

Isher Singh and ors. Vs. Mt. Nirmal Kaur

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Court : Jammu and Kashmir

Decided On : Oct-05-1951

Reported in : 1952CriLJ290

Judge : Janki Nath Wazir, C.J.

Appellant : isher Singh and ors.

Respondent : Mt. Nirmal Kaur

Judgement

:

ORDER

Janki Nath Wazir, C.J.

1. This is a transfer application preferred by Isher Singh accused praying that the case pending before Mr. R.P. Rampal, Magistrate First Class, Jammu, be transferred to the Court of some other Magistrate.

2. The facts which gave rise to this application briefly stated are these. A complaint was brought by Mt. Nirmal Kaur under Section 376 of the Ranhir Penal Code against Isher Singh in the Court of Mr. R.P. Rampal, Magistrate First, class, Jammu. The Magistrate recorded the evidence and framed the charge against the accused. The Magistrate was then transferred and before the succeeding Magistrate the accused availed of the benefit under Section 350 of the Criminal Procedure Code. The succeeding Magistrate started 'de novo' trial and issued summons to the witnesses. He did not examine any witness and the original Magistrate was re-transferred to Jammu. An application was made by the complainant before the Additional District Magistrate for the transfer of the case to Mr R.P. Rampal Magistrate who originally tried the case on the ground that the case will be expeditiously disposed of by him. The Additional District Magistrate transferred the case to Mr. R.P. Rampal Magistrate First Class who originally was seized of the case. The accused has preferred an application in this Court for the transfer of the case from the Court of Mr. Rampal Magistrate First Class to the Court of some other Magistrate.

3. On behalf of the applicant it is argued that the Additional District Magistrate should not have transferred the case to the Court of Mr. Rampal, Magistrate first class, on the ground that the case would be expeditiously disposed of as the accused will not be able to avail of the benefit of Section 350, Cr.P.C. It has been urged-that the view taken by the Additional District Magistrate is erroneous inasmuch as the accused is not barred from taking the benefit under Section 350, Cr.P.C. in the Court of the present Magistrate. In support of this contention reliance is placed on Ramalingam v. Emperor AIR (21) 1934 Mad 475 and Krishnaji v. Kashirao AIR (13)

1926 Nag 220.

4. In A.I.R (21) 1934 Mad. 475 it has been held that the grant of a 'de novo' trial by the successor of a Magistrate has the effect of wiping out the prior proceedings and hence if the case is transferred to the file of the old Magistrate even he cannot proceed with the, trial from the point where he had left it. Form where on having taken charge the accused asked for a 'de novo' trial and the succeeding Magistrate issues summons to the prosecution witnesses, this fact shows that the succeeding Magistrate has taken cognizance of the case and that whoever is to hear the case, in such circumstances must hear it 'de novo'. The same view is taken in the Nagpur case referred to above.

5. In the present case the succeeding Magistrate asked the accused whether he would like to take the benefit of Section 350 Cr.P.C. or not. The accused having asked for 'de novo' trial the Magistrate issued summons to the witnesses but he did not examine any witness. The case has been transferred to the original Magistrate and the question is whether the Magistrate can start the case from the point where he had left it. In *Ghaus Mahomed v. Emperor* AIR (28) 1941 Lah 322, originally, most of the evidence in the case had been heard by the Magistrate D but the case went to another Magistrate on account of the transfer of D to another District, Subsequently, however, it was re-transferred to D under the orders of the High Court with the object of saving the necessity of a 'de novo' trial. The second Magistrate to whom the case had gone on the transfer of D had not recorded any evidence at all. All that he had done was to order a 'de novo' trial at the request of the accused; it was held that since the successor of had not heard or recorded any evidence in the case at all the condition' laid down in Section 350(1) was not fulfilled and therefore proviso (a) to Section 350(1) was also not applicable. In this case the Madras authority has been considered and the view taken by the Madras ruling has not been followed. I fully agree with the view taken in the Lahore Case. The succeeding Magistrate not having recorded the evidence, the case is transferred to the Magistrate who originally tried the case and the accused cannot ask for 'de novo' trial before the original Magistrate as that Magistrate is not 'another Magistrate' as contemplated by Section 350(1) Cr.P.C.

6. This application, is therefore rejected.

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