

## Richhpal And Anr. vs State on 22 July, 1953

**Equivalent citations: AIR1954ALL69, AIR 1954 ALLAHABAD 69**

ORDER

Desai, J.

1. This is an application by two men who are being prosecuted under Section 110, Cr. P. C., in the Court of the Magistrate, for transfer of the case to another Court. Before coming to the main ground I would deal with other grounds which can be dealt with shortly. One allegation made by the applicants is that the station officer always stands by the side of the Assistant Public Prosecutor in the Court during the proceedings and that the witnesses are thus influenced. The learned Magistrate writes in his explanation that the station officer generally comes for the 'pairvi' of the cases, that it is possible that he stood by the side of the Assistant Public Prosecutor, that he himself never permitted him to stand by his side, that the applicants never objected to his standing by his side and that he has been transferred and another station officer has taken charge of the case.

If the station officer stands by the side of the Assistant Public Prosecutor during the trial of the case, the Magistrate cannot be blamed. I do not know what authority a Magistrate has to say to the station officer not to stand by the side of the Assistant Public Prosecutor or to stand in a corner of the Court room. Further, if there was anything objectionable, the applicants should have brought the matter to the notice of the learned Magistrate. But this has never been done. There is no force in this allegation. Another allegation is that on one date the station officer did not come to the court and the learned Magistrate said that the case would not be taken up because he was not present. It is not mentioned on what date this happened with the result that the learned Magistrate could not give a definite reply. He says that he does not remember if such a thing happened at all. No action can be taken on this allegation also.

2. I now come to the most important allegation and it is that when the applicants applied to the learned Magistrate for adjournment of the case under Section 526 (8) of the Code, the learned Magistrate did not stay the proceedings and examined five prosecution witnesses. This is admitted by the learned Magistrate. He writes in his explanation that "no affidavit for staying the proceedings was accompanied with it", that consequently he asked the applicants to bring a stay order from the Court of the District Magistrate and that he examined the five prosecution witnesses so that they may not have to come again at the cost of the State. The explanation given by the learned Magistrate is not sound in law. It was for him to stay further proceedings in the case as soon as the applicants intimated to him their intention to apply for transfer of the case. When the Legislature cast the duty upon him to stay further proceedings, there could not possibly arise any question of the applicants' bringing a stay order from the District Magistrate. Nor was there any question of any affidavit accompanying the application for adjournment.

All that the applicants had to do was to intimate to him their intention to apply for transfer. He had nothing to do with the question of diet money and it was no concern of him that the witnesses may have to be called again. But there is no reason for me to think that the learned Magistrate deliberately or flagrantly refused to stay further proceedings and knowingly disobeyed the provisions of Section 526 (8), Cr. P. C. It has not been alleged that in spite of his attention being drawn to the provisions of Section 526 (8) he refused to stay further proceedings. It may be that he was ignorant of the provisions of Section 526 (8) and did not know that he was bound to stay further proceedings on being informed by an accused of his intention to move for transfer. In these circumstances his disobedience of the mandatory provisions of Section 526 (8) was 'bona fide' and would not furnish a ground for the transfer of the case.

Mr. Darbari referred me to cases in which it was held that if a Magistrate refuses to adjourn a case under Section 526 (8) that alone is a ground for transfer of the case from his Court. One of them is --'Walidad Khan v. Emperor', AIR 1928 All 660 (1) (A). That was a case of "flagrant disobedience of a statutory mandate". There is no reason for me to say that in the present instance the disobedience by the learned Magistrate was of a flagrant nature. The circumstances in which a Magistrate disobeys a statutory provision vary from case to case and it is impossible to lay down one rule to meet all cases of disobedience of statutory provisions. The Legislature has mentioned the grounds in which a case can be transferred from a Court. Disobedience of statutory provisions is not one of those grounds. It is not for a High Court to add to the grounds. Therefore it cannot be laid down as a rule that a case must be transferred if a statutory provision is disobeyed by the Magistrate.

The remedy of the aggrieved party against the disobedience is an appeal or revision, if at all. If the disobedience is deliberate, the Magistrate may be punished, but transfer of the particular case from his Court is no punishment. One of the grounds mentioned in Section 526 is that a fair and impartial trial cannot be had. In some instances the disobedience of a mandatory provision may cause an apprehension that a fair and impartial trial cannot be had. But the same cannot be said of every disobedience of a mandatory provision. Certainly disobedience of a mandatory provision is not tantamount to not trying the case fairly and impartially. The two are quite different and it would be wrong to confuse one with the other. Mandatory provisions contained in Sections 145, 202, 252 (2) etc. of the Code are frequently violated by most Magistrates, but I have never heard of any case being transferred on the ground of this violation.

The only ground on which the applicants can succeed in the present case is that a fair and impartial trial cannot be had from the Court of the learned Magistrate. They have failed to satisfy me that this apprehension results merely from the fact of the learned Magistrate's refusal to stay further proceedings in the case. The refusal has nothing to do with the fair and impartial trial. The applicants should have had justification for their apprehension before they intimated to the learned Magistrate their intention to move for transfer. They cannot, without having any justification for the apprehension that they would not have a fair and impartial trial, ask for an adjournment under Section 526 (8) in the hope that the Magistrate would refuse to stay further proceedings and thereby furnish a ground for transfer when so far none existed.

3. No case is made out for transfer of the case under Section 526 (8), Cr. P. C., and the application is dismissed.