

## REVISIONAL CRIMINAL

Before Man Mohan Singh Gujral, J.

JIT RAM, ETC.,—Petitioners.

versus

THE STATE OF HARYANA,—Respondent.

**Criminal Revision No. 743 of 1970**

January 7, 1971.

*Code of Criminal Procedure (V of 1898)—Section 526(1) (ii) and section 528 (1A) and (1C)—Sessions case pending in the Court of Additional Sessions Judge—Sessions Judge—Whether has jurisdiction to withdraw the case—Transfer of a case from the Court of one Additional Sessions Judge to another—Whether amounts to transfer from one criminal court to another—Courts of Sessions Judge—Whether one criminal Court—Transfer of a case mature for judgment—Whether expedient for the ends of justice in spite of the unwillingness of the judge to proceed with the case.*

*Held*, that sub-sections (1A) and (1C) of Section 528 of the Criminal Procedure Code deal with different situations as their requirements are different. Under sub-section (1A) of Section 528, the Sessions Judge may recall any case or appeal even without their being any application by any party and without it being expedient in the ends of justice to withdraw the case. In other words, purely administrative reasons can be pressed into service by the Sessions Judge for withdrawing a case under sub-section (1A) of Section 528, provided the trial has not commenced in the case. On the other hand, under sub-section (1C) of Section 528, a Sessions Judge can only act on an application made to him in this behalf and not otherwise. Moreover, under sub-section (1C) the transfer can only be ordered if it is expedient for the ends of justice having regard to the circumstances of the case and not merely for administrative reasons. The limitation existing under sub-section (1A) that transfer can only be ordered before the commencement of the trial or hearing of the appeal is not imposed in sub-section (1C). Sub-section (1C) has been introduced to remove the limitation imposed on the Sessions Judges to transfer a case pending before any criminal Court in the Sessions Division and he has jurisdiction to do so if it appears expedient for the ends of justice and if a party makes an application to that effect.

(Paras 5 & 7)

*Held*, that the court of Sessions is not one Court and the transfer of a case from the Court of the Additional Sessions Judge to that of Sessions Judge or another Additional Sessions Judge does amount to transfer from one Criminal Court to another Criminal Court. If it were not so, then even the High Court would have no jurisdiction to transfer a case from the Court of Sessions Judge or Additional Sessions Judge under section 526(i) (ii) which gives the power to the High Court to transfer a case or appeal from a Criminal Court subordinate to it to any other such Court of equal or superior jurisdiction.

*Held*, that though section 528 of the Code does not fix the limit within which a transfer application is permitted, but it has generally been considered inexpedient for the ends of justice to transfer a case when it is mature for judgment unless there are strong reasons. The fact that a magistrate or Sessions Judge is himself unwilling to proceed with the case has not been considered a good reason for withdrawing the case from his Court.

*Petition under section 439/561-A of Criminal Procedure Code for revision of the order of the Sessions Judge, Gurgaon, dated 14th August, 1970, ordering the withdrawal of the case from the Court of Shri P. R. Aggarwal and taking it on the file of his Court. Under the instructions of the High Court this case cannot be sent to the Court of the IInd Additional Sessions Judge, Gurgaon.*

HARPARSHAD AND N. K. SODHI, ADVOCATES, for the petitioners.

HARI MITTAL, ASSISTANT ADVOCATE-GENERAL, HARYANA, for the respondent.

#### JUDGMENT

This revision petition is directed against the order of the Sessions Judge dated 14th August 1970 whereby he withdrew the case pending against the petitioners in the Court of Shri P. R. Aggarwal, Additional Sessions Judge, Gurgaon, to his own file.

(2) The facts necessary to decide this application are that the five petitioners were being tried in a case under section 302/149 etc., of the Indian Penal Code in the Court of Shri Aggarwal, Additional Sessions Judge, Gurgaon, and in this case the entire evidence had been recorded and the case had been fixed for arguments on 29th July, 1970. While arguments were being addressed the complainant made an application praying for adjournment on the ground that he wanted to move the High Court for transfer of the case. On this application the proceedings were adjourned to 13th August, 1970. After adjourning the case Shri Aggarwal wrote a confidential letter to the Sessions Judge requesting that this case be transferred from his Court. On receiving this letter the counsel for the parties were sent for by the learned Sessions Judge and were informed about this request for transfer. The counsel for the accused then made an application opposing the transfer. Subsequently Nur Mohammed complainant made an application seeking the transfer of the case and made various allegations in the petition to show that the learned Additional Sessions Judge was prejudiced against the complainant. On this application the learned Sessions Judge passed the impugned

order withdrawing the case from the Court of the Additional Sessions Judge to his own file. Being aggrieved the accused have come up in revision to this Court.

(3) It was firstly contended on behalf of the petitioners that the Sessions Judge had no jurisdiction to transfer the case after the evidence had been recorded and when only arguments had to be addressed.

(4) In order to appreciate the arguments of the learned counsel for the petitioners reference will have to be made to sub-sections (1) and (1A) of section 526 and sub-sections (1A) and (1C) of section 528 of the Criminal Procedure Code. The relevant provisions are as under :—

“526. (1) Whenever, it is made to the High Court—

- (a) that a fair and impartial enquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice, or is required by any provision of this Code,

it may order—

- (i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence ;
- (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;
- (iii) that any particular case or appeal be transferred to and tried before itself ; or

- (iv) that an accused person be committed for trial to itself or to a Court of Session.
- (1A) Notwithstanding anything contained in sub-section (1), no application shall lie to the High Court for the exercise of its powers under the said sub-section for transferring any case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him."
- "528. (1A) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, any Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.
- (1C) Any Sessions Judge, on an application made to him in this behalf, may, if he is of opinion that it is expedient for the ends of justice, order that any particular case be transferred from one Criminal Court to another Criminal Court in the same sessions division."

The argument advanced by Shri Har Parshad Advocate on behalf of the petitioners is that the powers of the Sessions Judge to withdraw a case from the Court of the Additional Sessions Judge are governed by sub-section (1A) and not sub-section (1C) of section 528 of the Criminal Procedure Code. Two grounds have been urged in support of this argument, namely, that sub-section (1A), being a specific provision relating to withdrawal of cases from the Court of the Additional Sessions Judge by the Sessions Judge, would apply in preference to the general provisions contained in sub-section (1C) in respect of the powers of the Sessions Judge to transfer cases from one criminal Court to another criminal Court in the same sessions division and that Sessions Court being one criminal Court the transfer of a case from the Additional Sessions Judge to Sessions Judge would not amount to transfer of a case from one criminal Court to another criminal Court. For second part of the argument support was sought from a Full Bench decision in *Kamleshwar Singh v. Dharamdeo Singh* (1), wherein it was observed that a Court presided over by an Additional or Assistant Sessions Judge is also a Court of Session. Reference was also made to *Superintendent and Remembrancer of*

(1) A.I.R. 1957 Patna 375.

*Legal Affairs, Bengal v. Ujjatulla Paikar* (2), in which it was observed that there is only one Court of Session in each sessions division sitting at different places and manned by a number of Judges. In view of these observations, it was contended that the Court of Session being one Court even though it was manned by different Judges a Sessions Judge could not transfer a case from the Court of Additional or Assistant Sessions Judge to his own Court or to the Court of another Additional or Assistant Sessions Judge except in the circumstances mentioned in sub-section (1A) of section 528. The transfer of a case from the Court of an Additional or Assistant Sessions Judge to that of Sessions Judge or another Additional or Assistant Sessions Judge, the counsel states, is not transfer from one criminal Court to another criminal Court within the meaning of section (1C) of section 528. The above arguments, though they appear attractive, are without much merit. Sub-sections (1A) and (1C) of section 528 of the Criminal Procedure Code deal with different situations as their requirements are different. Under sub-section (1A) of section 528 the Sessions Judge may recall any case or appeal even without there being any application by any party and without it being expedient in the ends of justice to withdraw the case. In other words, purely administrative reasons can be pressed into service by the Sessions Judge for withdrawing a case under sub-section (1A) of section 528 provided in the case pending before the Additional Sessions Judge the trial has not commenced. On the other hand, under sub-section (1C) of section 528 a Sessions Judge can only act on an application made to him in this behalf and not otherwise. For this view I find support from *R. K. Nabachandra Singh v. Manipur Administration* (3), wherein it was held that a Sessions Judge cannot transfer a case *suo motu* under section 528 (1C). More-over, under sub-section (1C), the transfer can only be ordered if it is expedient for the ends of justice having regard to the circumstances of the case and not merely for administrative reasons. Besides this, the limitation existing under sub-section (1A) that transfer can only be ordered before the commencement of the trial or hearing of the appeal is not imposed in sub-section (1C). Sub-section (1C) was introduced to remove the limitation imposed on the powers of the Sessions Judge to transfer a case pending before any criminal Court in the Sessions division if it appeared expedient for the ends of justice to do so and if a party made an application to that effect.

(2) A.I.R. 1931 Cal. 190.

(3) A.I.R. 1964 Manipur 39.

(5) The second part of the argument that Sessions Court being one criminal Court the transfer of a case from the Court of the Additional Sessions Judge to that of Sessions Judge or another Additional Sessions Judge does not amount to transfer from one criminal Court to another criminal Court is also without merit and the authorities relied upon by the learned counsel for the petitioners are wholly inapplicable to the point in issue. Before dealing with this argument a reference may be made to the authorities cited on behalf of the parties in order to see what exactly was decided in those cases. In *Ijyatulla Paikar's case* (2) (supra) the question that had arisen for consideration was whether the Sessions Judge could make a complaint under section 476(1) of the Criminal Procedure Code where notice to show cause why complaint should not be made for perjury had been issued by the Additional Sessions Judge. While interpreting section 9 of the Criminal Procedure Code and the expression "Court of Session" occurring therein it was held that there was only one Court of Session in each sessions division sitting at different places and manned by a number of Judges. The interpretation of the expression "Court of Session" occurring in section 9 of the Code is not relevant for determining the meaning of the expression "criminal Court" in sections 526 and 528 and this authority is, therefore, of not much help to the case of the petitioners. Similarly, *Lakshman Chavji v. Emperor* (4), is of no assistance in this case as the matter in issue in this case had not arisen in the Bombay case. Again, in *Kamleshwar Singh's case* (1) (supra) the expression "Court of Session" occurring in section 9 of the Criminal Procedure Code had come up for interpretation and after considering the meaning of this expression in sections 9 and 7(2) of the Code it was remarked that an Assistant Sessions Judge who exercises jurisdiction in the Court of Session has no separate or independent entity in the sense that the Court over which he presides while exercising such jurisdiction does not constitute an independent Court of Session within the meaning of section 9(1). The question with which we are confronted in this case had not at all arisen and the meaning of the expression "criminal Court" occurring in sections 526 and 528 had not come up for interpretation in the Full Bench case referred to above.

(6) It is not disputed and cannot be disputed that the High Court has ample powers to transfer a case from one Additional

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(4) A.I.R. 1931 Bom, 313.

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Sessions Judge to another Additional Sessions Judge in the same sessions division and if a reference is made to section 526 it will be seen that this power is derived from sub-section (1) of section 526, especially clause (ii), which gives the power to the High Court to transfer a case or appeal from a criminal Court subordinate to it to any other such Court of equal or superior jurisdiction. If the interpretation put on the word "criminal Court" by Shri Har Parshad, learned counsel for the petitioners, is accepted then even the High Court would have no jurisdiction to transfer a case from the Court of Sessions Judge or Additional Sessions Judge to the Court of another Additional Sessions Judge as on that reasoning the transferee Court would not be another criminal Court. Whatever doubt may have been left was removed by the insertion of sub-section (1A) in section 526 by Act 26 of 1955 which provides that before High Court can be approached for the transfer of any case under section 526 from one criminal Court to another criminal Court in the same sessions division an application for such transfer is to be first made to the Sessions Judge and rejected by him. From this it would necessarily follow that the Sessions Judge would have to be approached first if it is sought to get a case transferred from the Court of any of the Additional Sessions Judges before an application can lie to the High Court for the transfer of such a case. This obviously has reference to the powers of the Sessions Judge under section 528(1C) which was introduced by the same Amending Act.

(7) For the reasons recorded above, the conclusion is inescapable that the Sessions Judge has the jurisdiction to withdraw a case from the Court of the Additional Sessions Judge even after the trial has begun provided the conditions mentioned in sub-section (1C) of section 528 are fulfilled. Coming to the merits of the present case I find that it is not clear from the order of the learned Sessions Judge as to what had weighed with him in withdrawing the case from the Court of the Additional Sessions Judge. Certain circumstances have been noticed in the order but no clear findings have been given as to which of those circumstances were found sufficient to justify the withdrawal of the case from the Court of the Additional Sessions Judge. It may be observed at this stage that under sub-section (1C) of section 528 a Sessions Judge is empowered to withdraw a case from a criminal Court only if the transfer is expedient for the ends of justice and not otherwise. It has, therefore, to be seen whether the circumstances brought on the record make out such a case.

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(8) The first circumstance referred to by the learned Sessions Judge is that the case was fixed for 31st July 1970 but the same day subsequently the date was changed to 29th July, 1970 without the consent of the complainant's counsel. From the order of the Sessions Judge it appears that the Public Prosecutor was consulted and the date was changed as the Additional Sessions Judge was to go on tour on 1st August 1970. The learned counsel for the respondent could not show that acceleration of this date was motivated by any consideration other than convenience of the Court. It is again of no consequence that in the order-sheet 31st July 1970 was not shown at all and it was only shown that the case had been adjourned to 29th July, 1970. It could be that the learned Sessions Judge may have thought of changing the date before actually recording the order in the order-sheet. In such a situation, it was not necessary for the Additional Sessions Judge to have first recorded in the order-sheet that the case had been adjourned to 31st July, 1970, and then to have recorded a second order accelerating the date to 29th July, 1970. In any case the impropriety, if any, was too trivial to be taken notice of for the purpose of withdrawing the case from the Court of the Additional Sessions Judge.

(9) The next circumstance to which reference is made in the order of the Sessions Judge is that Shri Partap Singh Thakran who was the counsel for the accused was seen sitting with the Additional Sessions Judge in the club one evening even though generally Shri Thakran did not go to the club. The explanation offered by the learned counsel for the accused before the Sessions Judge was that Shri Thakran had gone to meet the General Assistant in the club and he happened to meet the Additional Sessions Judge accidentally and exchanged a few words with him. In such a situation, the fact that the Advocate who was conducting the case for the accused had a few words with the Additional Sessions Judge in the club is not sufficient to cause apprehension in the mind of the complainant that he would not get justice from the Court of Shri Aggarwal. It has not been found and there seems to be no suggestion even in this respect that the talk between the counsel for the accused and the learned Additional Sessions Judge related to this case or any other case for that matter. It often happens that presiding officers of the Courts do meet Advocates at social and private functions but such casual contacts between presiding officers and Advocates who have cases pending in their Courts have never been considered a sufficient



ground for giving apprehension in the mind of any party that the Presiding Officers are interested for or against that party on that account. This circumstance, therefore, cannot be pressed into service for withdrawing the case from the Court of the Additional Sessions Judge.

(10) Lastly it was contended before the learned Sessions Judge and was again contended before me that the learned Additional Sessions Judge had passed certain orders which were prejudicial to the case of the prosecution. It is neither necessary nor proper at this stage to consider the legality or otherwise of the orders but it is sufficient to remark that even if some of the orders passed by the learned Additional Sessions Judge were not wholly correct, mere passing of such orders would not form a ground for withdrawing a case from the Court of the Additional Sessions Judge. Apprehension in the mind of a party asking for transfer has to be reasonable and not merely conjectural. From the fact that a Court while trying a case takes a particular view of a matter it cannot reasonably be inferred that the Court is prejudiced against the party against whose interest that view has been taken. It has further to be shown that the Judge trying the case was motivated by other considerations in taking that view of the question involved before him.

(11) It may further be observed that though Section 528 does not fix the limit within which a transfer application is permitted but it has generally been considered inexpedient to transfer a case when it is mature for judgment unless there are strong reasons. The fact that a Magistrate or Sessions Judge was himself unwilling to proceed with the case has not been considered a good reason for withdrawing the case from his Court. Having regard to all the circumstances, I am of the view that it would not be expedient for the ends of justice to withdraw the case from the Court of Shri P. R. Aggarwal at this stage as it is likely to delay the trial considerably and prejudice the accused.

(12) For the reasons recorded above, I accept this revision petition and setting aside the order of the Sessions Judge direct that the case may be sent back to the Court of the Additional Sessions Judge who shall decide it in accordance with law.