

MISCELLANEOUS CRIMINAL.

1912
August, 5.*Before Mr. Justice Muhammad Rafiq.*

EMPEROR v. RAM KISHAN DAS. *

Criminal Procedure Code, section 526—Transfer—Nature of grounds warranting a transfer outside the district.

Where the Magistrate of a district refused to grant an interview to and cancelled the arms licence of a person who was under trial for various offences before the Joint Magistrate, it was held that these were sufficient reasons for transferring the cases against him out of the district, there being also grounds for granting a transfer from the court of the Joint Magistrate. *Fazand Ali v. Hanuman Prasad* (1) followed.

One Ram Kishan Das, a mahant of Akhara Ram Bagh in the Karwi sub-division, stood charged with various offences before the Joint Magistrate of Banda. Ram Kishan Das applied to the High Court for the transfer of the cases pending against him for reasons which will be found set forth at length in the judgement of the Court. He further asked that the cases might be transferred outside the district of Banda altogether, and his grounds for this prayer were two—(1) because the District Magistrate had, whilst the cases against him were pending in the Joint Magistrate's court, refused to grant him a personal interview, and (2) because the District Magistrate had cancelled his licence for arms.

Babu *Satya Chandra Mukerji*, for the applicant.

The Government Advocate (*Mr. A. E. Ryves*), for the Crown.

RAFIQ, J. :—The applicant, Mahant Ram Kishan Das of Akhara Ram Bagh, sub-division Karwi, has filed three applications in this Court under section 526 of the Code of Criminal Procedure, with regard to three criminal cases pending against him in the court of the Joint Magistrate of Karwi, praying that those cases be transferred to some other court outside the district of Banda on the allegation that the district authorities are prejudiced against him. The mahant stands charged with the offences of rash and negligent driving, enticing away of a married woman with criminal intent and committing riot in the course of the abduction of the woman. The allegations on which the transfer is sought are, to put them briefly:—(1) that on the 5th of June, 1912, the Joint Magistrate at first refused to see the applicant, and when on the latter's repeated

* Criminal Miscellaneous No. 135 of 1912.

(1) (1896) I. L. R., 19 All., 64.

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request an interview was allowed, the Joint Magistrate told him that the applicant was a *badmash* and ordered him to go away ; (2) that the Joint Magistrate had sanctioned the prosecution of the applicant for rash and negligent driving ; (3) that the Joint Magistrate received information of the alleged abduction at his bungalow in the middle of the night of the 27th of June, 1912, and went at once to the Railway station and issued orders to the police to make inquiry ; (4) that the District Magistrate of Banda cancelled the applicant's licence for arms and declined to see him when he called to pay his respects on the 8th of July, 1912. No explanation appears to have been submitted by the Joint or the District Magistrate in reply to the allegations of the applicant. The learned Government Advocate appears to oppose the applications for transfer. He says that he does not oppose the transfer from the court of Mr. Muir, the Joint Magistrate, not because the allegations made against him are true, but because the defence might possibly call him as a witness in the abduction case. In the case of transfer from the District Magistrate's court he opposes it strenuously on the ground that no case has been made out for imputing prejudice to the District Magistrate. For the applicant it is contended that what the court has to consider on an application for transfer is "not merely the question whether there has been a real bias in the mind of the presiding Magistrate against the accused but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial." The withdrawal of the applicant's licence for arms and the Magistrate's refusal to see the applicant before he was found guilty by a court of law are circumstances, it is said, which are calculated to create in the mind of the applicant a reasonable apprehension that he may not have a fair and impartial trial. In support of his contention the learned counsel for the applicant relies on a case of this Court, namely, *Farzand Ali v. Hanuman Prasad* (1). The learned Government Advocate replies that the cancellation of the licence for arms is a matter purely discretionary with the Magistrate and his refusal to see a man who

is standing his trial in a criminal court is not improper, and that neither circumstance implies a prejudice in the mind of the Magistrate, nor can it be said to create a reasonable apprehension in the mind of an ordinary man that he would not have a fair and impartial trial at the hands of the Magistrate. Moreover, it is said that the case of *Farzand Ali v. Hanuman Prasad* has not, as a rule, been followed in this Court. The correctness of the order of the Magistrate cancelling the licence for arms, or the propriety of his conduct in refusing an interview to the applicant, is not and could not be in question in the present application. Nor is it contended by the learned counsel for the applicant that the District Magistrate is, as a matter of fact, prejudiced against the applicant. What is advanced for the applicant and has to be considered is whether the said two circumstances would create in the mind of the applicant a reasonable apprehension of not getting a fair and impartial trial in the court of the District Magistrate. The position of an accused person is always one of great anxiety and suspense, and incidents, though susceptible of explanation and which would perhaps pass unnoticed but for the trial he is undergoing, alarm him and lead him to think that his guilt is already believed and that his conviction is a foregone conclusion. It is quite possible that such an impression has been produced in the mind of the applicant by the circumstances referred to above as they very likely led him to infer that the District Magistrate was displeased with him. It would, therefore, be advisable to grant the applicant's request for transfer. The suggestion that the principle enunciated in the case of *Farzand Ali v. Hanuman Prasad* has not been followed in this Court has no force, as I find on similar considerations transfers were allowed in the following cases, namely, *Krishna Nath Tewari v. King-Emperor* (1), *Inayat Ali Khan v. King-Emperor* (2) and *Muhammad Fuzl-ullah v. King-Emperor* (3). I think it is expedient in the ends of justice that the three cases pending against the applicant in the court of the Joint Magistrate of Karwi should be transferred to another district. I am told that Allahabad is as far from Manikpur, where most of the witnesses live, as Banda is, and that it would be convenient to both parties

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(1) Decided on the 23rd of March, 1910. (2) Decided on the 18th of October, 1910.

(3) Decided on the 1st of April, 1912.

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to have the case tried in Allahabad. I order that the three cases, against the applicant, be transferred from the court of the Joint Magistrate of Karwi to that of the District Magistrate of Allahabad, who will either try the cases himself or send them for trial to some other Magistrate subordinate to him competent to try them.

Application allowed.

REVISIONAL CRIMINAL.

1912
August, 13.

Before Mr. Justice Muhammad Rafiq.

EMPEROR v. DEBI PRASAD.*

Criminal Procedure Code, sections 4 and 195(1)—“Complaint”—Information of the supposed commission of an offence communicated by the District Judge to the District Magistrate with a view to the latter taking action as a magistrate.

A Munsif, being of opinion that a document filed in a case before him had been tampered with, communicated his suspicions to the District Judge, who thereupon wrote to the District Magistrate, requesting him to take action in the matter. *Held* that the letter of the District Judge to the District Magistrate amounted to a complaint within the meaning of section 195 (c) of the Code of Criminal Procedure. *Emperor v. Sundar Sarup* (1) followed.

In this case the Munsif of Havali, Bareilly, coming to the conclusion that a document filed in a case before him had been tampered with, communicated his views on the subject to the District Judge. The District Judge thereupon wrote to the District Magistrate requesting him to take action in the matter, and the District Magistrate initiated proceedings against the person concerned and made the case over to the Joint Magistrate. An application for revision of the District Magistrate's order and to set aside the proceedings pending against the applicant was accordingly preferred to the High Court on the ground that there existed no legal foundation for the exercise of his jurisdiction by the Joint Magistrate.

Mr. *Nihal Chand*, for the applicant.

The Government Advocate (Mr. *A. E. Ryves*), for the Crown.

RAFIQ, J.—It appears that in a case pending in the court of the Munsif of Havali in the district of Bareilly a document was tampered with. The learned Munsif reported to the District Judge about the tampering with the document. The latter wrote to the District Magistrate to take action in the matter. The case was made over to the Joint Magistrate of the district for trial. The

*Criminal Revision No. 530 of 1912.

(1) (1904) 1, L. R., 26 All., 514.