
(1982) 10 AHC CK 0032

In the Allahabad High Court

Case No : Criminal Misc. Transfer Application No's. 2015, 2462, 4779, 4811, 4955, 5046, 5442 and 5443 of 1982

Punjab Singh and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 22-10-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 10, 193(2), 194, 322, 325
Penal Code, 1860 (IPC) — Section 161, 32, 33, 34, 35
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1983) 7 ACR 35

Hon'ble Judges : P.N. Bakshi, J;Gopi Nath, J

Bench : Division Bench

Advocate : Palok Basu, for the Appellant; Raghubansh Sahai, for the Respondent

Judgement

Gopi Nath, J.—These are applications u/s 407 of the Code of Criminal Procedure for transfer of sessions trials from the court of one Additional Sessions Judge to that of another Additional Sessions Judge on the ground that the Judge to whose court transfer is sought had heard it in part. The applications raise a common question as regards hearing of part-heard sessions cases, and have been referred to a Division Bench as a large number of such cases are pending in this Court involving that question. These transfer applications shall accordingly be disposed of by a common judgment.

2. The question for decision is whether a sessions trial commenced by an Additional Sessions Judge who continues to be Additional Sessions Judge in the same sessions division but whose designation has changed, should be concluded by him or by another Additional Sessions Judge who has been conferred the designation earlier possessed by the Additional Sessions Judge who had commenced the trial.

3. In Criminal Misc. Transfer Application No. 2015 of 1982, transfer has been sought of Sessions Trial No. 194 of 1980, State v. Punjab Singh and Ors.

Sessions Trial No. 194 of 1980 pending in the court of Sri L.N. Rai, III Additional Sessions Judge, to the court of Sri R.C. Gupta, II Additional Sessions Judge, on the ground that charges had been framed in the case by Sri R.C. Gupta while he was III Additional Sessions Judge but has now been designated as II Additional Sessions Judge, and he had also passed orders for the appearance and examination of the witnesses before him, although no witness had been examined by him in the case. In this case, an order had been passed by the Administrative Judge of this Court allotting this case to the file of Sri L.N. Rai, III Additional Sessions Judge, in exercise of his administrative powers on a reference made by the Sessions Judge. Thus this case has gone to the file of Sri L. N. Rai on an order passed by the Administrative Judge.

4. In Criminal Misc. Transfer Application No. 2462 of 1982, transfer is sought of Sessions Trial No. 1 of 1974, State v. Mool Chand Sessions Trial No. 1 of 1974, to the court of Sri P.C. Agrawal who earlier was X Additional Sessions Judge and has now been designated as VII Additional Sessions Judge, who has been appointed a Special Judge to try cases u/s 161 IPC and Section 5(2) of Prevention of Corruption Act, from the court of the present X Additional Sessions Judg, who also is a Special Judge, on the ground that Sri P.C. Agrawal had examined almost all the witnesses of fact in the case.

5. In Criminal Misc. Transfer Application No. 4779 of 1972, transfer has been sought of Sessions Trial No. 148 of 1980, State v. Kamla Sessions Trial No. 148 of 1980, pendine in the court of Sri L.N. Rai, III Additional Sessions Judge, to the court of Sri R.C. Gupta, II Additional Sessions Judge, on the ground that charges had been framed by Sri R.C. Gupta in the case, and hence it had become part-heard. This case is on the file of Shri L.N. Rai under an administrative order passed by the Administrative Judge.

6. In Criminal Misc. Transfer Application No. 4811 of 1982, the applicants have prayed for the transfer of Sessions Trial No. 378 of 1980, State v. Bhola Nath and Anr. Sessions Trial No. 378 of 1980 from the court of Sri Brij Pal Singh, I Additional Sessions Judge, to the court of Sri K.C. Bhargava, II Additional Sessions Judge, on the ground that Sri Bhargava, who earlier was the I Addl. Sessions Judge and has now been designated as II Addl. Sessions Judge, had heard the case and recorded the evidence of a large number of witnesses, and since he had done so as I Additional Sessions Judge, and Sri Brij Pal Singh had subsequently taken over as I Additional Sessions Judge and Sri K.C. Bhargava was designated as II Additional Sessions Judge, the case was retained in the court of Sri B.P. Singh, and the same needed to be transferred to the court of Sri K.C. Bhargava. It may be observed that no specific order of either allotment of the case to the court of Sri Brij Pal Singh, I Additional Sessions Judge, or the transfer of the case to that court had been brought to our notice.

7. In Criminal Misc. Transfer Application No. 4955 of 1982, Sessions Trial No. 184 of 1979, State v. Astafa and Ors. Sessions Trial No. 184 of 1979. connected with Sessions Trial No. 16 of 1982, State v. Abdul Rasheed Sessions Trial No. 16 of

1982 pending in the court of Sri V.K. Sircar, v. Addl. Sessions Judge, was sought to be transferred to the court of Sri J.B. Singh, VI Addl. Sessions Judge on the ground that the evidence had been recorded by Sri J.B. Singh who earlier was v. Additional Sessions Judge, and has now become VI Additional Sessions Judge.

8. In Criminal Misc. Transfer Application No. 5046 of 1982, Sessions Trial No. 398 of 1980, State v. Sarvesh Kumar alias Pappu and Ors. Criminal Misc. Transfer Application No. 5046 of 1982, Sessions Trial No. 398 of 1980 has been sought to be transferred from the court of Sri B.P. Singh, I Additional Sessions Judge, to the court of Sri K.C. Bhargava, II Additional Sessions Judge, on the ground that a substantial part of the prosecution evidence had been recorded by Sri K.C. Bhargava who earlier was the I Additional Sessions Judge and whose designation has now been changed on account of the posting of Sri B.P. Singh who has been conferred that designation whereas Sri K.C. Bhargava has been made the II Additional Sessions Judge.

9. In Criminal Misc. Transfer Application No. 5442 of 1982, transfer is sought of Sessions Trial No. 487 of 1980, State v. Munni Lal and Ors. Sessions Trial No. 487 of 1980 from the court of Sri B.P. Singh, I Additional Sessions Judge, to the court of Sri K.C. Bhargava, II Additional Sessions Judge, as the latter had heard the case and recorded almost the entire prosecution evidence. In this case, an application was moved to the Sessions Judge for the transfer of the case but he rejected the same on the ground that this being a part-heard case, he had no jurisdiction to pass any order. He, however, made an observation that the present I Additional Sessions Judge who was the successor of Sri K.C. Bhargava could try the case.

10. In Criminal Misc. Transfer Application No. 5443 of 1982, transfer has been sought of Sessions Trial No. 439 of 1980, State v. Day a Shanker and Ors. Sessions Trial No. 439 of 1980 from the court of Sri Brij Pal Singh, I Additional Sessions Judge, to the court of Sri K.C. Bhargava, who earlier was the I Additional Sessions Judge and has now been designated as II Additional Sessions Judge, on the ground that the case was part-heard by him as he had recorded the evidence of the prosecution witnesses.

11. The words "trial" and "try" in quite a number of sections of the Code of Criminal Procedure, have been used as referring to a stage after the inquiry but that meaning attaches to those words in the sections having regard to the context in which they are used see The State of Bihar Vs. Ram Naresh Pandey, . The word "trial" is not defined in the present Code of Criminal Procedure. In the Code of 1872, the word "trial" was defined as the proceedings taken in court after a charge had been drawn up, and included the punishment of the offender. That definition was, however, omitted in the subsequent Codes, and it thus does not have a defined meaning. Commonly understood, however, it means the proceedings taken in court from the stage of framing of the charge and ending with the conviction or acquittal. By Section 4, read with Section 326 of the Code of Criminal Procedure, 1973 (hereinafter referred as "the Code"), every criminal

proceeding is to be taken according to the provisions of the Code by the court competent in that behalf, which may be the High Court, the Court of Session or any other court, by which such an offence is shown in the first Schedule to be triable. Section 6 provides for the constitution of courts and enumerates the following classes of courts:

1. High Courts;
2. Courts constituted under any law;
3. Courts of Session;
4. Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrate;
5. Judicial Magistrates of the second class; and
6. Executive Magistrates.

Section 9 then provides for a Court of Session and states:

9. Court of Session.-

(1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for disposal of cases of such place or places in the other division as the High Court may direct....

12. Under Sub-section (1) there shall be only one Court of Session in every sessions division which has to be presided over by a Sessions Judge vide Sub-section (2) though manned by Additional or Assistant Sessions Judges as well, as provided by Sub-section (3) in view of the work load. Thus provision has been made for the appointment of Judges in addition to the Sessions Judge in a sessions division to man the work of the Court of Session which could not be handled by the Sessions Judge alone. Such Judges have been given the designation of Additional Sessions Judge and Assistant Sessions Judge to exercise jurisdiction in the same Court of Session. They are criminal courts but it may not be quite accurate to use such expression as "court of Additional or Assistant Sessions Judge" there being only one Court of Session in a sessions division, and the Additional or Assistant Sessions Judges are only the Judges of a Court of Session. The appointment of Additional Sessions Judge does not constitute an additional court of Session, and he can only try such cases as the

High Court may direct or the Sessions Judge may make over to him (see Sections 194 and 381 of the Code). u/s 193(2) of the Code of Criminal Procedure, 1898 hereinafter referred as "the old Code", such a direction could be given by the State Government. A case or an appeal made over to an Additional Sessions Judge can, however, be recalled from him and heard by the Sessions Judge himself or transferred to another Additional Sessions Judge for disposal - see *Emperor v. Birju Marwari* ILR 1944 All. 157. But an Additional Sessions Judge has no power to transfer a case or an appeal either from his own file or from the file of another Additional Sessions Judge. All Assistant Sessions Judges have been made subordinate to the Sessions Judge, who shall distribute the work among Assistant Sessions Judges, and in his absence, an Additional Sessions Judge nominated by him in this regard may act on his behalf (see Section 10). Section 32 of the Code deals with the conferment of powers under the Code and states:

32. Mode of conferring powers.- (1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles....

Powers of officers have been provided in Section 33. Section 34 then deals with the withdrawal of powers and states that the High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Code on any person or by any officer subordinate to it. Section 35 then deals with powers of Judges and Magistrates exerciseable by their successors-in-office, and so far as material, states:

35. Powers of Judges and Magistrates exerciseable by their successors-in-office-

(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.

(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or other thereunder be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.

....

The successor-in-office of a Judge or a Magistrate may thus exercise the powers or perform the duties of his predecessor-in-office. If there is only one Court of Session, a question may arise who would, in law, be the successor-in-office of an Additional Sessions Judge for the purposes of any proceeding commenced by another Additional Sessions Judge. This has to be determined by the Sessions Judge by an order in writing, as laid down in Sub-section (2) of Section 35. As to the proceedings commenced by hearing and recording of evidence by any Judge, Section 326 provides, for the power of a successor Judge in the event of the

predecessor ceasing to exercise jurisdiction in the inquiry or trial, and the procedure to be followed by him. The section reads:

326. Conviction or Commitment on evidence partly recorded by one Judge or Magistrate and partly by another-(1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein, and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of Sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed u/s 322 or in which proceedings have been submitted to a superior Magistrate u/s 325.

The corresponding section in the old Code was Section 350 which reads as follows:

350. Conviction or commitment on evidence partly recorded by the Magistrate and partly by another.- (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself;

Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) Nothing in this section applies to cases in which proceedings have been stayed u/s 346 or in which proceedings have been submitted to a superior Magistrate u/s 349.

(3) When a case is transferred under the provisions of this Code from one

Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of Sub-section (1).

The Law Commission, in its 41st report, recommended that the provisions of Section 350 relating to part-heard cases may be extended to Additional Sessions Judges also as the old practice under the old Code, in respect of disposal of part-heard sessions trials was causing undue delay and inconvenience on account of the transfer of Sessions Judges from one sessions division to another. The section in its present form thus came to be enacted to get over the difficulty caused by the transfer of Judges from one division to another.

13. u/s 350 of the old Code, a part-heard sessions trial had to be concluded by the Sessions Judge who had commenced it, and he had to come back to conclude the same if he had been transferred to another sessions division. To cover this situation, an amendment was made in the provisions of Section 326 to enable a successor-in-office of a Sessions Judge to continue the part-heard sessions trial from the stage it was left over by his predecessor. Section 326 thus is an exception to the general rule that he who hears should decide. The normal principle applicable to criminal cases that he alone may decide who has heard the evidence has consistently been applied by courts to ensure fair justice to the parties - see *Smt. Gulzar v. Nizam* 1981 ACR 18, *Karam Chand v. State of U.P.* 1980 ACR 346, *Payare Lal Vs. State of Punjab*, in *re T.A. Fernandez* accused-applicant AIR 1958 Mad 571 and *In re Imbrahim Ali*, accused-Appellant, 1960 CLJ. 882.

14. In this background the scope and true construction of Section 326 has to be determined. Like all statutory exceptions to the rules of common law, the section has to be strictly construed. Two kinds of cases may arise to which the provisions of Section 326 may be sought to be attracted-(i) where the Judge commencing the trial has been transferred outside the sessions division, and he has been succeeded by another Judge in the sessions division, from which the first Judge has been transferred, and (ii) where the Judge who commenced the trial continues in the same sessions division but his designation has undergone a change and the one possessed by him has been conferred on another Judge in the same sessions division. To the cases of category (i) Section 326 will clearly apply. To the cases of category (ii), the terms of the allotment order by which cases were allotted to the former Judge would be material. If the allotment was by name, the cases allotted to the Judge would be tied-up to him. The cases allotted by designation will again fall in two categories (i) where the proceedings had been commenced by the Judge in the case allotted to his file, and the same had become part-heard and (ii) where the proceedings had not commenced. We are not concerned with the second category. The question involved in the instant cases relates to the first category, and what has to be seen is whether the Judge commencing the trial has the power to continue the same, or that power is affected by the change in his designation.

15 A right to continue a pending case is in the nature of a vested right which cannot be taken away except by a clear indication of intention to that effect see AIR 1943 24 (Federal Court) . The case related to a suit which had been instituted in 1932 in respect of properties situated in British India and in Burma. A question arose whether after the separation of Burma in 1937, the court in British India had the jurisdiction to proceed with the trial of the suit with respect to the property situate in Burma. It was held that the court had the jurisdiction and could proceed with the trial, and the jurisdiction was not affected by some of the properties falling in Burma which had been separated from British India. The Federal Court observed that the right to continue a duly instituted suit was in the nature of a vested right and could not be held to have been taken away except by a clear indication of intention to that effect. Their Lordships relied strongly on the case of Colonial Sugar Refining Co. v. Irving 1905 A.C. 369 and observed that the observations made therein necessarily involve recognition of a valuable right that the proceedings should in due course be tried and disposed of by the tribunal before which it had been commenced. Their Lordships observed:

...The true position, as we have already stated, is not whether there is an express provision permitting the continuance of pending proceedings, but whether there is any clear indication against the continuance of pending proceedings to their normal termination.

In *Indermull Loniya v. Subordinate Judge, Secunderabad* AIR 1918 AP 779 it was held:

It is well settled that a Court cannot be divested of its jurisdiction to hear a pending case notwithstanding the amendment of law, unless it expressly provides so.

In *Penumatcha Neelakanteswaraju and Others Vs. Jaddu Mangamma and Others*, it was held:

A jurisdiction once vested cannot be divested unless the legislature has expressly or by necessary intendment directed otherwise.

That case was concerned with the true scope and effect of Section 56(1) of Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, which reads as follows:

Where after an estate is notified, a dispute arises as to (a) whether any rent due from a ryot for any fasli year is in arrear or (b) what amount of rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer.

The Full Bench observed:

...The language of Section 56(1) does not lend itself to the interpretation, whether express or implied that the authorities already seized of a dispute in respect of matters referred to in that Sub-section are prohibited from

adjudicating thereon.

It was further observed:

...Whatever be its origin, the presumption is in favour of the continuance of the jurisdiction vested in the Courts unless otherwise so directed by the statute. It would not be inferred merely from the grant of jurisdiction to a new tribunal over certain matters that the legislature intended to deprive the superior court of the jurisdiction which it had already possessed over the same cases.

Maxwell on the Interpretation of Statutes (Twelfth Edition) para 155 states:

The fact that jurisdiction is conferred on one authority does not necessarily take away jurisdiction which another already possesses in the same matter.

In *Emperor v. Syed Sajjad Hussain* IV Criminal Law Journal Reports 140 4 Criminal LJR 140, the trial was commenced by an officiating District Magistrate and concluded by him after he had ceased to act as a District Magistrate but had continued as a First Class Magistrate. On a question raised as to whether he had no jurisdiction to continue the trial after ceasing to act as District Magistrate, it was held that the Magistrate had the jurisdiction to continue the trial to its conclusion. It was observed that the case being of a nature which the particular Magistrate (Mr. Lomas) had the jurisdiction to hear and determine before he was District Magistrate, after he was District Magistrate and when he ceased to act as District Magistrate, the mere fact that he commenced the trial while he was officiating as District Magistrate did not prevent him from continuing to try the case after he reverted to a Magistrate of the First Class for the district. See also *Queen Empress v. Sri Ahobalamatam Jeer* Indian Law Reports XXII Madras 47. It is thus not the designation but the substantive office and the nature of the case which determine the jurisdiction. In *Musammatt Mithani v. Emperor* XIII The Criminal Law Journal Reports 203XIII The Criminal Law Journal Reports 203, it was held that cases on the file of a Magistrate in a district do not automatically pass to his successor in the local area merely because the former has been transferred to another local area in the same district. In *Balwant v. Kishan* Indian Law Reports Vol. XIX Allahabad 114, a question arose whether a Deputy Collector had ceased to exercise jurisdiction in respect of a case, and it was observed that any number of such officers may be appointed by the Government to a particular district, and the assumption of the office of Deputy Collector by one officer in a district does not necessarily lead to the result that another Deputy Collector who has been performing the duties of a magistrate in that district ceases to have jurisdiction in the district. The jurisdiction of each officer within a specific area depends upon the orders of Government appointing him to exercise jurisdiction within that area. In *Payare Lal Vs. State of Punjab*, where the successor Special Judge tried the case from the stage at which his predecessor had left it, the Supreme Court observed:

The trial offended the cardinal principle of law namely, that it is a right of an accused person that his case should be decided by a judge who has heard the

whole of it, the acceptance of which by the Code was clearly manifest from the fact that the Code embodied an exception to that principle in Section 350." It was further observed:

There is no controversy that the general principle of law is that a judge or magistrate can decide a case only on evidence taken by him. Section 350 of the Code is a statutory departure from this principle.

16. In order to attract the provisions of Section 326, to enable a successor Judge to continue a trial from the stage left by his predecessor, two conditions must be satisfied-(i) that the first Judge had heard and recorded the whole or part of the evidence and (ii) that he had ceased to exercise jurisdiction in the case. The expression "ceases to exercise jurisdiction therein" occurring in Sub-section (1) of Section 326 of the Code points to the ceasing of jurisdiction in the inquiry or trial, and not to the designation of the officer. Further, the words "and is succeeded by another Judge...who has and who exercises such jurisdiction" as occurring in Sub-section (1) of Section 326 refer to the jurisdiction in the inquiry or trial. Thus, if a Judge has commenced a trial possessing a particular designation, i.e. as Additional Sessions Judge No. II, and he has subsequently been conferred the designation of Additional Sessions Judge No. I, the Judge who succeeds him as Additional Sessions Judge No. II may not continue the trial commenced by his predecessor until the jurisdiction of the predecessor has ceased in the trial and the successor has such jurisdiction in the trial. The words "ceases to exercise jurisdiction therein" will thus mean "ceases to exercise jurisdiction to continue a part heard trial" and the words "who has and who exercises such jurisdiction" will mean "who has the jurisdiction to try such cases and who exercises such jurisdiction". He would then act on the evidence recorded by his predecessor, or partly recorded by his predecessor and partly recorded by him. Sub-section (2) of Section 326 further clarifies this position. It refers to one of the modes in which a Judge may be deemed to cease to exercise jurisdiction in an inquiry or trial. The mode is by the transfer of a case from one Judge to another. This has to be done by an order. Thus unless an order is passed to that effect, whether Administrative or Judicial, the Judge who was seized of the matter would not be deemed to have ceased to exercise the jurisdiction vested in him. The transfer order has to be made in respect of the case. That order may be a general or a special order.

17. Section 326 thus deals with part heard cases and provides for the powers of the Judge and the procedure to be followed by him in respect thereof with reference to the situations arising therein. The part-heard case in an inquiry or trial, has to reach a stage where the Judge has heard and recorded the whole or any part of the evidence therein, and thereafter if the Judge ceases to exercise jurisdiction therein and is succeeded by another Judge who has or would exercise such jurisdiction, namely, the jurisdiction to continue the trial, he may act on the evidence recorded by his predecessor or may record the evidence himself, and then conclude the trial. In this regard, if the succeeding Judge finds it necessary

that he should re-summon the witnesses or any of them, he may do so, and after such further examination, cross-examination or re-examination as he may permit, the witness or witnesses may be discharged.

18. The first question thus is when and how does the jurisdiction of one Judge who commenced a particular trial cease therein, and second when and how does his successor, which term means he who takes his place or comes in his position, assume jurisdiction to try the case commenced by the first Judge. In order to permit a trial commenced by one Judge to be continued by his successor, it may be necessary that the duties of one are transferred to the other. This may happen by an order, general or special in nature, or by situations arising in the case. As observed earlier, under the old Code, when a Sessions Judge was transferred from one sessions division to another sessions division, he was required to come back and to conclude the trial which he had commenced. This procedure is departed from under the provisions of Section 326. But to the continuance of a trial by a Judge who had commenced the same as being a Sessions Judge available in the same sessions division, the section gives no contrary indication.

A strong leaning exists against construing a statute so as to oust or restrict the jurisdiction of the superior courts...the well known rule that a Statute should not be construed as taking away the jurisdiction of the courts in the absence of clear and unambiguous language to that effect now rests on a reluctance to disturb the established state of the law or to deny to the subject access to the seat of justice...." (See Maxwell on Interpretation of Statutes, 12th Edition, page 153).

It is the right of an accused that his case should be decided by a Judge who has heard and recorded the evidence. Thus, unless the jurisdiction of the first Judge to continue the trial is taken away expressly or by necessary implication either under a statutory provision or an order passed to that effect by a competent authority, the Judge shall continue to exercise the jurisdiction to continue a part-heard trial, and he would not be deemed to have been divested of it merely because a change has taken place in his designation. If this be not the true rule, successive change in the designation of Additional Sessions Judges would result in successive change of hands in the trial of part-heard cases, which does not seem to be the intention of the legislature behind the provisions of Section 326.

Ceaseure of jurisdiction may occur by:

- (i) natural causes,
- (ii) transfer of Judge outside the sessions division;
- (iii) general or special order in respect of the Judge;
- (iv) general or special order in respect of the case; and
- (v) transfer of the case by a Judicial order.

Natural causes may include death or retirement of a Judge or other similar

situations. By transfer outside the sessions division a Judge would cease to be a Sessions Judge exercising Sessions powers in the sessions division from which he had been transferred, and accordingly he would cease to exercise jurisdiction in the trial commenced by him as contemplated by Section 326 unless directed otherwise. General or special orders in respect of a Judge will include orders conferring or withdrawing powers to be exercised by him under the Code. General or special orders in respect of cases may include administrative orders making over or withdrawing cases from the file of a Judge by the Sessions Judge or special orders passed by the High Court giving directions in respect of the trial of cases. This is contemplated by Sections 194 and 381 of the Code. Transfer of cases by judicial orders will refer to orders passed u/s 407 by the High Court and under Sections 408 and 409 passed by the Sessions Judge. The Sessions Judge is prohibited from recalling or transferring part-heard cases u/s 409, and in the reference in Criminal Misc. Case No. 747 of 1971 and Cr. Misc. Case No. 3318 of 1972 on 17-9-1974 it was held that he could not do so under Sub-section (1-C) of Section 528 of the old Code corresponding to Section 408 of the Code although the Addl. Sessions Judge was a criminal court under the supervisory control of the Sessions Judge. High Court has unfettered powers in this regard u/s 407. Sri Palok Basu, in Cr Misc. Transfer Application Nos. 2015 of 1982, 4779 of 1982 submitted that the administrative powers u/s 194 could be exercised only so long as the case was not heard in part by an Additional Sessions Judge, and not thereafter as the Section dealt with the initiation of proceedings. Thus neither the Sessions Judge nor the High Court on the administrative side could pass orders withdrawing a case from the file of one Judge and making it over to another Judge after the proceedings had been initiated. Section 194 falls in Chapter XIV which deals with the conditions requisite for initiation of proceedings. By allotment of a case a condition referring to the power of a Judge to try it is fulfilled which otherwise he would not be competent to try but a prescription as to a condition to the exercise of power cannot be constructed as a fetter on the power of an authority to recall an order passed in respect of the condition to initiate proceeding. It may withdraw a case from the file of one Judge unless that power is fettered. The contention is that the Sessions Judge has no power to withdraw or transfer a case on the administrative, and the High Court can also do it only by a judicial order and not by an administrative order. Reliance is placed on P. Sridhar Vs. The State of U.P. and Another, . That case is distinguishable. The Deputy Registrar in that case issued directions in a part-heard case, and it was held that he could not do it. In Rahul Sharma Vs. The State of Rajasthan and Others, it was held that the High Court u/s 194 could give administrative direction in respect of part-heard case. The field of operation on the administrative and judicial sides are different, while in the one, administrative situations have to be tackled and orders are passed on administrative considerations, in the other, fairness of trial, solution to legal problems and expediency of justice on a variety of grounds are the matters to be considered. Administrative orders, whether general or special, may cover a body of cases while judicial orders have to be passed in individual cases. The High

Court's power u/s 194 to give directions in respect of trial of cases is not to be construed in a narrow manner. The section is concerned with the distribution of work and over-all control of the High Court on the proceedings in the subordinate courts. It may further be observed that the section deals with the power of the Additional Sessions Judge to try a case allotted to him by the Sessions Judge or under a direction by the High Court. It does not deal with the kinds of general or special orders to be passed by the Sessions Judge or the High Court or their powers in this behalf. To limit the power of the High Court to issue directions in respect of proceedings either to be initiated or already commenced would affect its administrative control over them, which may, in situations arising by transfers and postings of Judges or conferring of special powers or withdrawal of the same or the powers to be exercised by Additional Sessions Judge or the like, may call for directions. The words "...by special order, direct him to try," seem to be wide enough to enable the High Court to issue administrative directions at any stage of a proceeding. The power of the Sessions Judge to recall a case made over to an Additional Sessions Judge on account of administrative situations or to allot it to another Additional Sessions Judge is not beyond the scope of this Section - see *Emperor v. Birju Marwari* ILR 44 All 157 where the general principle was considered and it was observed:

...We found nothing in the Code of Criminal Procedure to suggest that the jurisdiction of the Sessions Judge of Gorakhpur in respect of this appeal had been ousted in consequence of any arrangement which he might previously have made for the convenient disposal of the work of that Sessions Court.

The question whether a particular general or special order passed by a Sessions Judge is in accordance with law, is a different matter.

19. On the question of the powers of the Sessions Judge to transfer a case from one Additional Sessions Judge to another Additional Sessions Judge, it was canvassed by Sri Keshav Sahai, learned Counsel for one of the Petitioners, that words "criminal court" in Section 408 did not include an Additional Sessions Judge, and hence this provision did not apply to an Additional Sessions Judge. In the reference made in *State of U.P. v. Gyan Chand and Ors.* Criminal Misc. Transfer Application No. 747 of 1971 and *State v. Gyan Chand* Criminal Misc. Transfer Application No. 3318 of 1972 it was held by the Division Bench by the order dated 17-9-1974 that the Additional Sessions Judge was a criminal court, and was covered by the provisions of Section 408. But a Sessions Judge, under that section, had no power to transfer a part-heard sessions trial from one Additional Sessions Judge to another. As at present advised, we are in respectful agreement with this view. But since that question is not involved in the instant cases, we refrain from discussing that question and giving an opinion thereon.

20. Two kinds of cases may be part-heard with a Judge-(1) where the Judge had framed only the charges but had not recorded evidence, and (ii) where the Judge had heard and recorded evidence either wholly or in part, and his jurisdiction has not ceased in the trial in the manner referred to above. To the first category of

cases, Section 326 in terms may not apply, and the successor-in-office of that Judge would not be entitled to continue the hearing of the case from the stage left over by his predecessor. But, at the same time, the Judge who had commenced the proceedings and framed the charges, being seized of the matter, would be entitled to continue the proceedings since his jurisdiction to deal with it had not been terminated. In the aforesaid second category, the Judge would continue to exercise jurisdiction and will dispose it of according to law, and in the light of the discussion above.

21. For the reasons discussed, Criminal Misc. Transfer Application Nos. 2462/1982, 4811/1982, 4955/1982, 5046/1982, 5442/1982 and 5443/1982 which seek transfer of the cases to the Additional Sessions Judge who had commenced the proceedings, and whose jurisdiction had not ceased in the matter, deserve to be allowed, while Criminal Misc. Transfer Application Nos. 2015/1982 and 4779/1982 which seek transfer of the cases to the Additional Sessions Judge who had framed the charges only and whose jurisdiction had ceased by an administrative order passed by the High Court directing the cases to be tried by another Additional Sessions Judge, fail.

22. Criminal Misc. Transfer Application Nos. 2462/1982, 4811/1982, 4955/1982, 5046/1982, 5442/1982 and 544/1982 are allowed. Let Sessions Trial No. 1 of 1974 (State v. Mool Chandra Sessions Trial No. 1 of 1974), be transferred from the X Additional Sessions Judge to VII Additional Sessions Judge, Sri P.C. Agarwal. Sessions trial No. 184 of 1979 (State v. Astafa and Ors. Sessions trial No. 184 of 1979.) and the connected Sessions Trial No. 16 of 1982 (State v. Abdul Rashid Sessions Trial No. 16 of 1982), are directed to be transferred from v. Additional Sessions Judge, Sri V.K. Sircar, to VI Additional Sessions Judge, Sri J.B. Singh. Sessions Trial Nos. 378 of 1980 (State v. Bhola Nath and Anr. Sessions Trial Nos. 378 of 1980.), 998 of 1980 (State v. Sarvesh Kumar alias Pappu and Ors. 998 of 1980), 487 of 1980 (State v. Munni Lal and Ors. 487 of 1980) and 438 of 1980 (State v. Daya Shanker and Ors. 438 of 1980), shall be transferred from I Additional Sessions Judge, Sri B.P. Singh to II Additional Sessions Judge, Sri K.C. Bhargava.

23. Criminal Misc. Transfer Application Nos. 2015/1982 and 4779/1982 are dismissed.

24. The question referred to this Bench does not seem to be involved in Criminal Misc. Transfer Application Nos. 5242/1982 and 5671/1982. Let both these transfer petitions be listed before the appropriate Bench.