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the words " last resided " in that clause or to treat those words as denoting permanent residence only. *Mrs. E. H. Jolly* v. *St. John William Jolly*[1] is a good authority for the proposition that temporary residence is sufficient to give the Court jurisdiction. That case was approved of by Wild J. in *Khairunissa* v. *Bashir Ahmed*[2] and does not appear to have been dissented from by Patkar J. in his judgment in the same case. *Sher Singh* v. *Amir Kunwar*[3] is a decision of a Judge of the High Court at Allahabad to the same effect. In that case *Ramdei* v. *Jhunni Lal*,[4] which was relied upon by Mr. Shah, has been distinguished, and it is clear that the circumstances there were quite different from those in the case before us. It appeared that the husband had merely taken his wife to her relations in a place where he did not reside in order to leave her there, and stayed with her for a week only. The present applicant's stay with his wife at Surat for two months in the circumstances described by my learned brother can fairly be said to amount to residence with her at Surat.

As regards the other points in the case I have nothing to add to what my learned brother has said.

Rule discharged.

B. G. R.

CRIMINAL TRANSFER.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Mirza and Mr. Justice Broomfield.

PARASHRAM DATARAM SHAMDASANI *v.* SIR HUGH GOLDING COCKE AND OTHERS.*

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April 15.

Criminal Procedure Code (Act V of 1898), sections 526, 561A—Transfer—Frivolous and vexatious applications—Abuse of process of Court—High Court's inherent power—Applicant can be prosecuted for contempt or committed to prison—Security for costs.

Where frivolous and vexatious applications for transfer under section 526 of the Criminal Procedure Code, 1898, are resorted to as a means for preventing

*Criminal Application for transfer No. 140 of 1930.

(1) (1917) 21 Cal. W. N. 872.
(2) (1929) 53 Bom. 781.
(3) (1927) 49 All. 479.
(4) (1926) 27 Cr. L. J. 820.

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the ends of justice being attained, the High Court can prevent the abuse of process of Court under section 561A of the Criminal Procedure Code, by directing proceedings against the applicant for contempt of Court. The High Court can also direct the applicant to lodge a certain sum in Court as security for the costs occasioned to the opponent by repeated adjournments and the applications in respect of them.

THIS was an application for transfer of a criminal case pending in the Court of the Chief Presidency Magistrate, Bombay.

The facts are sufficiently stated in the judgment of Marten C. J.

P. D. Shamdasani (applicant), in person.

Velinkar, with Messrs. *Payne & Co.*, for opponent No. 3.

MARTEN, C. J. :—This is an application No. 140 of 1930 by Mr. Shamdasani the complainant in a case filed on June 13, 1929, and still pending before the learned Chief Presidency Magistrate, asking that all proceedings had before the learned Magistrate be set aside and that the case be transferred to some other Court for disposal according to law. This is the third application of a similar nature, there having been two previous applications, viz., Criminal Revision No. 71 of 1930 filed in this Court on February 17, 1930, and Criminal Revision No. 104 of 1930 filed in this Court on March 14, 1930.

The prosecution which has been instituted by the complainant is in respect of certain alleged false balance sheets which have been published. The learned Magistrate has held an inquiry for some eight days, viz., on October 9, November 27, December 4, 5 and 6, 1929, and February 1, 8 and 15, 1930, into the allegations made by the complainant. Then, on February 15, the hearing appears to have been prolonged up to 6-30 p.m.; and thereupon the complainant made an application for transfer alleging bias in the learned Magistrate and that

he feared he would not get a fair trial. Subsequently, on February 17 the first application to this Court was made. The result under section 526 (8) of the Criminal Procedure Code was that the Magistrate had to postpone the case.

The first application, which I will call "A", was refused by the High Court on March 7, 1930. In the judgment delivered by my brother Mirza J. the point of bias was thus dealt with:

"With regard to the second part of the application, viz., that the Magistrate is prejudiced against the applicant and is not likely to do justice to his case with an impartial mind, the materials placed before us do not in our opinion justify such a conclusion. If the applicant entertains an apprehension that he will not get justice at the hands of the Magistrate we would be constrained to say that the apprehension is not one which we would regard reasonable. The application therefore is summarily rejected."

Accordingly, on March 11, 1930, the inquiry was resumed by the learned Magistrate, and practically at once another application for a transfer was made on similar grounds. That was filed in this High Court on March 14, 1930, in which it was alleged that the cumulative effect of the incidents on the mind of the complainant was that the mind of the learned Magistrate was not free from some bias in the matter, and he did not approach the case with that judicial impartiality so essential to the administration of justice. That application, which I will call "B," came before my learned brothers on March 26, 1930, and was summarily dismissed.

Accordingly, the learned Magistrate on March 29, 1930, once more resumed the hearing of the case and once more an application was forthwith made for a transfer of the case on the same grounds of bias, which is the application (C) now before us. It is based on this additional circumstance that on March 28, 1930, in another case the Magistrate made certain observations derogatory to Mr. Shamdasani which of themselves show that

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the Magistrate is not a fit person to continue the hearing of the present inquiry. Moreover, Mr. Shamdasani alleges that those observations were defamatory, and he is accordingly petitioning the Local Government for sanction to take proceedings against the learned Magistrate for defamation in respect of those observations. And this, he contends, is an additional reason why the Magistrate should not continue the present inquiry, whether or no the requisite sanction to prosecute is eventually given by the Local Government.

We have carefully considered what has been urged before us by the complainant in the present case, but in coming to our conclusion we must remember the surrounding circumstances. The complainant puts himself in the position of one who is vindicating public justice and who accordingly is bringing repeated prosecutions against certain persons who are alleged to have filed improper balance-sheets. The point for decision before the learned Magistrate will therefore be whether these particular balance sheets are improper, and, if so, whether the respondents are under any liability under the criminal law in respect of them. As regards the first point it will, I take it, be largely a question of accountancy and so on. Therefore we are a long way away from a case where there is a mere conflict of evidence between a complainant and an accused or where the result depends on the credibility of or character of the complainant. Moreover, it has to be borne in mind, as the complainant himself tells us, that he has been bringing proceedings of a somewhat similar nature in these Courts for the last six years. Consequently, it is impossible for any Judge or Magistrate to be unaware of the activities of Mr. Shamdasani in his desire that the law should be put in motion against any directors or auditors and

others of limited liability companies who put forward or are alleged to put forward inaccurate balance-sheets.

Therefore, bearing these facts in mind, we do not think the observations, which the learned Magistrate is alleged to have made—and for the purpose of deciding this application we accept the words which the complainant says he uttered—show a bias which would influence the learned Magistrate in deciding whether these balance-sheets are false or not. We do not think they indicate that the complainant will not have a perfectly fair trial in deciding, first, a matter of accounts only, and, secondly, a question as to the criminal liability not of the complainant but of the accused in the case. Therefore, as regards this present application before us we unhesitatingly reject it. I repeat that in our opinion there is no adequate reason to suppose that the complainant will not get a fair hearing.

But the matter does not quite end there. We cannot shut our eyes to the fact that this is the third application for a transfer on the ground of bias and so on which has been presented to this Court since February 17, 1930. We also cannot shut our eyes to the fact that repeated transfer applications of this kind might in certain events enable a complainant or for a matter of that an accused to stop a trial or enquiry altogether under section 526 (8), because as soon as one application for a transfer was rejected he could proceed forthwith to make another with only a possible liability for costs under section 526 (*6A*). But, fortunately, in our judgment, it is not open either to a complainant or to an accused to hinder the administration of justice in that way. We hold it to be clear that under section 561A of the Criminal Procedure Code we can, if necessary, exercise the inherent power of the High Court to prevent the abuse of the process of any Court; and in such a case as I have indicated, we ought unhesitatingly to apply that power.

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Section 561A runs :—

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

To my mind it is clear that one of the ends of justice is to have a case properly heard and concluded within a reasonable time. Accordingly, if frivolous and vexatious applications are resorted to as a means of preventing the ends of justice being attained, then I would hold that the Court ought to exercise its above inherent power to prevent its process being thus abused.

So too, in certain cases, speaking for myself, conduct of this sort might, I think, amount to contempt of Court which could be punished in various ways. For instance, in Halsbury's Laws of England, Vol. VII, p. 293, para. 629, it is said :—

"Abusing the process of the court is a term generally applied to a proceeding which is wanting in *bona fides* and is frivolous, vexatious, or oppressive, the ordinary remedy in such a case being to apply to strike out a pleading or stay the proceedings, or to prevent further proceedings being taken without leave. Beyond this the court has jurisdiction to punish abuse of process by committal or attachment as a contempt."

That means committal to prison. Then note (*t*) says (p. 293) :—

"The following acts of abuse of process have been held punishable as contempts : taking out process without any colour of right to it; making use of process in a vexatious manner or to serve the purposes of oppression or injustice. . . . ."

And many other examples are given.

Now we have seriously considered whether in the present case we ought not to issue an order of the nature indicated in section 561A. But we propose to give the complainant one more chance. We have indicated what in principle we hold to be the powers of the Court. We have also indicated that in a proper case those powers ought to be exercised by this Court. We also consider that in the present case the Magistrate should continue

to hold his inquiry into this present complaint and to bring the matter to a final conclusion without permitting any more adjournments than are necessitated by the other urgent work of his Court. Accordingly, if the complainant repeats what he has done in the past, namely, that as soon as one application for a transfer is refused by the High Court he promptly makes another, then I must warn him that if the matter comes up again before the High Court he will be in grave risk not only of having an order under section 561A passed against him but also of having proceedings directed against him for contempt of Court.

There is also another remedy which we think as a matter of principle the High Court in an appropriate case could adopt. That would be to direct such a complainant as we have here to lodge a certain sum in Court, say a thousand rupees, as security for the costs occasioned to his opponent by these repeated adjournments, and the applications in respect of them.

With this warning then, which we trust the complainant will pay very careful attention to, we will pass our order on the present application, namely, that it should be dismissed.

As regards the question of costs under section 526 (6A) to which we drew the complainant's attention, the present application is made *ex parte* for a rule *nisi*. Accordingly, on the present application we do not propose to make any order as regards costs.

MIRZA, J.:—I agree.

BROOMFIELD, J.:—I also agree.

Application dismissed.

J. G. R.