

MISCELLANEOUS CRIMINAL.

1912
May, 16.*Before Mr. Justice Karamat Husain and Mr. Justice Tudball.*

JAGGU AHIR v. MURLI SHUKUL.*

*Criminal Procedure Code, sections 145, 526—Transfer—“Criminal case”—
“Accused person.”*

Held that the expression ‘criminal case’ as used in section 526 of the Code of Criminal Procedure includes a proceeding initiated under section 145 of the Code and that the High Court under section 526 has power to transfer such a proceeding from one court to another court subject to all the conditions under which a transfer can be made. *Arumuga Tegundan* (1), *Lalit Mohan Moitra v. Surja Kanja Acharyee* (2) and *Gurudas Nag v. Gaganendra Nath Tagore* (3) referred to. *In re Pandurang Govind Pujari* (4) dissented from.

An ‘accused person’ is one over whom a criminal court exercises jurisdiction. *Queen-Empress v. Mutasaddi Lal* (5) followed.

THE applicant applied for the transfer of a criminal proceeding instituted under section 145 of the Criminal Procedure Code. On the application coming on for hearing before PIGGOTT, J., a preliminary objection was raised by the opposite party that the High Court had no power to transfer criminal proceedings under section 145 of the Criminal Procedure Code. PIGGOTT, J., referred the point to a bench of two Judges. The matter then came on before KARAMAT HUSAIN and TUDBALL, JJ.

Pandit *Shiam Krishna Dar* (for *Munshi Binode Behari*) for the applicant :—

This Court has power to transfer all cases pending in inferior criminal courts. Section 526 is very wide and gives this Court power to transfer on sufficient grounds any ‘criminal case.’ It is not necessary that an offence should have been committed before the matter could be called a ‘criminal case.’ A criminal case is one which is tried by a criminal court. The Bombay case proceeded upon the erroneous assumption that it was necessary to constitute a criminal case, that an offence should have been committed.

Mr. *M. L. Agarwala*, for the opposite party :—

There is a material difference in the wording of the section conferring on District Magistrates power to transfer cases and of the section conferring such power on the High Court. In section

* Criminal Miscellaneous No. 52 of 1912.

(1) (1902) I. L. R., 26 Mad., 188.

(2) (1901) I. L. R., 28 Calc., 709.

(3) (1905) 2 C. L. J., 614.

(4) (1900) I. L. R., 25 Bom., 179.

(5) (1898) I. L. R., 21 All., 107.

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526 the words "*criminal case*" are used, whereas in section 528 the word '*case*' is used. It is obvious, therefore, that the Legislature intended to discriminate between a '*case*' and a '*criminal case*.' Every proceeding would, of course, be a *case*; but would not necessarily be a '*criminal case*.' The reason for the distinction is obvious. Proceedings under section 145 and cognate sections are proceedings taken to prevent the commission of offences, and the District Magistrate, as head of the district, is responsible for the maintenance of its peace. He, as the person on the spot, is best able to decide whether the exigencies of public peace would allow of the delay involved in transfer proceedings. It could never have been the intention of the Legislature to allow such proceedings to be indefinitely postponed or delayed, while questions of academical importance were being discussed in this Court. The mischief which these proceedings were intended to prevent would be perpetrated during the time that the transfer proceedings remained pending.

Pandit *Shiam Krishna Dar* was heard in reply.

KARAMAT HUSAIN and TUDBALL, JJ.—The question referred to us is whether the High Court has jurisdiction under section 526 of the Code of Criminal Procedure or under the Letters Patent (especially by section 22) to transfer from the court of one Magistrate to the court of another Magistrate a proceeding under section 145 of the Code of Criminal Procedure. There is a conflict of authority on the point. In *In re Pandurang Govind Pujari* (1) it was held that the High Court had no power under section 526 of the Code to transfer a proceeding under section 145 of the Code from one court to another. The reason given is that such a proceeding is not a "*criminal case*" within the meaning of section 526, that a criminal case means a case arising out of and dealing with *some crime already committed* and does not include proceedings taken for the prevention of a crime. The Madras High Court in *Arumuga Tegundan* (2) dissented from the Bombay case. The learned Judges said:—"We have no doubt of our power to transfer this case both under section 526 of the Code of Criminal Procedure and clause 29 of the Letters Patent. If a case under section 145 of the Code of Criminal Procedure is not a "*criminal case*," it is difficult to conceive what it

(1) (1900) I. L. R., 25 Bom., 179.

(2) (1902) I. L. R., 26 Mad., 188.

is. With all respect we are unable to agree with the decision of the Bombay High Court in *In re Pandurang Govind Pujari*." In *Lalit Mohan Moitra v. Surja Kanta Acharjee* (1) GHOSE, J., held as follows :—

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"An investigation under section 145 of the Code of Criminal Procedure is an inquiry within the meaning of clause (a) of section 526 of that Code.

"A Magistrate trying a case under section 145 is a criminal court within the meaning of the Code.

"The expression 'criminal case' in section 526 means a case over which a Criminal Court has jurisdiction."

It is doubtful whether the High Court has power under section 526 to transfer cases other than those in which a person is charged with an offence. The High Court may, under section 15 of the Charter Act, transfer a case under section 145.

TAYLOR, J., held as follows :—"The expressions 'case' and 'criminal case' are not co-extensive. The phrase 'criminal case' is used in a limited sense and does not apply to every case cognizable by a Criminal Court. It is doubtful whether the High Court has power under section 526 to transfer cases which do not relate to matters which may strictly be described as criminal as relating to a crime or offence under the law. The power, however, exists under section 29 of the Letters Patent wherein the phrase 'criminal case' appears to be used without the distinction which apparently exists in the Criminal Procedure Code in respect of cases tried by a Criminal Court as opposed to civil cases."

In *Gurudas Nag v. Gaganendra Nath Tagore* (2) RAMPINI and MOOKERJI, JJ., held that a proceeding under section 145 of the Code of Criminal Procedure was a "criminal case" and expressly dissented from in *In re Pandurang Govind Pujari* (3). Our answer to the question turns upon the meaning we give to the phrase "criminal case" in section 526 of the Code of Criminal Procedure. There is nothing in the section to lead us to infer that the phrase means a "criminal case arising out of an offence which has already been committed." Had that been the intention of the Legislature, it could have easily expressed it in apt words and would not have used an expression of a larger connotation.

(1) (1901) I L. R., 28 Cal., 702.

(2) (1905) 2 C L. J., 614.

(3) (1900) I L. R., 25 Bom., 179.

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We are of opinion that it includes proceedings taken under section 145 for the prevention of a crime.

A Magistrate who conducts those proceedings does so as a criminal court under the provisions of the Code of Criminal Procedure, and it cannot be said that he performs the function of an executive officer.

The expression "criminal case" in clause (8) of section 526 need not necessarily be taken to have been used in the narrow sense of a criminal case arising out of an offence already committed.

The High Court is the highest tribunal in these provinces, and one of its important functions is to supervise the work of all the Criminal Courts subordinate to it, and there is no reason why the Legislature should deem it fit to limit the power of the High Court to transfer only such "criminal cases" as arise out of the offences already committed, and for that purpose should use a phrase of a more general import. Besides such a limitation can serve no useful purpose. The contention of the learned counsel for the opposite party that the expression "an accused person" which occurs in section 526 of the Code indicates that the phrase "criminal case" refers only to such cases as arise out of the offences which have already been committed is without force. That expression has been used in a larger sense, *i.e.*, the person over whom a Criminal Court exercises jurisdiction. BANERJI, J., in *Queen-Empress v. Mutasaddi Lal* (1) said:—"The Code of Criminal Procedure contains no definition of an 'accused person,' but it was held by the Bombay High Court in *Queen-Empress v. Mona Puna* (2) that the term 'accused' means a person over whom a Magistrate or other (criminal) court is exercising jurisdiction. The same view was taken by the Calcutta High Court in *Jajha Singh v. Queen-Empress* (3). I see no reason to put a different interpretation on the words 'an accused person' in section 434."

It was further urged that proceedings under sections 176, 488 and 491 of the Code of Criminal Procedure can hardly be called a "criminal case" notwithstanding the fact that they are conducted under the Code of Criminal Procedure, and this shows that

(1) (1898) I. L. R., 21 All., 107.

(2) (1892) I. L. 16 Bom., 661

(3) (1896) I. L. R., 23 Calc., 493.

every proceeding held under the Code is not a "criminal case." In our opinion this contention is without substance. We are inclined to hold that in the absence of anything to the contrary, every case over which a criminal court exercises jurisdiction under the Code is a "criminal case" for the purposes of that Code.

On a careful consideration of the wording of section 526 of the Code of Criminal Procedure, the policy of the law and the cases to which we have referred in this judgement, we hold that the expression "criminal case" in section 526 includes a proceeding initiated under section 145 of the Code, and that the High Court under section 526 has power to transfer it from one court to another court subject, of course, to all the conditions under which a transfer can be made.

In this view of the case it is unnecessary to consider the effect of section 22 of the Letters Patent upon the power of the High Court to transfer a proceeding under section 145 of the Code of Criminal Procedure.

With the above expression of opinion the case was again put up before PIGGOTT, J., who passed the following order :—

PIGGOTT, J.—The Bench to which the question was referred has held that this Court has jurisdiction to make the order of transfer required. I have considered the question on its merits, and what chiefly impresses me is the absence of any answer to paragraph 10 of the applicant's affidavit in the explanation of the Deputy Magistrate. I think a transfer will be in the interests of justice. I accordingly transfer this case from the court of Munshi Nizam-ud-din Ahmad to that of the District Magistrate of Ballia. The latter may either dispose of the case himself, or may exercise his own powers of transfer so as to refer it to the court of any other Magistrate of his district competent to dispose of the same, except Munshi Nizam-ud-din Ahmad himself.

Record returned.

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