

(1951) 04 AP CK 0006
In the Andhra Pradesh High Court

Mir Ahmed Ali Khan

APPELLANT

Vs

State of Hyderabad

RESPONDENT

Date of Decision : 13-04-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 494(8)

Citation : AIR 1953 AP 188 : (1953) CriLJ 1166

Hon'ble Judges : Suryanarayana Rao, J; Mohd. Ahmed Ansari, J

Bench : Division Bench

Judgement

1. This is an application for transfer of a criminal case comprising charges for murder and other offences, now pending before the Special Sessions Judge at Warangal, A number of prosecution witnesses have already been examined and during the course of further cross-examination of one of the prosecution witnesses, the Advocate for the accused desired to elicit from the witness the names of persons under whom the witness had hitherto worked as a driver. Unfortunately there was disagreement between the Judge and the Advocate with the result that the Advocate withdrew from the case. We wish to point out that this need not have happened. It is not conducive to the dignity of the Bench or the Bar. On the same day (28.11.1950) the accused filed an application requesting for time to engage another lawyer. The Court gave a day's time and posted the case to the next day. It is futile to expect that in a case of murder when already several witnesses have been examined, it is possible for an accused to engage a fresh lawyer and duly instruct him to proceed with the case, within the next 24 hours. The accused could not engage a lawyer and finding that the Court was proceeding with the case in hurry which the accused considered unreasonable, filed an application stating that he would apply to the High Court for transfer of the case and for stay. The Special Judge dismissed the application and posted the case to 30.11.1950, on which day he ordered the accused to put in a list of witnesses to be summoned through the Court. On 2.12.1950, the Judge directed accused 2 to produce witnesses of his own accord. On 5.12.1950, the Court examined a witness on behalf of accused 3 and the case

was posted to 12.12.1950. On 11.12.50, the Judge ordered the file to be sent to the High Court in pursuance of the transfer application.

2. It is rather unfortunate that the learned Special Judge should have considered it fit to proceed with the case when the petitioner had categorically stated that he would apply for transfer. The Special Judge had held that Section 494 (8), Hyderabad Criminal P.C. was not applicable to the transfer application. Section 494(8) corresponds to Section 526(8), Indian Criminal P.C. before the amendment of 1923 and its translation is reproduced below:

Adjournment on "If, in any criminal case or appeal application under before the commencement of the this section. hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make in application under this section in respect of the case, the Court shall exercise the powers of postpone- ment or adjournment given by Section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the ease of an appeal, before the hearing of the appeal.

Apparently the Special Judge came to the conclusion that the transfer application was not filed before the "hearing". A Division Bench of this Court has interpreted "hearing" in Section 494(8) to mean the first opportunity after cause for transfer has arisen Vide - Tulsiram v. Sarkar Ali 29 Deccan L.R. 401 (A). That being the latest view of the High Court, it would have been more appropriate to grant stay. Mr. Gopal Rao Marumkar, the Government Advocate has strenuously argued that it was competent for the learned Judge to have declined to grant the stay, in view of the earlier rulings reported in - 7 Deccan LR 236 (B) and - 14 Deccan LR 191 (C). Technically it may be so, but the more advisable course for the Judge would have been to follow the latest ruling. Further, even if the Judge could decline to order stay of proceedings, yet he should at least have adjourned the case giving a reasonable time to the accused to move the High Court.

3. On the merits of the application we feel constrained to observe that it is unfortunate that the Special Judge should have proceeded with this case with such unnecessary hurry as to create in the mind of the accused a reasonable apprehension that the Court was prejudiced against him and that he would not secure a fair trial. While unreasonable delay is certainly to be prevented, at the same time Judges should see that they themselves unwittingly do not become the cause of unnecessary delay of litigation. The learned Special Judge could have given a week's time to the accused to get a stay order. We have no doubt that the precipitate action of the Special Judge in hurrying up the case at that stage has made the accused suspicious of the fairness of the Court.

4. We are conscious that in a case like this, where several prosecution witnesses have been examined, a transfer order will lead to further delay and inconvenience. Unfortunately it cannot now be avoided in this case. It could have

been avoided by the Special Judge himself. Confidence in Courts and interests of justice are paramount considerations and all other considerations are subservient. In this connection we wish to draw the attention of Judicial officers to the recent Full Bench ruling of this High Court reported in - Mohd. Abdul Raoof v. State of Hyderabad AIR 1951 AP 50 (FB) (D), wherein the principles governing cases of transfer have been discussed³ and it has been laid down that

It is of paramount importance that parties arraigned before the Courts should have confidence in the impartiality of the Courts. It is the duty of the High Court at all events to clear away every thing which might reasonably engender suspicion and distrust in the Courts and so to promote and maintain in the public a feeling of confidence in the administration of justice which is so essential for social order and security. It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly seem to be done.

These principles should be borne in mind not only by the High Court but also by all Judicial Officers so that they may be on guard to see that no cause is given to the accused to move for a transfer since a transfer especially at a late stage always throws a burden on public time and finance, with its attendant inconveniences besides affecting the prestige of the Court. In the result the transfer application is allowed and the case is transferred to the Sessions Judge, Warangal, for trial.