

Basheshwar Nath vs State on 21 July, 1953

Equivalent citations: AIR1954ALL28, AIR 1954 ALLAHABAD 28

ORDER

B.D. Mukerji, J.

1. This is an application for the transfer of a case pending in the Court of Sri A. N. Singh, Judicial Magistrate 1st class, Hardoi, to some Magistrate at Allahabad, competent to try it.

2. On behalf of the State a preliminary objection is taken to the hearing of this application by this Court on the ground that this Court has no jurisdiction under the provisions of the U. P. High Courts (Amalgamation) Order, 1948, inasmuch as the case in respect of which relief is claimed from this Court is pending within the jurisdiction of the Lucknow Bench or is one in respect of which the Lucknow Bench alone can exercise jurisdiction.

3. The relevant clause in the Amalgamation Order is Clause 14. Clause 14 is in these words : "The new High Court, and the Judges & Division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint :

Provided that unless the Governor of the United Provinces, with the concurrence of the Chief Justice, otherwise directs, such judges of the new High Court, not less than two in number, as the Chief Justice may, from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court :

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad."

4. From the above it will be apparent that the first proviso to Clause 14 is really the material provision which determines the venue of this application for transfer. There can be no doubt that the case out of which this application has arisen is pending within the area over which the Lucknow Bench exercises jurisdiction. While dealing with an application for the transfer of a case a Court must be deemed to be exercising jurisdiction in respect of a case which has arisen within a certain territorial area or jurisdiction. In my judgment the position of an application for the transfer of a case is not any different from that of an application in revision or an appeal so far as the question of the higher Court's territorial jurisdictional powers qua that case is concerned.

The High Court, when it is called upon to determine, in respect of a case pending in Hardoi, which falls within the jurisdiction of the Lucknow Bench, whether that case should or should not be transferred, it is called upon, without doubt, to exercise its powers in respect of a case which has arisen within such jurisdiction. The fact that a prayer has been made for the transfer of the case to Allahabad, which place is within the jurisdiction of the Allahabad Bench, should make no difference for the reason that the case in respect of which the High Court is exercising its powers of transfer is not in respect of a case arising within the jurisdiction of the Allahabad Bench: it is the jurisdiction of the original matter that determines the jurisdiction of the Bench -- Lucknow or Allahabad -- under the U. P. High Courts (Amalgamation) Order.

5. From what I have stated above it appears to me that the preliminary objection must prevail. I accordingly dismiss this application as being unentertainable by me.