
(1972) 07 KAR CK 0012
In the Karnataka High Court

Bharamarambika @ Ambakka

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 18-07-1972

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 526 (1) (d), 528 (1) (c), 582 (1) (1-C)

Citation : (1973) CriLJ 114

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Judgement

M.S. Nesargi, J.—This petition -1 filed u/s 526(1)(d) of the Code of Criminal Procedure for transfer of C.C No. 2330 of 1971 from the file of the Special First Class Magistrate, Davangere, to the file of the Judicial Magistrate. First Class. Chitradurga.

2. The petitioner Is complainant in C.C. No. 2330 of 1971 on the file of the Special First Class Magistrate. Davangere. She filed the complaint on 6.7.1971 alleging that respondent-2 the husband of the petitioner, had. during the subsistence of their marriage, married one Jayamma, respondent No. 3 and that that marriage had been abetted by the remaining respondents 4 to 6. The Magistrate recorded the sworn statement of the complainant on 6.7.1971 and then recorded sworn statements of two witnesses on 2.8.1971 and thereafter directed issue of processes. Respondents 2 to 6 who are accused Nos. 1 to 5 before him appeared on 22.9.1971 and were enlarged on bail. The matter was posted for recording of evidence on 13.10.1971. The matter was adjourned to 15.12.1971 and then to 17.1.1972. On that date, the complainant-petitioner filed an application stating that she had filed an application in the court of the Sessions Judge. Chitradurga. u/s 528(1)(c) of the Code of Criminal Procedure praying for transfer of the case from that court to the court at Chitradurga on the ground that both the parties and 5 out of 7 witnesses were from Hiriyur Taluk and it was convenient to all of them to have the case tried in the court of the Judicial Magistrate at Chitradurga. The case was adjourned in view of the transfer

application.

3. The learned Sessions Judge, has in Cr. Misc. No. 1 of 1972. passed an order rejecting the request made by the complainant for transfer of the case holding as follows:

The inconvenience of the complainant or even her witnesses. I do not think, is a good ground to grant the prayer

It is, in view of this order passed by the Sessions Judge, the complainant-petitioner has approached this Court u/s 526(1)(d), Cr.P.C.

4. The complaint petition shows that 7 witnesses have to be examined on behalf of the complainant. Witness No. 1 is a resident of Davangere town; witness No. 6 is a resident of Hiriya town and remaining 5 witnesses are either from Gannayakanahally to which both the complainant and all the accused belong or of some other village in Hiriya taluk itself. Gannayakanahally is in Hiriya taluka. The accused-respondents did not appear before the Sessions Judge in the said criminal miscellaneous petition and contest the matter. They have remained absent even though they were served with the notice of the present petition here also. These facts make it clear that accused-respondents appear to have no objection for the transfer of the case from the court at Davangere to the court at Chitradurga for the general convenience of the parties and also of Witnesses.

5. Section 526(1)(d) reads as follows:

High Court may transfer case or itself try it. (1) Whenever it is made to appear to the High Court:- (d) that an order under this Section will tend to the general convenience of the parties or witnesses, or....

It is therefore, evident that the facts found in the case fall within the four corners of the above provision of law and therefore an order transferring the said case C.C. No. 2330 of 1971 from the court of the Special First Class Magistrate Davangere to the Court of the Judicial Magistrate. First Class Chitradurga, has to be passed.

6. The learned Sessions Judge, in my opinion, has ignored the above provision of law while rejecting the petition filed before him and observing that inconvenience of the complainant or her witnesses is not a good ground to transfer the case. Section 528(1)(1-C) of the Cr.P.C. reads as follows:

Any Sessions Judge, on an application made to him. in this behalf, may if he is of opinion that it is expedient for the ends of justice order that any particular case be transferred from one Criminal Court to another Criminal Court in the same Sessions division.

The courts at Davangere and Chitradurga are in the same sessions division. No guidelines are provided in Section 528(1)(1-C) of the Cr.P.C. to indicate what are the grounds that are to be considered to hold that it would be expedient for the ends of justice to transfer a case from one Criminal Court to another Criminal

Court in the same sessions division. It has been held in a catena of decisions of various High Courts that the powers vested in the Sessions Judge by Section 528(1)(1-C) are very wide and these powers should be judiciously and cautiously exercised. That would mean that the said powers cannot be exercised by a Sessions Judge in an arbitrary manner. Sub-section (1)(a) of Section 526 Cr.P.C. has provided that when a transfer of a criminal case from one criminal court to another criminal court in the very same division is sought, an application for such a relief should be in the first instance, filed in the court of the Sessions Judge of that particular sessions division and if it is rejected by the Sessions Judge then a remedy by way of an application before the High Court u/s 526 (I) Cr.P.C. would be available. It is in this background, the grounds mentioned in Section 526(1) (d) Cr.P.C. will have to be read while understanding what grounds are to be regarded as expedient for the ends of justice to pass an order of transfer of criminal cases from one criminal court to another Criminal Court in the very, same division. I am clearly of the opinion that the Sessions Judge, while exercising their powers u/s 528(1)(1-C) of the Cr.P.C. will have to bear in mind the grounds mentioned in Section 526(1) Cr.P.C. The grounds mentioned in Section 526(1) are not exhaustive. The power vested in Sessions Judge u/s 528(1)(1-C) is very wide. Though particular circumstances found In a criminal case may not fall within any one of the grounds mentioned in Section 526(1) a Sessions Judge has ample powers to transfer such a case from one criminal court to another criminal court in his division provided that he Is of opinion that it is expedient for the ends of justice that such an order of transfer should be made.

7. In view of the above position in law. it has to be held that the view taken by the Sessions Judge that inconvenience of the complainant or even her witnesses is not a good ground to grant the prayer made by her, is not correct in law.

8. In view of the foregoing reasons, this petition is allowed. C.C. No. 2330 of 1971 on the file of the Special First Class Magistrate. Davangere, is transferred from that court to the Court of the Judicial Magistrate. First Class. Chitradurga. and the latter court is directed to dispose of the case according to law.