
(1976) 01 AHC CK 0044
In the Allahabad High Court

Brij Behari Das

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-01-1976

Acts Referred:

Constitution of India, 1950 — Article 235

Criminal Procedure Code, 1973 (CrPC) — Section 10, 107, 109, 110, 117

Citation : (1976) CriLJ 1407

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Kapoor, J.—This revision is directed against the order dated 20-8-1975 of the Addl. Sessions Judge, Ballia in Cr. Revision No, 57 of 1974 by which he rejected the revision against the order dated 19-3-1974 of the Addl. District Magistrate (Judicial), Ballia in Cr. Revision No. 12 of 1972. A revision was then filed before the Addl. District Magistrate (Judicial) Ballia in a case u/s 145, Cr. P.C. which was decided by the S. D. M. Ballia by his order dated 10-11-1972. An objection was raised before the Addl. District Magistrate (Judicial) Ballia that the revision was not entertainable by him in view of the Government Order No P-8690/II-C-554/1961 dated September 29, 1967 (Appointment C Department), The Addl. District Magistrate (Judicial) rejected that contention and ordered the case to be proceeded with. A revision was then filed before the Sessions Judge, Ballia which was ultimately decided by the Addl. Sessions Judge, Ballia by the impugned order. It is not clear from the record but the learned Counsel for the applicant informs that this revision before the Sessions Judge was filed before 1st of April, 1974.

2. The only point that arises for decision is as to whether the Addl. District Magistrate (Judicial) was empowered to entertain the revision against the orders passed by the Executive Magistrate under the scheme of Separation of Judiciary from the Executive contained in the aforesaid G. O. There appeared to be no

direct authority on this point. I had, therefore, sent for all the relevant papers from the Administrative Department of the Court. Paragraph 3 of the aforesaid G. O. is as follows:

(3) Disposal of criminal Case work.

3. The present position is that Judicial Officers deal with all cases under the I.P.C. and are also empowered to take cognizance, under Clause (a) and Clause (b) of Sub-section (1) of Section 190, Cr. P.C. of offences under the I.P.C. They will continue to deal with all such cases after separation from October 2, 1967. The Executive Magistrate will continue to deal with the following cases and miscellaneous work as heretofore:

(a) All cases under the Cr. P.C., particularly under Sections 107/117, 109, 110, 145.

(b) all cases under other miscellaneous local and Special Acts such as Arms Act, Excise Act, Prevention of Food Adulteration Act, Gambling Act, Essential Commodities Act, etc.

(c) Conduct of identification proceedings, recording of dying declarations, confessions and statements u/s 154, Cr. P.C.

Clause (1) of that G. O. deals with administrative control and its exercise. The relevant portion on which learned Counsel for the applicant has laid great stress may be reproduced as under:

All members of the U. P. Judicial Officers Service whose names are given in the Annexure except the eight Additional Commissioners shown at numbers 1-6 and 8-9 will be placed under the administrative control of the High Court from October 2, 1967. They will form a separate wing under the High Court, and Will not be merged with the cadres of the U. P. Civil Service (Judicial Branch) and the U. P. Higher Judicial Service. It is hereby clarified that notwithstanding Section 17(5), Cr. P.C. the High Court will exercise its administrative control over Additional District Magistrates (Judicial) and other Magistrates belonging to the said service under Article 235 of the Constitution, through the District and Sessions Judges. The Additional District Magistrates (Judicial) who are already invested with all the powers of a District Magistrate will continue to exercise those powers in relation to Judicial Magistrates and Munsif Magistrates, while District Magistrates will continue to exercise similar powers in relation to the Executive Magistrates and Special Railway Magistrates. In respect of Sections 192(1) and 528(2), Cr. P.C. occasions may arise when a District Magistrate may have to transfer a case wrongly instituted in the Court of an Executive Magistrate to the Court of a Judicial Magistrate or, in a converse situation, an Additional District Magistrate (Judicial) may have to transfer a case to an Executive Magistrate, but these powers will, as a matter of convention, be exercised by the officers concerned only in consultation with their counterparts.

4. According to the learned Counsel for the applicant the powers of the A.D.M.

(J.) which were conferred on him earlier u/s 10(2), Cr. P.C. were curtailed by this Notification and he could not exercise those powers and hear revisions in cases which were to be heard by the Executive Magistrate. I find that a reference was made by the District Magistrate, Ghazipur to the Secretary to Government Appointment (C) Department, U. P. Shashan, Lucknow by his letter dated October 8, 1968 and the following clarification was issued by Appointment (C) Department under G. O. No. 39/9/1968-Appointment (C) dated March 10, 1969. It may be convenient to reproduce the entire G. O. as under:

I am directed to refer to your letter No. 41/XIV-97-28 (64-68) F. R. dated October 8, 1968, on the above subject, and to say that all such appeals and revisions will continue to be heard by the Addl. District Magistrate (Judicial) as laid down in para 8 of G. O. No. 2798/II-A-371/1949, dated May 20, 1949. There was no intention to transfer to the Executive the cases which before the separation scheme were already being dealt with by the Addl. District Magistrate (Judicial). The orders contained in the G. O. mentioned above in regard to the disposal of case work were intended to be continued vide para 1 (3) of G. O. No. P-8690/II-C-554/1961, dated Sept. 29, 1967.

5. It is not disputed that under the earlier Government Order dated May 20, 1949, the Addl. District Magistrates (Judicial) were authorised to hear all appeals, revisions, etc. which could be heard by the District Magistrates under the Code of Criminal Procedure. This will make it clear that those powers remained intact and even after the Scheme of Separation, the A.D.M. (Judicial) was authorised to hear revisions, etc. against the orders of the Executive Magistrates.

6. Learned Counsel for the applicant has argued that this was only the opinion of the department of Legal Remembrancer and it could not modify the Government order dated September 29, 1967. I find that the order dated March 10, 1969 too has been issued by the Government, Appointment (C) Department and it is not a mere opinion. No doubt, it has clarified the earlier G. O. dated September 29, 1967 but at the same time it has reiterated that the powers already conferred on the Addl. District Magistrate by the G. O. dated May 20, 1949 were kept intact. Those powers were conferred u/s 10(2), Cr. P.C. and it cannot now be said that they have been taken away by the Government from the Addl. District Magistrates (Judicial) by the G. O. dated September 29, 1967.

7. I am also of the opinion that the reference to Clause (1) to the G. O. dated September 29, 1967 is only with regard to the administrative control of the Judicial Magistrates and the Executive Magistrates. The powers already conferred on the Addl. District Magistrates (Judicial) u/s 10, Cr. P.C. by the Government Order No. 2798/II-A-371-1949 dated May 20, 1949 have certainly not been taken away. The view taken by the lower courts is, therefore, correct. No interference is called for in revision.

8. The revision is dismissed summarily.