

## Shori Lal vs The State on 31 August, 1950

**Equivalent citations: AIR1952ALL193, AIR 1952 ALLAHABAD 193**

ORDER

Waliullah, J.

1. This is a reference made by the learned Sessions Judge of Lucknow recommending that the appeal filed in his Court by one Shori Lal in respect of an offence which is alleged to have been committed in the district of Dehra-Dun be ordered to be received by the learned Sessions Judge of Dehra Dun.

2. It appears that Shori Lal, son of Quran Datta Mal, an assistant station master of Doiwala, was tried by Shri Girja Shankar Misra, Special Magistrate, U. P. with his headquarters at Lucknow, for an offence under Section 161, Penal Code. The trial was held by the learned Magistrate at Lucknow. The offence was alleged to have been committed at Doiwala, district Dehra Dun. On 5-7-1950, he was convicted of the offence under Section 161, Penal Code, and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500 or in default of payment of the fine to undergo rigorous imprisonment for a further terms of six months. Against his conviction Shori Lal preferred an appeal on 11-7-1950 in the Court of the Civil and Sessions Judge of Dehra Dun, who was also the Additional Sessions Judge of Saharapur at Dehra Dun. After hearing Counsel for the appellant the learned Additional Sessions Judge returned the memorandum of appeal on 18-7-1950, with the following order :

"I have heard the Counsel for the appellant. He concedes that the appeal does not lie here and should have been filed at Lucknow where the trial was held. Let the appeal be, therefore, returned for presentation to proper Court".

Thereafter the petition of appeal, along with an application for bail, was presented to the Court of the Sessions Judge of Lucknow on 19-7-1950. On the office report the question arose before the learned Judge whether the appeal lay to his Court inasmuch as the offence was alleged to have been committed outside the territorial jurisdiction of that Court. The learned Sessions Judge after hearing the counsel for the parties came to the conclusion that the appeal as presented to him was not competent. He has accordingly made the reference to this Court.

3. It is clear that the offence under Section 161, Penal Code is said to have been committed at Doiwala, district Dehradun. Further, it is clear that Shri Girja Shankar Misra has been appointed a Special Magistrate with powers of a Magistrate of the first class to try, or commit, cases of the Special Police Establishment, throughout the United Provinces. The relevant notification is Home Department (Criminal) Notification No. 2787/ VI-342-1949 dated 27-9-1949. It reads thus :

"Under Section 14, Criminal P. C. 1898 (V of 1698) the Governor is pleased to confer upon Shri Girja Shankar Misra for a period of four months the powers of a Magistrate of the first class to try or commit cases, investigated by the Government of India, Special Police Establishment, throughout the United Provinces.

"Under Sub-section 2 of Section 190 of the said Code the Governor is further pleased to empower Shri Girja Shankar Misra to take cognizance under Sub-section (1) Clause (b) of the said Section of offences for which he may try or commit for trial throughout the United Provinces."

Apparently the period of time for which the appointment was made in the first instance was subsequently extended.

4. The Magistrate has his headquarters at Lucknow. The trial was actually held at Lucknow. The question is whether in these circumstances the appeal would lie to the Court of Sessions at Lucknow or at Dehradun. I have heard learned Counsel for the appellant as well as the learned Counsel for the State. On behalf of the appellant it has been contended that the appeal lies to the Court of the Sessions Judge, Lucknow, inasmuch as the headquarters of the Special Magistrate, who held the trial, were at Lucknow and the trial and conviction of the appellant took place at Lucknow within the local limits of the jurisdiction of the Sessions Judge of Lucknow on the other hand, the learned Counsel for the State has contended that the Sessions Court at Dehra Dun has jurisdiction to hear the appeal inasmuch as the offence is alleged to have been committed within the local limits of its jurisdiction. During the course of arguments my attention has been invited to some cases decided by Courts other than this Court.

5. Learned Counsel for the appellant has contended that the present case is practically on all fours with the case of Valia Ambu v. Emperor, 30 Mad. 136, decided by two learned Judges of that Court. In that case, a Magistrate convicted certain persons of offences under Sections 143 and 147, Penal Code. These offences were committed within the local limits of the jurisdiction of the Sessions Court of North Malabar. The Magistrate who tried the case, had his headquarters at Calicut, situate within the local limits of the Sessions Court at South Malabar, but he had criminal jurisdiction over the whole district, comprising the two sessions divisions of North and South Malabar. The convicted persons appealed to the Court of Sessions, North Malabar, but the appeals were rejected on the ground that the Sessions Court within whose jurisdiction the Magistrate had his headquarters was the proper appellate authority. Thereupon an appeal was preferred in the Sessions Court of South Malabar, but that Court held that no appeal lay to it as the offence was committed in North Malabar and the Magistrate must be considered to have decided the case as a first class Magistrate of North Malabar. Again the orders rejecting the appeals, revision petitions were filed in the High Court under SECTIONS 435 and 439, Criminal P. C. The learned Judges of the Madras High Court considered the provisions of Sections 408 and 435, Criminal P. C. They noted that Section 408, which refers to appeals from first class Magistrate, merely states that the appeal lies "to the Court of Sessions" without any further explanatory words, The learned Judges then considered Section 435 which deals with the power of revision of Sessions Court and held that by reason of the provisions of that section, a Sessions Judge has got power to call for and examine the records of any inferior

criminal Court "situate" within the local limits of his jurisdiction. It was observed that the word "situate" means fixed or located; when applied to a Court it must be taken to refer to the place where the Court ordinarily sits. Finally, it was held:

"In the absence of any indication to the contrary in the Criminal Procedure Code, the principle thus laid down in regard to the analogous powers of revision under Section 435, should be followed in the case of appeals also."

It was accordingly held that the appeals should have been received by the Sessions Court of South Malabar. This ruling clearly supports the contention of the learned counsel for the appellant.

6. Next, reference has been made to the case of *Hira Lal v. Emperor*, 44 I, C, 326 (Lah.), decided by a Division Bench of the Punjab Chief Court. In that case, Hira Lal was being tried by a Magistrate of the first class at Ludhiana for offences which were alleged to have been committed by him at Simla. An objection was raised that he had no jurisdiction to proceed with the trial. It transpired that the Magistrate concerned had been appointed a Special Magistrate under the provisions of Sections 14, Criminal P. C., with powers of a Magistrate of the first class in regard to cases generally throughout the Punjab. In a revision to the Chief Court, it was contended that the notification issued by the Local Government empowering the Magistrate to exercise powers of a first class Magistrate in regard to cases generally throughout the Punjab was ultra vires the powers of the Local Government. In view of the opinions expressed by all the six Judges in an earlier case of *Lakhmi Chand v. Emperor*, 24 Pun Be 1901 Cr., it was held that "local area" could embrace all the territories administered by the Local Government. The notification issued by the local Government under Section 14, Criminal P. C. was, therefore, held to be intra vires the powers of the local Government. In the course of arguments it was suggested that there would be difficulty in regard to appeals from the orders of a Special Magistrate having jurisdiction throughout the Punjab, In this connection, the learned Judges referred to the decision of the Madras High Court in the case of *Valia. Ambit v. Emperor*, 30 Mad. 136 (ubi supra) and held that there was no reason to doubt the correctness of the decision of the Madras High Court and the principle underlying that decision might well be held to apply to a case such as the one before them.

7. It is true that the opinion expressed by the learned Judges on this point was by way of an obiter dictum, but it clearly approved the view taken by the Madras case in the case referred to above.

8. Next, reference was made to the case of the Assistant Sessions Judge, North Arcot v. *Ramammal*, 36 Mad. 387, decided by a Division Bench of that Court. This case deals with quite a different matter. This was a case which related to the commitment of the accused to the Court of Session. The Magistrate who passed the order of commitment was held to have local jurisdiction over the offence and the order of commitment in that respect was held to be legal. But the Sessions Court to which the commitment was made was, by reason of the provisions of Section 177, Criminal P. C. held to have no jurisdiction to hold the trial inasmuch as the offence under trial was found to have been committed outside the local limits of its territorial jurisdiction. In this view of the matter, the learned Judges, following a decision in *Queen Empress v. Thaku*, 8 Bom. 312, held that the commitment should be to the Court empowered to try the case under Section 177, Criminal P. C. For

this reason, the commitment was held to be illegal and was set aside.

9. In my judgment, the commitment to the Court of Sessions stands on a different footing from an appeal to the Court of Session. There is a specific provision in the Criminal Procedure Code contained in the group of sections beginning with Section 177, Criminal P. C. dealing with the trial of offences by the Sessions Court. There is no similar provision in the Code dealing with the power of the Sessions Court to hear an appeal, The group of sections beginning with Section 177, Criminal P. C. deals only with the place of enquiry or trial. Section 178 also deals only with the question of trial of a case or class of cases not covered by Section 177 and it has no bearing on the point under discussion. It seems to me, therefore, that the decision of the Madras High Court in the case of *Valid Ambu Poduval v. Emperor*, 80 Mad. 136 (*ubi supra*) remains untouched by the later decision of the same Court in the case of the Assistant Sessions Judge, North Arcot *v. Ramammal*, 36 Mad. 387 (*ubi supra*),

10. On a full consideration of the matter, it seems to me clear that the principle laid down by the Madras High Court in the case of *Valia Ambu Poduval v. Emperor*, 30 Mad. 136 (*ubi supra*) is sound. In the absence of any Statutory provision in the Code of Criminal Procedure, the principle governing the territorial jurisdiction of a Sessions Court in regard to its revisional jurisdiction must be followed in regard to its appellate jurisdiction.

11. For the reasons given above, I reject the reference made by the learned Judge and direct that the appeal filed before him should be heard and disposed of in accordance with law. The appellant Shori Lal is on bail. His bail bonds will remain in force and he shall remain on bail till the disposal of the appeal by the learned Judge.