
(2014) 02 AHC CK 0096
In the Allahabad High Court
Case No : Crl. M.T.A. No. 411 of 2009

Purshottam Das Agarwal

APPELLANT

Vs

Rajesh

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 107, 116, 307, 34, 504

Citation : (2014) 2 ACR 1648 : (2014) 87 ALLCC 210

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Tej Pal and Sukhendu Pal Singh, Advocate for the Appellant;
J.S.P.Singh, R.K. Singh, Brijesh Dubey and V.K. Shukla, Advocate for the Respondent

Judgement

Ravindra Singh, J.—Heard Sri Sukhendu Pal Singh, learned counsel for the applicant, learned A.G.A. for the State of U.P. and perused the application, its counter-affidavit, supplementary counter-affidavit filed on behalf of the opposite party No. 1 and 2 and its rejoinder-affidavit filed by the applicant.

2. The applicant Purshottam Das Agarwal has moved this application u/s 407. Cr. P.C. with a prayer that the proceedings of Sessions Trial No. 716 of 2008, State v. Rajesh and others, under Sections 307 and 504/34, I.P.C., Police Station Sadar Bazar, District Mathura, pending in the court of XIth Additional Sessions Judge/ F.T.C. No. 2, Mathura may be transferred to any adjoining District of Mathura except District Aligarh.

3. The facts, in brief, of this case are that F.I.R. of this case has been lodged by applicant on 26.6.2008 at 9.30 p.m. in respect of the incident allegedly occurred on 26.6.2008 at about 8.30 p.m. in Case Crime No. 184 of 2008 under Sections 307, 506 and 34, I.P.C. against opposite party Nos. 1 and 2 alleging therein that on 26.6.2008 at about 8.30 p.m., the first informant was standing at his residence, the accused Rajesh alias Raju and Kale alias Krishna Kant came there,

the accused Raju hurled the abuses and extended the threat to enter into a compromise in the cases of civil and criminal nature, the first informant refused to do so, the co-accused Raju alias Rajesh fired at him, consequently, he sustained injuries, thereafter the accused persons fled away by riding on motor cycle.

4. After completing the investigation, the charge-sheet has been submitted against both the accused persons, on which the learned Magistrate concerned has taken the cognizance and after completing the required formalities committed the case to the court of sessions, which is pending in the court of XIth Additional Sessions Judge. Mathura.

5. It is submitted by counsel for the applicant that the atmosphere of District Court Mathura is so uncongenial or so hostile to applicant and prosecution witnesses that fair trial is not possible. The life and liberty of the applicant and prosecution witnesses is not safe. The father of the accused Rajesh, namely, Madan Mohan has been typing as well as Munshi in the District Court Mathura for the past several decades. The accused Rajesh alias Raju and father of the O.P. No. 2, namely, Girdhar are also doing the work of Typing in civil court Mathura. They are having the intimacy with the employees and lawyers of civil court Mathura. The clerk, advocates and other persons working at Civil Court Mathura are siding the accused persons. In the year 1987 the police had submitted the Chalani Report u/s 107/116, Cr. P.C. against Rajesh alias Raju and Girdhar, the father of the O.P. No. 2 and Vishwanath, brother of O.P. No. 1. In such circumstances, it is very difficult to the applicant and other prosecution witnesses to appear before the court of Mathura and depose their evidence freely. Therefore, the above mentioned Sessions Trial may be transferred from Mathura to any other adjoining district except Aligarh.

6. In reply of the above contentions, the counter-affidavit and supplementary counter-affidavit have been filed controverting the submission made by counsel for the applicant.

7. It is also submitted by learned A.G.A. that atmosphere of district court Mathura is not uncongenial or hostile to the applicant and other prosecution witnesses for their appearance before the trial court and deposition of their evidence and the life and liberty of the applicant and prosecution witnesses is not under threat. In such circumstances the above mentioned Sessions Trial may not be transferred from Mathura to any other adjoining district.