

REVISIONAL CRIMINAL.

Before Harrison J.

PESHORI LAL—Petitioner

versus

THE CROWN—Respondent.

Criminal Revision No. 1556 of 1930.

Criminal Procedure Code, Act V of 1898, section 526 (8)—“or the accused”—meaning of—whether accused as a whole or each of the accused in turn—Successive applications by several accused persons for adjournment of a case to enable them to apply for transfer—whether Magistrate bound to adjourn the case on each application.

The petitioner being one of a number of accused persons applied to the trial Magistrate for time to apply for a transfer. Similar applications had twice been made by other accused persons and granted. The Magistrate refused the further adjournment of the case. In revision to the High Court it was argued that under section 526 (8) of the Code of Criminal Procedure each accused in turn was entitled to obtain an adjournment for the purpose of applying for a transfer and this without any fresh grounds being urged or any fresh incident having occurred, which could possibly justify or form the basis of an application for transfer.

Held, that the words “or the accused” in section 526 (8) of the Code apply to the accused as a whole, and that the Magistrate’s order was under the circumstances perfectly correct and the accused were not entitled to any further adjournment.

Application for revision of the order of Rai Sahib Lala Labhu Ram, District Magistrate, Gujranwala, dated the 27th November 1930, affirming that of Rai Sahib Pandit Sri Kishen, Magistrate, 1st Class, Gujranwala, dated the 5th November 1930, refusing to stay proceedings, etc.

S. L. PURI, for Petitioner.

MOHAMMAD AKBAR KHAN, for Government Advocate, for Respondent.

HARRISON J.—Proceedings were taken against thirteen men under section 452 of the Indian Penal Code. The case was heard by the Additional District Magistrate, Gujranwala, and, after the statements of a few witnesses had been recorded, one of the accused, Tulsi Das, applied, to the presiding Magistrate *Sardar* Bishen Singh, under section 526 of the Criminal Procedure Code, for the stay of proceedings to allow him time to apply for transfer. Time was allowed from the 2nd September 1930 to the 17th September 1930. No action whatsoever was taken. On the vernacular record there is an order of the 17th September 1930 illegibly signed presumably by Pandit Sri Kishen, who had succeeded *Sardar* Bishen Singh, the previous Additional District Magistrate, adjourning the case to the 7th October 1930. On the 7th October 1930, as soon as the case was taken up, another of the accused, Sardari Lal, applied for another postponement in order to have the case transferred. The postponement was granted in spite of no attempt having been made by any of the accused to avail themselves of the previous postponement. The case was adjourned from the 7th October to the 20th October 1930. Out of these thirteen days, two days were spent in applying to the District Magistrate for the transfer of the case, an application being put in on the 14th October and rejected on the following day. No application was made to the High Court.

On the next date of hearing, the 5th November 1930, a third accused, Jatindar Nath, applied for a postponement in order to enable him to apply for a transfer. This was refused and, in my opinion, quite rightly. A fourth man, Pishauri Lal then applied for an adjournment and his application was refused. Then followed a revision petition to the

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District Magistrate, which was dismissed, and from his order an application for revision has been presented to this Court.

The contention of counsel is that every accused is, in turn, entitled to have an adjournment to apply for the transfer of his case "*quot rei tot moratoria*" so to speak, and this without any fresh grounds being urged or any fresh incidents having occurred which could possibly justify or form the basis of an application for transfer. This is an ingenious proposition and counsel relies on the words "or the accused" in section 526 (8) of the Criminal Procedure Code and contends that this must be read as meaning "the accused and every one of them," and that there is no estoppel, nor bar against each of the accused in turn exercising his privilege. It appears to me that the words "or the accused" apply to the accused as a whole, and that, although any further incident might give rise to a fresh application, it would equally give rise to the making of such an application by the same person, provided always that there was something to justify or form the foundation thereof. It is contended in the grounds for revision that, at any rate, one application for adjournment to each of the Magistrates, who handled the case, was justified and, even if this be conceded, such adjournments were given both by *Sardar* Bishen Singh and *Pandit* Sri Kishan. I hold that, under the circumstances, the Magistrate's order was perfectly right, and that the accused were not entitled to any further adjournment.

I dismiss the application for revision and direct that the case proceed and be disposed of as soon as possible.

A. N. C.

Revision dismissed.