

## Manohar And Ors. vs State on 16 June, 1950

**Equivalent citations: AIR1950ALL735, AIR 1950 ALLAHABAD 735**

ORDER

Sapru, J.

1. This is an application for the transfer of an appeal which the applicant along with 27 others has filed before a learned Sessions Judge against the judgment of a learned Judicial Magistrate convicting the appellants under Sections 147, 323, 325/149, Penal Code, each and sentencing them each to varying terms of imprisonment and fine. The affidavit in this case has been filed by one of the applicants Lallai. According to this affidavit, when the case was called up on 11th February 1950, the learned Sessions Judge told counsel for the appellants even before he had presented the case of the appellants, that the appeal was a very weak one and was liable to be rejected. He went a little further and started dictating judgment without hearing the appellants' counsel. On his doing so, an application was moved by the appellants notifying their intention of applying to this Court under Section 526, Criminal P. C., for the transfer of the appeal and time was granted to the applicant by the learned Judge to obtain an order from this Court.

2. A general allegation, which has been made against the learned Sessions Judge, is that it is his habit to make up his mind, after reading the judgment before he comes to Court, and that he brings to bear upon his work no open mind. No opportunity is given by him to counsel for the appellant to argue the appeals and he starts dictating judgments even while arguments are proceeding. It is alleged that by the time the argument is over the judgment is ready. The learned Sessions Judge has, in his explanation, categorically denied the allegation that he ever told the counsel for the applicants that the appeal was weak or had no merits. He has also denied allegation that it is his habit to read the judgment under appeal before a case is called up for hearing that the conclusions he forms after reading the judgment before the appeal starts become as it were final with him and that thereafter he attaches no weight to the arguments of counsel.

3. The learned Sessions Judge has further denied the allegation that in this particular case he dictated his judgment before arguments were heard. He has forwarded a copy of the order, sheet which bears out his statements. I am satisfied that there is no substance in the allegations of the applicant against the learned Sessions Judge.

4. Had the learned Sessions Judge contented himself only with answering the allegations that had been made against him in the affidavit of counsel for the applicant, I should certainly have rejected this application for transfer. As I have indicated in an order passed this very day in another criminal transfer application in a case pending before this very learned Judge, this Court is most jealous of the position and dignity of Sessions Judges who occupy a high place in our judicial hierarchy. It is most reluctant to entertain applications for transfer of cases or appeals pending before them. Our

learned Judges represent a body of men who are noted for their ability, independence and impartiality. They are a credit to the administration of justice of this State. This Court expects judicial officers in answering allegations' in affidavits made in transfer applications to use Signified language. It is not desirable for any learned judicial officer in his answers to show peevishness. It is regrettable that the learned Sessions Judge has departed from this healthy tradition in answering the affidavit which had been filed in support of the transfer application. The words to which I take exception are as follows:

"I am not So impertinent as to dictate judgments when the counsel for the applicant is engaging the Court with his voice. There is no competition of elocution."

In addressing arguments to Courts, counsel perform duties which they owe to their clients. They are not supposed to indulge in cheap rhetoric and the court room is not a place for platform oratory, but certainly in addressing arguments there is room for the display of forensic eloquence. It is essential for the proper administration of justice that there should be complete co-operation between the Bench and the Bar. The Bar is an essential institution for the administration of justice. Without the help of a strong, able and independent Bar the administration of justice is bound to suffer. I regret, therefore, that the learned Sessions Judge should have used language, perhaps unwittingly, which is calculated to suggest that the Bar utilises the court room only for the purpose of performing feats of eloquence. I wish the learned Judge had not made the remarks of the general character that he has made about the Bar.

5. In his explanation the learned Sessions Judge has made the following remarks about the appellant Lallai, who is responsible for the affidavit in support of the application for transfer.

"I beg to submit that the deponent Lallai, does not appear in my Court and is misguided by some others, whom he does not understand or who do not understand me."

Even when this Court grants a transfer application, no reflection is necessarily cast upon, the judicial officer seized of the case transferred. The accepted principle of the system of jurisprudence that we have to administer is that justice must not only be done but must seem to be done. In logically working out this principle, it sometimes becomes necessary for this Court to order transfer of cases from one subordinate Court to another. In answering affidavits filed by applicants in support of their various transfer applications, Courts ought not to display loss of temper. It is the function as also the privilege of this Court to protect their honour and a bare statement, in a coherent manner, of the truth or otherwise of the allegations against them is what is expected of Courts in answering affidavits. It is not desirable that, in their answers, they should enter into arguments with litigants who may have deposed to facts which they deny to have occurred. It is certainly not proper for them to say that a litigant who swears an affidavit has been misguided by others whom he does not understand or who does not understand the Judge. Such remarks lead to an apprehension in the mind of the applicants concerned that the transfer application made by them has annoyed the judge and that because of it they Will not have a fair and impartial hearing before him. Because of the last paragraph of the learned Judge's explanation I deem it necessary to transfer

this case from the file of the Court of the learned Additional Sessions Judge to the Court of the learned Sessions Judge of Basti.