

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Broadway.

SARDARI LAL—Petitioner,

versus

THE CROWN—Respondent.

1922

Nov. 3.

Criminal Miscellaneous No. 84 of 1922.

Criminal Procedure Code, Act V of 1898, section 526—transfer of case—reasonable apprehension of not getting a fair and impartial trial.

Held, that it is of paramount importance that persons arraigned before the Courts should have confidence in the impartiality of those Courts, and if a person has a reasonable cause to apprehend that the Court before whom he is being tried is not completely free from bias a transfer should be directed.

Bans Gopal v. Emperor (1), Kali Charan v. Emperor (2), Machal v. Martu (3), Emperor v. Abdul Latif (4), Srilal Chamaria v. Emperor (5), and Rang Bahadur Singh v. Kariman (6), referred to.

Application for transfer of the case, pending in the Court of Malik Allah Bakhsh, Magistrate, 1st Class, Lyallpur, from the Lyallpur District to some other district.

G. BEVAN-PETMAN, for Petitioner.

DES RAJ SAWHNY, Public Prosecutor, for Respondent.

BROADWAY J.—Proceedings were instituted on the 11th July 1922 against Sardari Lal, *Vakil*, and three others under Sections 161/116, Indian Penal Code. These proceedings were commenced under the orders of the officiating District Magistrate of Lyallpur, who acted on information given to him by the Public Prosecutor.

The case was taken up by *Malik Allah Bakhsh*, Magistrate, 1st Class, and the 19th July 1922 was fixed

(1) (1914) 24 Indian Cases 951.

(2) (1906) L.L.R. 33 Cal. 1183.

(3) (1913) 22 Indian Cases 989.

(4) (1904) L.L.R. 26 All. 536.

(5) (1918) 45 Indian Cases 690.

(6) (1921) 22 Cr. L. J. 708.

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for hearing. On that date Sardari Lal appeared, but the Police reported that the other three persons complained against had absconded.

As stated above the complaint had been instituted on the 11th July 1922, so that the Police had not had much time in which to get the other three persons served. Sardari Lal applied to the Magistrate under section 526 (8), Criminal Procedure Code, for an adjournment in order to enable him to move the superior Courts for a transfer. The Magistrate, however, proceeded to record evidence as to the absconding of the other three persons and recorded an order expressing himself as satisfied that the said persons were absconding, and that proceedings against them should be taken under section 512, Criminal Procedure Code. He then examined some of the prosecution witnesses and adjourned the case to the 25th July 1922 for the remaining prosecution evidence.

Sardari Lal then moved this Court under Section 526, Criminal Procedure Code on the 21st July 1922, and the learned Chief Justice issued notice and ordered further proceedings to be stayed.

On the 25th July 1922 Sardari Lal filed a copy of the High Court's order and asked for a stay of proceedings in accordance therewith.

In spite of the definite direction that further proceedings were to be stayed the prosecution sought to get the Magistrate to continue the examination of the prosecution witnesses, but this the Magistrate very properly refused to do. In the application for transfer the petitioner has assigned many reasons for apprehending that he would not receive a fair and impartial trial in the Lyallpur District. The Magistrate has traversed these reasons so far as he is personally concerned, but Mr. Petman for the petitioner has contended that the atmosphere in Lyallpur is such, as gives his client grave apprehension that he will not receive impartial justice in that district.

Now it has been repeatedly held by the various High Courts that it is of paramount importance that persons arraigned before the Courts should have confidence in the impartiality of those Courts, and if a person has

reasonable cause to apprehend that the Court before whom he is being tried is not completely free from bias a transfer should be directed. It appears that the permanent District Magistrate of Lyallpur has now returned and the petitioner is willing to be tried by that officer. The District Magistrate concerned, however, does not wish to deal with the case on the ground that he is greatly pressed with other important work.

The gentleman, who was officiating as District Magistrate in July 1922 and who directed the institution of these proceedings, is still attached to the Lyallpur District as Additional District Magistrate. He is on friendly terms with the trying Magistrate and the other Magistrates of the District—a very excellent state of affairs—and the petitioner is convinced that this case has formed the subject of discussion at various social gatherings and functions.

The question is whether the apprehensions held by the petitioner are reasonable. As to this the first point for consideration is the procedure adopted by the Magistrate on the 19th July 1922 when the case first came up or hearing.

Out of four persons complained against the petitioner alone appeared. The police had had only 8 days in which to search for the other three, and yet it was considered necessary to proceed with the case. Now the witnesses for the prosecution, I am told by the Public Prosecutor, were members of the Bar and Magistrates. It is obvious that they are not of the stamp of persons who could be "got at" by the defence. It was extremely improbable that the three other persons had really absconded so as to render their apprehension within a reasonable time unlikely. The record shows that one of them put in an appearance on the 25th July 1922. In these circumstances I consider the Magistrate acted ill-advisedly in not adjourning the case when requested to do so by the petitioner.

Again, it appears that the petitioner was served with process on the 13th July 1922. Some conversation took place between him and the Magistrate relating to the likelihood of the case being heard on the 19th July. This is apparent from an order of the Magistrate, dated 19th July 1922.

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The petitioner apparently understood that in the absence of all the persons complained against an adjournment would be granted. The Magistrate records that he made no such promise. I am prepared to accept the Magistrate's view of the conversation, but it cannot be denied that the petitioner may have, in good faith, understood differently.

That the late officiating District Magistrate has taken a keen interest in the case seems also to be indisputable. He is also a witness in the case.

In *Bans Gopal v. Emperor* (1), a transfer to another district was considered necessary when the proceedings against an accused were initiated under the orders of a District Magistrate and one of the important witnesses for the prosecution was a Deputy Magistrate of the same district.

In *Kali Churan v. Emperor* (2), it was held that a transfer was advisable if the actions of a Judicial officer, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the mind of the accused an apprehension that he may not have an impartial trial. In *Machal v. Martu* (3), it was pointed out that in matters of this kind the law has regard not so much to the motives, which might be said to bias the Judge, as to the susceptibilities of the litigant parties, and that where there is anything in the case likely to create in the mind of the accused a reasonable apprehension that he may not have an impartial trial, the case should be transferred. What is "reasonable" must of course depend on the degree of intelligence of the accused. Again in the present case it is alleged that the petitioner intends to summon the trying Magistrate as a witness in connection with certain conversations, between him and other Magistrates, relating to the case, and in *Emperor v. Abdul Latif* (4), this was considered a good ground for transfer. In *Srital Chamaria v. Emperor* (5) and *Rang Bahadur Singh v. Kariman* (6), however, it was pointed out that before a transfer could be made on this ground it must first be ascertained that the Magistrate was in a position to give some evidence directly bearing on the case, and I am, therefore, not pressed with this point as it has not

(1) (1914) 24 Indian Cases 951.

(2) (1906) I.L.R. 33 Cal. 1183.

(3) (1913) 22 Indian Cases 380.

(4) (1904) I.L.R. 26 All. 536.

(5) (1918) 45 Indian Cases 630.

(6) (1921) 22 Cr.L.J. 708.

been made clear that the Magistrate in question can give any evidence that has any bearing on the guilt or innocence of the petitioner. There can be no doubt that this case has created somewhat of a stir in Lyallpur. The Public Prosecutor of the District is virtually the complainant; the present Additional District Magistrate ordered the institution of the proceedings; he is himself a witness as also is another Magistrate who acted under his orders. The trying Magistrate's action in proceeding with the case on the 19th July 1922 was ill-advised, and indicated a desire to expedite proceedings, which, though highly commendable in most cases, might well have created a suspicion in the mind of the petitioner that he was influenced by the fact that the then District Magistrate was taking an interest in the case. I am unable to hold that there was any real justification for taking proceedings under section 512, Criminal Procedure Code, as against the other three persons. The time taken by the police was only 8 days and, as has been stated above, one of the other persons appeared in Court on the 25th July 1922. That something of the kind would occur should have been anticipated by the Magistrate, and it was obvious that all the evidence would have to be taken over again.

In all these circumstances I am of opinion that the petitioner's apprehension that he will not obtain that completely, fair and impartial trial that he is entitled to must be regarded as not unreasonable.

In saying this I must not be taken to be casting any reflections on the integrity and good faith of the Magistrate. I have no doubt that he would hold the scales evenly and come to a decision in the case solely on the evidence that would be led before him, but regard must be had to the susceptibilities of the accused and his apprehensions must be given due weight to.

He has no objection to being tried by the District Magistrate, but as that officer has not time to take up the case, I transfer this case to the District Magistrate of Sheikhpura, who may deal with the case himself, or make it over for trial to one of the Magistrates in his district.

A. R.

Petition accepted, case transferred.

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