

(2001) 01 PAT CK 0009
In the Patna High Court
Case No : Criminal W. J. C. No. 591/99

Nawal Kishore Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-01-2001

Acts Referred:

Citation : (2001) 2 PLJR 379

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Ram Chandra Jha, for the Appellant; Uma Kant Prasad, for the Respondent

Judgement

P.K. Deb, J.—This criminal writ application has been preferred for the grievance that Sessions Trial No. 124/93 which was at the fag end of trial before the Assistant Sessions Judge, Banka, was transferred administratively by the Sessions Judge, Bhagalpur, to the court of another Assistant Sessions Judge, Banka. Sessions Trial No. 124/93 as per the order-sheet shows that it was at the fag end of the trial, when the case was ready after hearing argument for delivery of judgment and the same was being dragged day to day by the accused persons when one or some of the accused remained absent on the dates fixed for delivery of judgment. On one occasion against the order passed for issuance of warrant of arrest against the absconding accused, a revision was preferred before the Sessions Judge, Bhagalpur, and the same was dismissed. Then very peculiarly an administrative petition was filed from the side of the accused persons before the Sessions Judge, Bhagalpur, for transfer of the case from the court of Sri S. A. Qadr, Assistant Sessions Judge, Banka, where the Sessions Trial was pending to another Assistant Sessions Judge at Banka, where the counter-case in respect of the same occurrence was pending. That counter-case was at the very preliminary stage, i.e. on the cognizance taking stage. But Sessions Trial No. 124/93 was at the fag end of the trial as I. have already mentioned above. Although, the transfer order was there, but by this time Sri Qadr has already

been transferred from the Sessions Division of Bhagalpur and as such the case shall have to be re-heard at the argument stage and by that way there may not be any prejudice to the petitioner by such transfer order. But the fact remains where the case has been transferred on the administrative ground is definitely an introduction of a novel method initiated unknown in the Criminal Procedure Code by the Sessions Judge. The Sessions Judge has got power to transfer a case from the court of one Sessions Judge to the court of another Sessions Judge in the same division. But this is generally done at the initial stage. When a Sessions case is ready for delivery of judgment, there is no reason of transfer of the case to another Sessions court unless there is a judicial initiation from either side. It appears that a petition was filed by the accused persons for transfer of that case, but that petition was not taken judicially by the Sessions Judge. Rather, that petition was termed and styled as an administrative petition which has no sanction in the Criminal Procedure Code, and on that administrative transfer petition a report was called for from the trying Sessions Judge and on the basis of that report such transfer was made. Practically, such transfer petition was proceeded judicially but without giving any opportunity to the petitioner which is against all norms and against the decorum of criminal jurisprudence. Such procedure adopted by the Sessions Judge, Bhagalpur is deprecated. He should not indulge in such illegal processes in transferring of one case to another court in the garb of his administrative capacity. It is true that when there is a case and counter-case, it is proper that both the cases should be tried by the same court and a principle has been enunciated by the Apex Court to the effect that after trial of one case, judgment should not be delivered and the trial of the other case should be taken up and judgment should be delivered in both the cases simultaneously. In that way, transfer of the present case to the court of Assistant Sessions Judge where the other counter-case is pending, can not be said to be an illegal one. But that step ought to have been taken by the Sessions Judge at the initial stage. But now at the fag end of the trial when delivery of judgment is left out, the same should not be transferred to another Sessions court. However, when Sri Qadr before whom the trial was pending has also been transferred from the Sessions division of Bhagalpur, as has been stated from the side of the Respondents, such transfer order may not be prejudicial to either side of the parties. But if he has not been transferred, then the so-called transfer order of the case should be withdrawn by the Sessions Judge immediately. This criminal writ application is, thus, disposed of with the aforementioned direction.