were held twice. He further states in his explanation that in the first parade no accused could be identified and in the second parade which was held after some time by another Magistrate the same witnesses identified the accused persons. Naturally it was pointed out by one of the counsel for the accused that any identification in the circumstances would be of little or no value. The learned Sessions Judge asked the counsel who was appearing in the case to hunt out authorities on the point and observed that the point would be discussed at length at the time of argument. We see nothing wrong in the line that the learned Sessions Judge adopted. It would certainly have been improper for the learned Sessions Judge to have expressed any definite or final opinion on the identification proceedings, but we do not find on the facts before us that he, in fact, did so.

4. The third grievance against the learned Sessions Judge is that he asked the defence Counsel whether they had ever seen or heard of a second identification parade of the same accused in the same case. The allegation in the affidavit is that the question was put in a tone which unmistakably indicated that the learned Sessions Judge had already made up his mind that the second identification proceedings were null and void and illegal. The learned Sessions Judge denies that he ever made any such observation. We accept the version of the learned Sessions Judge as correct.

5. The fourth grievance against the learned Sessions Judge is that the attitude of the learned Sessions Judge during the examination of Shri N.K. Roy was not correct and proper. It is alleged that the deposition of this witness was not recorded in the manner in which it should have been recorded and that the defence counsel was, in fact, allowed to dictate the statement in his own words. It is also alleged that there was objection to this procedure on the part of the witness but no heed was paid to the objection. It is further alleged that thereafter the dictation of the learned defence counsel was penned through and the actual statement of the witness taken down. This is a very serious allegation to make against any Court and, if true, would constitute a good ground for transfer. The learned Sessions Judge has categorically denied that the statement of the Magistrate was not recorded in the manner deposed to by him. He has also denied in no unmistakable language that the defence counsel was allowed to dictate the statement in his own words. He has given an explanation of the two cuttings in the English memorandum and one in the Hindi record which we find reasonable. The result is that this allegation against the learned Sessions Judge has no force.

6. We come now to the fifth grievance which is to be found in para. 7 (ii) of the affidavit. The allegation ia that the learned Sessions Judge was intent on being obnoxious to Shri N.K. Roy. He

submitted him to ridicule in open Court. It is alleged that when Shri Roy stated that the complexion of one of the accused was gahra gandumi, the learned Sessions Judge compelled the witness to go out of the court room in the verandah to examine the complexion of the accused and thereafter to give his statement. The version of the learned Sessions Judge is that the witness was asked to go out of the court room in the verandah to see the complexion of a particular accused as that accused in his opinion had a remarkably fair complexion for a villager. The point that the defence was making out was that it was possible, because of his complexion for the accused to be singled out in the identification parade unless precautions were taken to mix up persons of similar complexions is the parade. It was urged by the defence that no such precautions had been taken by the learned Magistrate who was in the witness box. In these circumstances, it became necessary for the learned Sessions Judge to draw the attention of the Magistrate witness to the complexion of the accused. Apparently, the room in which the Magistrate was being examined was a dark one. In order to give the witness an opportunity of giving a correct description of the accused the learned Sessions Judge asked him to go out of the court room in the verandah and see his face in clear light there. It may be that the learned Sessions Judge would have been better advised to take down the statement of Shri Roy as it was without asking him to go out of the court room in the verandah, but we are unable to see in this act of the learned Sessions Judge any prejudice or bias or animosity against the learned Magistrate or the prosecution.

7. The sixth grievance against the learned Sessions Judge is that he compelled the Magistrate witness to measure with pins the distances and the size of the marks on the face of the accused and that he made him, despite his protests, hold the nose of the accused and measured the distance of the marks from the nose. The learned Sessions Judge states in his explanation that it is a fact that the witness was allowed to measure with pins the size of the marks on the face of the accused, but this he explains was necessitated by the conduct of the witness. According to the learned Sessions Judge, Badri accused had two marks on his face. In the identification memorandum prepared by the witness there was no note about these marks. The allegation of the defence was that no precautions had been taken in respect of these marks. When the attention of the witness was drawn to these marks by defence counsel, the witness tried to explain them away by saying that the marks were insignificant. Thereafter the learned Sessions Judge was requested by the defence counsel to note the size of the marks as the witness was not prepared to agree to the size proposed by the defence. In these circumstances, the learned Sessions Judge came to the conclusion that there was no alternative before him but to ask the witness to measure the marks with pins and give their exact dimensions. We have no hesitation in accepting the version of the learned Sessions Judge as correct. We are certain that by doing all this it was not the intention of the learned Sessions Judge to humiliate the Magistrate witness.

8. The seventh grievance made against the learned Sessions Judge is that he made sarcastic allusions and references to the identification parade held by learned Magistrate and that he made it quite obvious by the nature of his questions and the manner in which they were put that he had already decided that the identification proceedings were of a farcical character. The learned Sessions Judge categorically denies that at any time during the examination of the Magistrate he made any sarcastic allusions or references to the identification parade or expressed any opinion about the value of the identification parade. We see no reason to disbelieve the learned Sessions Judge on this

point.

9. In Para. 11 of the affidavit the allegation is made that it was only alter repeated protests by the Magistrate that the record was correctly written. The learned Sessions Judge denies that there is any foundation for this allegation. We have noticed his explanation in regard to the manner in which the record was prepared in considering the allegations made against him in Para. 7 (i) of the affidavit filed on behalf of the prosecution.

10. We have dealt in detail with the various allegations which have been made in the affidavit filed on behalf of the prosecution. We are bound to say that we do not think it right that the State, when it seeks transfer of a case from the Court of one Sessions Judge to that of an other Sessions Judge, should utilise the services of a Police Officer for purposes of swearing affidavits. Such a procedure is calculated to affect the prestige as also the independence of the judiciary. The affidavit in this case should have been sworn to by some one who was not a Police Officer.

11. We come now to a portion of the explanation of the learned Sessions Judge which to say very frankly, has surprised us. In the concluding part of his explanation the learned Sessions Judge says :

> "In the end it may be pointed out that some senior-most members of the local Bar, including the President, Shree Makund Lat, and the Secretary Shri Bhupendra Nigam were present in Court at the time of hearing and bad watched the proceedings. They all expressed their surprise at the attitude of the Magistrate witness."

12. For any counsel who is not directly interested in the case as counsel for one of the parties to make any observation, favourable or unfavourable, against a witness in Court is in our opinion a highly improper act. It is the Court and Court alone which is in control of the proceedings of the Court. It is not right for a Judge to encourage counsel to make any observations in his Court about witnesses who happened to be appearing before him. The decision that a Judge has to give is a personal decision and in coming to a conclusion in regard to a case it is not open to him to consult, in any shape or form, any person whatsoever. We think that it was not proper for the learned Sessions Judge to have allowed the president and the secretary of the Local Bar to make any remarks about the nature of the evidence or the Character or the attitude of the Magistrate witness. We regret that this aspect of the matter never occurred to the learned Sessions Judge. This, however, is not one of the matters of which a grievance has been made by the State. We have given anxious thought to the question whether, having regard to the fact that the learned Sessions Judge did not observe a proper etiquette in regard to this mutter, we should transfer the case to some other Sessions Judge. We have come to the conclusion that regrettable as this lapse--perhaps through inadvertence--on the part of the learned Sessions Judge is, it is not of such a character as to create a reasonable apprehension in the mind of the State which has advisers of a sufficiently high intellectual calibre that it will not have a fair and impartial justice before the learned Sessions Judge. We are not on this ground, therefore, to transfer this case.

13. Before we part with the case, we should like to mane it clear that this Court is, generally speaking, averse to entertaining applications for transfer of cases by the State from the Courts of one

Sessions Judge to another. We have in the opening part of our judgment given at some length the reasons why we think that this practice should be discouraged

14. For the reasons given above, this transfer application on behalf of the State is rejected.