

(1956) 01 AHC CK 0034
In the Allahabad High Court
Case No : Special Appeal No. 271 of 1955

Ibadat Husain

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 31-01-1956

Acts Referred:

Constitution of India, 1950 — Article 154
Criminal Procedure Code, 1898 (CrPC) — Section 14, 16

Citation : AIR 1956 All 448 : (1956) 26 AWR 300

Hon'ble Judges : Mootham, C.J.; Agarwala, J

Bench : Division Bench

Advocate : S.N. Kacker, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mootham, C.J.—This is an appeal from a judgment of Chaturvedi J., dated 4-8-1955, dismissing a petition under Article 226 of the Constitution. The facts are these:

2. By a Notification dated 23-2-1953, made under Section 14 of the Criminal P. C. 1898, the Governor conferred upon the Regional Transport Magistrate, Allahabad the power to try at Allahabad all cases under the Motor Vehicles Act, 1939 arising within the districts of Allahabad, Mirazpur, Pratapgarh, Sultanpur and Fyzabad.

In January, 1955, an enforcement Squad Officer of the State Transport Department reported that the petitioner had contravened the provisions of the Motor Vehicles Act by carrying more goods and passengers than he was authorised to do, and proceedings against him were sub-sequently commenced in the court of the Regional Transport Magistrate at Allahabad.

The appellant thereupon filed the petition out of which this appeal arises in which he sought the issue of a writ in the nature of certiorari quashing the aforesaid Notification on the ground that the Governor had no power to fix the place at

which a case shall be tried by a Special Magistrate.

3. It is not now contended that the Governor lacked the power u/s 14 of the Criminal P. C. to confer on the Regional Transport Magistrate the power to try cases under the Motor Vehicles Act arising within one or more districts of the Uttar Pradesh; the only question is whether the Governor could prescribe the place at which such Magistrate shall sit for the purpose of trying such cases.

4. The Code of Criminal Procedure contains no provision conferring upon the State Government or any person the power to direct at what place a Magistrate or a Special Magistrate shall hold his sittings, and the argument is that in the absence of any such provision the Governor cannot direct that he shall sit at a particular place.

Our attention has been invited to the provisions of Sub-sections (2) and (4) of Section 9 of the Code, which empower the State Government to direct at what place or places a Court of Session or Additional Sessions Judge shall sit, and to Section 16 which empowers the State Government or, subject to its control, the District Magistrate to make rules for the guidance of Magistrates' Benches respecting certain matters including the times and places of sittings; and these provisions are sought to be used to support the argument that the power of the Governor to determine where a Special Magistrate shall sit, must be found if at all, in the Code. We do not think this argument is well founded, for it fails to take account of the fact that whereas Sessions and Additional Sessions Judges are judicial officers under the general administrative control of High Court, Magistrates are for administrative purposes directly under the control of the State.

Chaturvedi J. was of the opinion that the Governor, in exercise of the executive power which is vested in him by Article 154 of the Constitution, can determine the place at which a Magistrate shall sit, and we are in agreement with this view. We think that the executive power of the Governor includes the superintendence, direction and control of the civil Government of the State, and that it is within the ambit of this power that the Governor may direct at what place or places the officers of Government shall perform their duties, including the place or places at which a Special Magistrate shall exercise powers conferred upon him by a notification u/s 14 of the Criminal P. C.

The provisions of Section 16 of the Code are in no way inconsistent with this view as that section is concerned only with the power to frame rules.

5. Reliance has been placed by the appellant on certain observations in the judgment of Raghubar Dayal J. in - *Lalata Prasad v. The State* AIR 1953 All 70 (A). At page 74 of the report the learned Judge said:

"He -- that is a Special Magistrate -- cannot however, be ordered by anyone to hold his Court at any particular place, as no such power is given . to anyone u/s 14 or any other section of the Code of Criminal Procedure".

We think however that the learned Judge was in this passage only repeating with emphasis what he had said at page 73, namely that

"The Code of Criminal Procedure does not provide for the location of the Courts of Magistrates and does not authorise anyone to order such location".

a statement which, if we may say so with respect, is undoubtedly correct. The observations of the learned Judge were obiter as the matter then before him was an application for the transfer of a case pending before a Special Magistrate to some other Magistrate, and they are not in our opinion authority for the proposition advanced on behalf of the appellant. In our opinion therefore this appeal fails and it is dismissed. There will be no order as to costs.

6. Before parting with this appeal we think it proper to express our concern at the very serious difficulties in which a person charged with an offence under the Motor Vehicles Act may be placed as a consequence of a Notification such as that which we have had to consider in this case. Save in a few instances offences under the Motor Vehicles Act are not regarded by the "Legislature to be so serious as to warrant the imposition of a term of imprisonment, the ordinary punishment being the imposition of a fine.

It has been stated by counsel for the appellant, and we have no difficulty in believing it to be true, that in cases where the place at which the Special Magistrate sits is at a considerable distance from the place at which the alleged offence was committed the expenses incurred by the accused person in arranging for the attendance of his witnesses at the time of the trial is likely to exceed the amount of any fine which may be imposed on him; and that expense may become prohibitive if on arrival at the court the accused person finds that owing to pressure of work or for any other reason the Magistrate is unable to proceed with the case that day and adjourns it to a subsequent date.

7. The accused person can of course apply to this Court for the case to be transferred to another Court more conveniently situated, but the expense incurred in making such an application may again be out of, proportion to the amount of the fine likely to be imposed. The fixing at one town of the place of sitting of a Magistrate whose jurisdiction extends over no less than five districts may cause no great inconvenience to a wealthy accused but it may well, it appears to us, be an obstacle to the administration of true justice in the case of a person of limited resources.