

(1905) 12 CAL CK 0015
In the Calcutta High Court
Case No : Rev. Mis. No. 145 of 1905

Narain Chandra Bannerjee and Others	APPELLANT
Vs	
The Howrah Municipality	RESPONDENT

Date of Decision : 19-12-1905

Acts Referred:

Citation : (1905) 12 CAL CK 0015

Judgement

Brett, J.—The present rule has been granted on an application made to this Court under sec. 526, C.P.C. The Petitioners have been sent up for trial by the Police charged with offences under secs. 147 and 353, I.P.C. Information was lodged against them to the Police by an officer of the Howrah Municipality, and the case appears to be on the file of Mr. Prentice, Joint Magistrate of Howrah, for trial. In support of the rule it was alleged that the information had been lodged under the directions of Mr. Forest, Chairman of the Howrah Municipality, who is also District Magistrate of Howrah, and that in consequence the Petitioners were under the apprehension that they would not have a fair and impartial trial before a Magistrate at Howrah who was subordinate to the District Magistrate. It was also suggested that as Mr. Prentice, the Joint-Magistrate, is also a Municipal Commissioner of Howrah, the case ought to be transferred from his Court to the Court of some other Magistrate for trial. A rule was granted on the District Magistrate of Howrah to show cause why the case should not be transferred for hearing to a Magistrate of competent jurisdiction in the district of Alipore for the above reasons.

2. The Magistrate of the district has submitted a written explanation in answer to the rule. Dealing with the merits he has stated that his knowledge of the facts of the case is confined to the statements made to him by the Assistant Engineer of the Municipality. That statement he reduced to writing and passed an order on it; and the statement and order are on the record. From this we gather that the District, Magistrate, as Chairman of the Municipality, has taken no further action or interest in the case beyond what is stated in the explanation.

3. He has further stated that the Joint-Magistrate, Mr. Prentice, had no intention to try the case himself, but had proposed to transfer it for trial to the senior Deputy Magistrate, who has no connection with the Municipality, when he was prevented from doing so by the application for postponement which was made to him by the Petitioners under sub-cl. 8 of sec. 526, Cr.P.C.

4. The District Magistrate has further suggested that the grounds on which the application is based amount to an imputation against the honesty of the District Magistrate and the judicial independence of the Magistrate subordinate to him, which is not justified, and lastly he has pressed this Court to take into consideration when passing an order on an application made under the provisions of cl. 1 of sec. 526, Cr.P.C., the effect which an order for transfer on those grounds has on the reputation and authority of the Magistrate against whom it is directed.

5. In dealing with an application such as the present this Court has, however, only to determine whether good grounds for the transfer have been made out to its satisfaction. It cannot consider its effect on the Magistrate concerned. We doubt very much whether any impression such as the Magistrate suggests is conveyed by the order to any person except possibly to the Magistrate himself, and we think that undue sensitiveness on the part of Magistrates in this respect is much to be deprecated.

6. The learned Counsel who was appeared in support of the rule has emphatically repudiated the suggestion that it reflects on the District Magistrate or the Magistrates subordinate to him any imputation such as the District Magistrate imagines, and we accept his assurance on this point without reserve.

7. The learned Counsel has urged that he relies in support of his application on the principle laid down by Lush, J., in *Serjeant v. Dale* L.R. 2 Q.B.D. 558 (1877), in the following passage : "The law does not measure the amount of interest which a Judge possesses. If he has any legal interest in the decision of the question one way, he is disqualified, no matter how small the interest may be. The law, in laying down this strict rule, has regard not so much perhaps to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant parties. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security." This rule, the learned Counsel points out, has been followed by this Court in the cases of *Girish Chunder Ghose v. Queen-Empress* ILR 20 Cal. 857 (1893), *Dupeyron v. Driver* ILR 23 Cal 495 (1896), and *Khetu Panday v. Mohim Nath Bishi* 8 C.W.N. 75 (1903), and he has urged in support of this application, that, as a matter of grace rather than of right, if this Court is satisfied that circumstances have transpired from which the applicant may entertain an apprehension which to him appears reasonable that he may not have a fair and impartial trial before a Subordinate Magistrate at Howrah, then, even though in fact there may not be sufficient grounds for his apprehension,

and although we cannot regard it as reasonable, yet in deference to the feelings of the Petitioner and to remove all doubts from his mind as to the fairness and impartiality of the tribunal, we should direct the transfer of this case for trial to a Magistrate in another district. The circumstances which it is said have given rise to the apprehension are that some time ago the Petitioners let out a small plot of land to the Municipality of Howrah, that the Municipality constructed an urinal on it which was removed on the 3rd November 1905, that the Petitioners had served a notice on the Municipality to quit the land, that on the 6th November the Petitioners resumed possession of the land and had a tiled hut constructed on it, and that on that day the Municipal Overseer with the assistance of the Police removed the hut, and on the same date laid the charge against the Petitioners to the Police which has resulted in their being sent up for trial under secs. 147 and 353, I.P.C.

8. Since then, on the 8th November, the Petitioners instituted a civil suit against the Chairman of the Municipality to recover possession of the land and obtained an injunction staying the Municipality from building on it.

9. The learned Counsel has argued that because the District Magistrate is the Chairman of the Howrah Municipality and as such is interested in the result of the proceedings in the Civil Court, therefore the Petitioners, whether rightly or wrongly, feel an apprehension that any Magistrate subordinate to the District Magistrate may feel himself hampered or may be unconsciously influenced in the trial of the case against the Petitioners by the knowledge that the Magistrate of the District is interested in those proceedings in the Civil Court.

10. This we may observe is asking us to extend the rule on which learned Counsel relies far beyond the scope of its original application and further than this Court has applied it in the cases to which we have been referred.

11. The rule as laid down by Lush, J., in the English case must command universal respect, but it was then applied, to a case in which it was held that a judicial act was invalid by reason of a statutory disqualification in the learned Prelate who passed it, owing to personal interest. In the cases in this country in which the rule has been applied, personal interest in the judicial officer himself has been alleged and accepted. Where personal interest even of the smallest nature is proved in the presiding officer of the tribunal, then, even though that interest may not be such as to raise even a suspicion of bias against him, yet in deference to the susceptibilities of the litigants it has been held that the case should be transferred for trial to another Court. This may be a sound and salutary principle on which to proceed, but the present case differs materially from the cases relied on. In this case we are asked to direct the transfer, not because of any personal interest which can be alleged against the Magistrate before whom it now is pending for trial but because the Petitioners imagine that this Magistrate and every other Magistrate subordinate to the District Magistrate at Howrah may be affected and influenced by what it is suggested they may suppose to be the state of mind of the District Magistrate. The learned Counsel

has not only contended that this is a reasonable apprehension, but he suggests that we should treat it as reasonable in deference to the susceptibilities of his clients.

12. The law requires that it should be made to appear to this Court that a fair and impartial trial cannot be had before we take action under sec. 526 (1), Cr.P.C., and we think that we should not be doing our duty if we pretended to accept as reasonable grounds which we knew to be insufficient and unreasonable simply because the litigants were foolish enough to entertain them. To extend the rule in the manner suggested by the learned Counsel would be to encourage a distrust in the integrity and independence of the magisterial courts in this country which would amount to a serious evil. We conceive it to be our duty rather to discourage unreasoning apprehension and distrust than to encourage it. We are not prepared therefore to apply the rule unless we are satisfied that there is in the present case a reasonable apprehension that the Petitioners will not have a fair and impartial trial in the Court before which their case is at present.

13. So far as the District Magistrate is concerned we find that he has neither taken any action nor shown any interest in the case which would indicate that he himself was specially concerned in its result, and, even if he had done so, we can find no reason whatever for supposing that the Magistrate before whom the case is pending would be in any way hampered or influenced in the trial by the state of mind of the District Magistrate. The Joint-Magistrate has up to the present passed no order in the case except an order for postponement at the request of the Petitioners. It is not even suggested that he has any personal interest in the case, and the law distinctly provides that the fact that he is a Municipal Commissioner is no disqualification. Holding, therefore, that the Petitioners have failed to make it appear to us that a fair and impartial trial cannot be had in the Court of the Joint-Magistrate or of any other Subordinate Magistrate at Howrah, we discharge the rule.

Stephen, J.

14. I entirely agree with the judgment of my learned brother and have very little to add. Cases in which this Court will grant a transfer under sec. 576 (1) (a) and (d) of the Code may be divided into three classes. Of these the first where misconduct may be imputed to the Judge from whose jurisdiction transfer is sought, and the second where he has a personal interest in the case before him, such as a chance of pecuniary profit depending on its decision independent of his judicial character, have nothing to do with the present case. There remains the third and commonest case which is this one. There the ground on which the transfer is sought is some act of the Judge, not improper, and not performed for his own profit but usually an official act it was his duty to perform. The proper principle to apply to this class of case seems to me to be to enquire as to whether the act was performed by the Judge in his judicial character or otherwise, and only to grant a transfer in the latter case. It is, however, laid down by the very high authority of Lush, J., in *Serjeant v. Dale* L.R. 2 Q.B.D. 558

(1877), which is a case falling in what I have called the second class, and by Banerjee, J., in *Dupeyron v. Driver* ILR 23 Cal 495 (1896), that, however, proper the conduct of the Judge may have been, the state of the mind of the accused is to be considered, and in the words of Banerjee, J., any incidents which are calculated to create in his mind a reasonable apprehension that he may not have a fair and impartial trial are good ground for transfer. This has been repeatedly recognised as correct law and I cannot do otherwise than accept it. What is a reasonable apprehension must, however, be decided by a reference to the minds of the Court, rather than to the mind of the accused. This seems to me to be the plain meaning of sec. 526 of the Criminal Procedure Code; and this view is strongly supported by a consideration of the evils indicated by my learned brother as likely to follow an extension of the language of Banerjee, J., further than the limit I have suggested. It is no doubt desirable to quiet reasonable apprehension in the mind of the accused, but to yield to apprehensions which we do not consider reasonable would be disastrous to the cause of justice. For these reasons agreeing with my (sic) brother as I do in his view of the facts of the case I agree in his conclusion that the rule must be discharged.