

## Mt. Wahidan vs Rex on 3 April, 1950

**Equivalent citations: AIR1950ALL482, AIR 1950 ALLAHABAD 482**

### JUDGMENT

Harish Chandra, J.

1. According to the finding of the Court below the offences Under Section 494 and Section 494 read with Section 109, Penal Code, of which the applicants have been convicted were committed in Hardoi district although the trial took place in the Court of a Magistrate at Shahjahanpur. At the time that the trial took place Shahjahanpur was under the jurisdiction of the High Court at Allahabad while Hardoi was within the jurisdiction of the Chief Court of Oudh, The learned Sessions Judge held that in view of Section 531, Criminal P. C., the applicants not having been prejudiced by the trial having taken place in a wrong district their convictions and the sentences passed upon them ought not to be set aside on that ground. The contention of learned counsel for the applicants is that Section 531, Criminal P. C., does not apply to a case in which the trial took place in a Court which had no territorial jurisdiction at all for the reason that the offence was committed outside the limits of the High Court to which such Court was subordinate. Section 531, Criminal P. C., runs as follows :

"No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

2. Learned counsel for the applicants has not been able to cite any authority in support of his contention. He, however, refers to the case of Mt. Bhagwatia v. Emperor, A. I. R. (12) 1925 Pat. 187 : (26 Cr. L. J. 49). In that case the offence had taken place outside the Province of Bihar and the Magistrate at Buxar had committed the accused persons for trial to the Court of Session at Arrah. The case was heard by a Division Bench and Bucknill J. in the course of his judgment observes:

"It is not, however, at all clear that the provisions of this section contemplate a case in which there has been an order by a Court which had no territorial jurisdiction at all; such as in a case in which jurisdiction could only properly have been exercised by some Court outside the territorial limits of the jurisdiction of a Provincial High Court."

After this, however, he goes on to say : "There is, however, nothing in the section itself which limits in any way its operation" and the question was accordingly not decided by him.

3. It will, however, be observed that the case before the Patna High Court was not strictly covered by the provisions of Section 531, Criminal P. C. The High Court quashed the commitment order so far

as it related to the accused persons whose offences appeared to have been committed outside the Province on the ground that the Sessions Court to which they had been committed for trial had no jurisdiction to try them. There is, however, a series of cases in which the interpretation to be put upon the term "local area" as used in Section 531, Criminal P. C., has been considered. In the Nagpur-case of Dewan Singh Maftoon v. Emperor, 161 I. C. 635: (A.I.R. (23) 1936 Nag. 55: 37 Cr. L. J. 474), a Division Bench of the Nagpur Judicial Commissioner's Court expressed the view that the expression "local area" as used in Section 531, Criminal P. C., is not confined to a Province but includes all local areas governed by the Code of Criminal Procedure which extended to the whole of British India as it then was. The decision was based on a number of previous decisions referred to in that judgment. A similar interpretation was put upon the term "local area" by the Rangoon High Court in the case of Ngwe Yon v. Emperor, A. I. R. (18) 1931 Rang. 169: (32 Cr. L. J. 939). The Calcutta High Court in the case of Bichitranund Dass v. Bhughut Porai, 16 Cal. 667 also expressed the same view.

4. The language used in Section 531, Criminal P. C., is also quite clear and there is nothing in it to indicate that the term "local area" is inapplicable to a case in which the offence had been committed within the jurisdiction of another High Court. In my view that Section has been rightly applied by the Court below to the present case. There is nothing to indicate that the applicants had in fact been prejudiced by the trial having taken place in the Shahjahanpur district. No doubt they had raised the question of jurisdiction before the trial Court. But that is of no consequence. The trial Court, however, held that the offence had been committed within its jurisdiction and overruled the applicants' contention.

5. In my view this application ought to be rejected and the convictions of the applicants and the sentences passed upon them maintained.

Sankar Saran, J.

6. I agree, It appears that the provisions of Section 581, Criminal P. C., are slightly different from similar provisions in Section 70, Criminal P. C. of 1872. That section reads as follows:

"No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a wrong district or Sessions division, unless it is proved or appears that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by snob error, in either of which cases a new trial may be ordered."

7. It is clear that the words "local area" were included in Section 531 to clarify any error that might have crept in on account of certain interpretation put upon that clause in Peerun v. Mr. C. D. Field, 21 W. R. Cr. 66, where a Bench of the Calcutta High Court held that "Section 70, Criminal P. C., contemplates such an error only of jurisdiction as may arise from a case being tried in one district or sessions division of a province, where it ought properly to have been tried in the neighbouring district or sessions division, and does not apply to cases in which the right local jurisdiction is a jurisdiction foreign to the Court which has power to order a new trial, and which lies entirely outside

the province to which the local division or district belongs, in which the charge was actually entertained."

Section 531, Criminal P. C., as it now stands, by incorporating the clause "local area," definitely contemplates that the Court shall not set aside any conviction on the ground that it took place in a wrong sessions division, district, sub-division or other local area unless such an error has occasioned failure of justice. This view found favour in *Ali Mohammad Kasim v. Emperor*, A.I.R. (18) 1931 Rang. 164 : (32 Cr. L. J. 1120) and also in *Dewan Singh Maftoon v. Emperor*, A.I.R. (23) 1986 Nag. 55: (37 Cr. L. J. 474). In my judgment the view taken by these Courts is the correct one and I respectfully follow them.

Sankar Saran, J.

8. The application is rejected and the convictions and the sentences passed upon the applicants are maintained. They will surrender to their bail and undergo the unexpired portion of their sentences.