

MISCELLANEOUS CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

_AMAR SINGH (COMPLAINANT) Petitioner
versus
SADHU SINGH (ACCUSED) Respondent.

Criminal Miscellaneous No. 44 of 1925.

Criminal Procedure Code, Act V of 1868, section 526 (a)
—Transfer of case—grounds for—Duty of Magistrate to supply copies of orders applied for.

In dealing with an application for transfer the Court considers not merely whether there has been any real bias in the mind of the presiding Judge against the applicant, but whether incidents may not have happened which, though they may be susceptible of explanation, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial.

Serjeant v. Dale (1), referred to.

Held also, that it is for the litigant (and not for the Magistrate) to decide what copies he should have in order to move the superior Court, and that the Magistrate's action in refusing to supply a copy of the particular order applied for, but directing that copies of two other orders should be prepared with it on one sheet of paper—the applicant having to pay for all three—was without any justification and must be deprecated.

Petition for transfer of the case from the Court of Rai Sahib Lala Amar Nath, Additional District Magistrate, Amritsar, to some other district.

MOTI SAGAR and KHAZAN SINGH, for Petitioner.

ABDUL RASHID, Assistant Legal Remembrancer,
for Crown, Respondent.

ORDER.

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SIR SHADI LAL, C. J.—On the 30th January 1925, Mr. Amar Singh, a Vakil of this Court, preferred a complaint against the respondent, *Sardar Bahadur Sadhu Singh*, Honorary Magistrate at Amritsar, in which he accused the latter of having committed offences under sections 352, 500 and 504, Indian Penal Code. It appears that the complainant was engaged, in November 1924, to defend certain accused in the case of *Crown v. Master Daulat Singh and others*; and that on the 19th December, 1924, he, on behalf of his clients, cross-examined the respondent who appeared as a witness for the prosecution. The complainant, after reciting the fact that on that day the respondent, while he was being cross-examined, insulted and abused the complainant, made, *inter alia*, the following allegations in his complaint:—

“ That the cross-examination of the accused as a prosecution witness in that case continued and the complainant again on 24th January 1925 cross-examined him with a view to (a) test his veracity, (b) to discover who he is and what is his position in life and (c) to shake his credit by injuring his character as allowed by section 146 of the Indian Evidence Act and for which documentary proof was given to the complainant by his clients, which document in original was shown to the Magistrate to prove the *bonâ fides* of the defence.

“ That the Magistrate without making record of these questions disallowed a number of them and the accused took to insulting, abusing and assaulting the complainant in open Court in the presence of a large audience, reporters of papers, other lawyers and clients.

“ That to the best remembrance of the complainant the following were the words used by the accused

1925 . for the complainant:—‘ What position have you
 AMAR SINGH got?—I know you are a son of petition-writer. Men
 v. of your position are worse than my menial servants.
 SADHU SINGH. I can engage a number of men of your position as my
 menial servants. You are a dog, nay, son of a dog.
 You should not bark like a dog. If sons of sweepers
 and *mochis* (shoe-makers) pass B.A., what do I care
 for them? I will forthwith make you lie down here.’

“ That after using these words the accused from the witness box assaulted the complainant and would certainly have struck him, had there been no railing between, and had the complainant not receded back.

“ That the complainant upon this sought the protection of the Court, but the learned Magistrate took no other action against the accused except to ask Deputy Superintendent, Police (Courts), to call the accused (then a prosecution witness) to order, and not to behave in that way. But the accused did not mind this at all, rather said loudly ‘ I will do so thousand times. I do not care for anybody. What is he (*i.e.*, the complainant) to bark in my presence.’ The complainant kept himself under control otherwise there would certainly have been serious breach of peace. That the complainant then took leave of the Court to consult his clients, as it was impossible for him to defend them any more under the circumstances.

“ That the accused did all this intentionally, maliciously to overawe the complainant and to malign, insult, annoy, and lower him and his family members in the estimation of his clients and the audience. The complainant has in fact suffered great mental pain and worry on account of the action of the accused, and he has been disgraced in the presence of his clients, other audience and lawyer friends present there and lowered in their estimation.”

On the 2nd February, 1925, the District Magistrate of Amritsar examined the complainant at great length in support of these allegations and then passed the following order :—

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“ I have heard complainant’s statement, but I know far too much about various facts concerned with this case to be able to deal with this complaint in an unprejudiced manner. Nor do I wish to transfer it to any Court subordinate to me. The complainant may, if he wishes, apply to the High Court for a transfer.”

Thereupon the complainant, in order to move the High Court as suggested by the District Magistrate at once made an application for a copy of the order to be supplied to him urgently; but it appears that the learned Magistrate took up the case on the following day, and wrote, in the absence of the complainant, an order which is in these terms :—

“ The above order was too unconsidered, and makes a petty case into a *cause célèbre*. I propose to reconsider it and deal with the case in this district. Call the complainant for 6th February.”

Now, the complainant practises his profession at Lahore and does not reside at Amritsar; and the Court should have known that an interval of two days was wholly insufficient for serving a notice on a person who was residing in another district. Indeed, I find that the notice was handed over to a process-server at Lahore on the 5th February, and that he returned it on that very day with an endorsement that he could not effect service. The complainant, who had no information of what was going on at Amritsar, was not present in the Court on the 6th February, but the

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learned District Magistrate proceeded in his absence, and recorded the following order :—

“ Complainant is not present. I have considered his statement. In view of the locality of the incident in the presence of a Magistrate and police and in view of the fact that accused was separated from complainant by strong wooden partition, I do not consider that accused’s alleged menaces, even if proved, would amount to an offence either under section 352, Indian Penal Code, or section 504, Indian Penal Code. The words, however, may have been defamatory and may constitute reason for a case under section 500, Indian Penal Code. The case is sent to the Court of *Rai Sahib Lala Amar Nath*, Additional District Magistrate, for trial. Complainant to be informed.”

Now, the complainant states in his affidavit that it was only on the 7th February, when he went to Amritsar to fetch the copy of the order of the 2nd February for which he had applied as stated above, that he learnt for the first time that the learned District Magistrate had passed two orders on the 3rd and 6th February 1925, respectively, and contends that he had “ no authority or jurisdiction under the law to pass these orders after the order, dated the 2nd February 1925, had been passed.”

On the facts set out above and on the allegation that the accused is a Magistrate at Amritsar and wields considerable influence there, the complainant urges that he cannot get a fair and impartial trial at Amritsar, and asks this Court to transfer the case from the Amritsar District to the Lahore District or to some other district in the Punjab.

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The principles, which guide the Court adjudicating upon an application for transfer are firmly established, and do not admit of any doubt. It is not sufficient for the applicant merely to allege that he would not get an impartial trial, but he must place before the Court the facts which give rise to this belief in his mind. The Court should not make an order for transfer unless it is satisfied that on the facts disclosed in the application and the affidavit there arises a reasonable apprehension that the applicant may not have a fair and impartial trial. It is, at the same time, clear that in dealing with an application for transfer what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. As observed by Lush J., in *Serjeant v. Dale* (1), "the law has regard, not so much perhaps to the motives which might be supposed to bias the Judge, as to the susceptibilities of the litigant-parties. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is essential to social order and security."

It has, therefore, to be seen whether there is anything in this case likely to create in the mind of

(1) (1877) 2 Q. B. D. 558.

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the applicant a reasonable apprehension that he may not have a fair and impartial trial in the Court of a Magistrate at Amritsar. Now the learned District Magistrate, in his order of the 2nd February, expresses his inability to deal with the complaint "in an unprejudiced manner," and he had evidently adequate grounds for holding that the case should not be tried by any Court subordinate to him. He, however, left it to the complainant to move the High Court to transfer the case to another district. This order was, in the circumstances, perfectly just and reasonable; and it was expected that the learned Magistrate would await the result of the application which the complainant intended to make to the High Court for the transfer of the case. But he subsequently changed his mind, and apparently *suo motu* the record, at any rate, does not show that any person had moved him in the matter—decided to rescind his previous order. Not only did he rescind that order, but he went so far as to express his opinion adverse to the complainant on two of the three charges mentioned in the complaint. And, strange to say, all this was done in the absence of the complainant.

Now, there can be no doubt that the proceedings taken by the District Magistrate in the absence of the complainant were not calculated to inspire confidence in the administration of justice. While I am not prepared to accept the contention that the Magistrate, after passing the order of the 2nd February, became *functus officio* and had consequently no jurisdiction to deal with the case; I must say that he was entirely wrong in deciding, contrary to his previous order, that the case should be heard by a Magistrate at Amritsar when he ought to have known that the complainant had not been served with notice and could not, therefore, be present in Court. Nor

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was he justified in pronouncing an adverse opinion on the merits without affording the complainant an opportunity of being heard in support of his complaint. The learned Magistrate does not evidently realize the impropriety of prejudging the case, because I find that, even in the explanation submitted by him to this Court, he does not feel any hesitation in declaring that "the Court" (namely, the Court which heard the criminal case which has led to the present complaint) "permitted counsel much too much liberty in cross-examination. Much of the cross-examination appears to me irrelevant, vexatious and insulting. There is no doubt that the witness lost his temper and abused counsel. Here again, the Court failed to keep control of the situation."

It is unnecessary to dwell on the subject further, as it is clear that the various incidents, that have occurred since the 2nd February, have tended only to confirm the view expressed by the District Magistrate himself in his order of that date that the case should be tried by a Court in a district other than Amritsar. Accordingly I withdraw the case from the Court of the Additional District Magistrate, Amritsar, to whom it was made over by the District Magistrate, and refer it for trial to the Additional District Magistrate, Lahore. It is hardly necessary for me to point out the obvious fact that this judgment does not, and could not, deal with the merits of the complaint, and that nothing contained herein should be construed as implying, in the slightest degree, any expression of opinion on the accuracy or otherwise of the allegations on which the complaint is founded. It is the duty of the Magistrate to base his conclusion upon the evidence that may be adduced by the parties, and to exclude from consideration everything which is not strictly relevant to the issue before him.

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Before concluding, I must deal with a matter to which my attention has been specially invited by the learned Advocate for the petitioner. As stated above, the complainant before leaving Amritsar had made an application for a copy of the order passed by the District Magistrate on the 2nd February, 1925, but when he returned to Amritsar on the 7th February; he found that no such copy had been prepared, even though he had deposited the money required for defraying the cost of preparing the copy and had applied for the copy to be furnished urgently. He accordingly made another application for a copy of the aforesaid order of the 2nd February, but the Additional District Magistrate passed an order refusing to supply a copy of only the above-mentioned order and directed that copies of all the three orders, namely, those passed on the 2nd, 3rd and 6th February, be prepared on one sheet of paper and supplied to the applicant. The latter had accordingly to submit to an order which was wholly unwarranted, and to pay for copies of the documents for which he had made no application.

It is for the litigant, and not for the Magistrate, to decide what copies he should have in order to move the superior Court, and it is plain that the Magistrate's action in thrusting upon the applicant copies which he did not want and making him pay for them, was without any justification, and must be deprecated. I trust that no judicial officer will ever behave in this arbitrary manner or allow any extraneous consideration to influence him in the performance of his judicial functions.

N. F. E.

Petition accepted.
