
(1985) 10 AHC CK 0024

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. Nill of 1985 in Criminal
Miscellaneous Transfer Application No. 7752 of 1984

Raj Kuamr alias Ram Kuamr alias Munna Panda and Another **APPELLANT**
Vs

State of U.P. and Another **RESPONDENT**

Date of Decision : 04-10-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 229, 230, 326

Citation : (1985) AWC 1041

Hon'ble Judges : A.S. Srivastava, J

Bench : Single Bench

Advocate : Keshav Sahai, for the Appellant; A.G.A. and R.P. Singh, for the
Respondent

Final Decision : Dismissed

Judgement

A.S. Srivastava, J.—This is an application made by the accused of S.T.O. 529/M of 1983 State v. Bacheha Pande for the transfer of the case from the court of III Additional Sessions Judge, Kanpur to that court in the district of which Sri O. P. Garg is now the presiding Officer.

2. On 24-4-1,983 when charges were framed in this case, Sri O.P. Garg was the presiding Officer of the III Addl. Sessions Judge, Kanpur. It was on this date that the Applicants pleaded not guilty to the charge read over to them by Sri Garg. No evidence was recorded on that date by Sri Garg who fixed another date for recording evidence in the case. However, before any evidence could be recorded in the case, Sri Garg was transferred from that Court to another Court in the same Sessions Division. The recording of evidence in the case was actually started on 25-7-1984 by the successor of Sri Garg who after recording the statement of only ore witness Kalloo, adjourned the case to 7-8-1984 for further evidence. In the meantime the Applicants filed the instant application before this Court for transfer of this case to the court of Sri O.P. Garg on the ground that the successor of Sri Garg has no jurisdiction to try this case.

3. According to the Applicants the jurisdiction of Sri Garg in the case has not at all ceased as his transfer to another court in the same Sessions Division actually meant a change of his designation. His jurisdiction in the case did not, therefore, cease on account of this change of designation. It is only he who has jurisdiction in the case. It should, therefore, be transferred to his Court for further trial.

4. The above contention of the Applicant is based on a decision of Division Bench of this Court in *Punjab Singh v. State of Uttar Pradesh* 1983 AWC 55.

5. After hearing counsel for both the sides and after going through the judgment of *Punjab Singh's* case (supra) I have no quarrel with the Applicants counsel that it is always the right of the accused to claim that his case should be decided by a Judge who has heard and recorded evidence in his case unless his jurisdiction in the case has ceased. There can also be no controversy with the decision of *Punjab Singh's* case that the jurisdiction of a Judge does not cease by mere change in his designation. But, as already observed in my order dated 14-9-1984, I find myself unable to agree with Learned Counsel for the Applicants that the above two propositions are applicable to the facts of this case because I am of the opinion that in, this case Sri Garg cannot be held to be a Judge who had heard and recorded any evidence in this case within the meaning of Section 326 Code of Criminal Procedure. It is only when a Judge or Magistrate has heard and recorded the whole or part of the evidence in a case that the case becomes part-heard with that Judge or Magistrate and it is in such a case that his jurisdiction does not cease merely by a change in his designation. Sri Garg had admittedly not recorded any evidence in this case. He had only framed charges in this case and mere framing of charge does not amount to recording of evidence in the case. There is absolutely no ambiguity in this regard in the section itself. The relevant portion of Section 326(1) Code of Criminal Procedure reads as under:

Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial....

6. The words "after having heard and recorded whole or any part of the evidence" clearly indicate that the "Judge or Magistrate" contemplated in this Section is that the Judge or Magistrate who has "recorded whole or any part" of the evidence in the case. When a Judge or Magistrate frames charge in a case u/s 228 Code of Criminal Procedure he does not record any "evidence" in the case, wholly or partly, I do not agree with Sri Keshav Sahai that the framing of charge u/s 228 Code of Criminal Procedure is a part of the evidence contemplated u/s 326 Code of Criminal Procedure. In fact, the recording of evidence in a case starts when the trial against an accused commences and the trial commences, not with the framing of the charge but immediately after it. There was no such controversy in the old Code in which the word "trial" was defined as proceedings taken in court "after a charge has been drawn up". This definition of "trial" has been omitted in the new Code but this omission does not mean that the legislature intended to define it otherwise. This omission by itself does not have

the effect of defining "trial" as proceedings commencing, not subsequent to the framing of the charge but along with it. A charge against an accused is framed by a Court u/s 228 Code of Criminal Procedure when the Court is, after considering the material on the record and hearing the accused (as provided u/s 227 Code of Criminal Procedure), of the opinion that there is ground for presuming that the accused has committed an offence. The Court proceeds with the trial of the case only when such a charge framed by it is read over and explained to the accused who, after hearing the charge, either refused to plead or pleads not guilty to it and claims to be tried. The purpose of the charge framed by a court is (a) only to tell the accused the matter with which he is charged, (b) to convey to him what actually the prosecution intends to prove and (c) the matter which he will have to face at the trial. Framing of the charges does not, therefore, amount to recording of evidence in the trial which, in fact, follows after the charge is read over to the accused.

7. This fact becomes further clear when Section 230 Code of Criminal Procedure is also examined in this connection. This section reads as under:

If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted u/s 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution issue any process for compelling the attendance of any witness or the production of any document or other thing.

8. It is evident from this section that the Court fixes a date for the examination of witnesses after the accused either refuses to plead; or does not plead; or pleads not guilty to the charge (i.e. he claims to be tried). The words "claims to be tried" in this section further makes the intention of Legislature in this regard clear. This section provides for the fixing of a date for the examination of witnesses "when the Court proceeds to try the accused (who) after hearing the charge either refuses to plead, or pleads not guilty and claims to be tried. Now when such a date for" examination of witnesses is to be fixed after the charge is framed and read over to the accused, the charge itself cannot be treated a piece of evidence in the case. Therefore, mere framing of a charge cannot by any stretch of imagination be considered to be recording of evidence in the case as contemplated in Section 326 Code of Criminal Procedure.

9. Examining the facts of this case in the above view of the matter, I have no doubt that the jurisdiction of Sri Gurg in the case does not survive u/s 326 Code of Criminal Procedure merely because he had framed charge in it. I will now advert to the decision in the Punjab Singh's case (supra) to examine whether it has laid down any such proposition on account of which contrary view can be taken in this case. Sri Keshav Sahai relied upon the observations contained in paragraph 20 of this judgment which reads as under:

20. Two kinds of cases may be part-heard with a Judge (i) 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 (in the trial by recording evidence) 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.

10. If the above observations are clearly examined it will be clear that it has not been laid down in this case that where a Judge has framed only the charges in the case he shall be deemed to have recorded evidence in the case within the meaning of Section 326 Code of Criminal Procedure and the successor-in-office of that Judge will not, therefore, be entitled to continue with the hearing of that case. In this para, it has been pointed that the following two kinds of cases be part heard with a Judge:

(i) Where a Judge had framed only the charge but had not recorded evidence, and

(ii) Where the Judge had heard and recorded evidence either wholly or in part.

To the first category of cases, it has been clearly held in this case that:

...Section 326 in terms may not apply, and successor-in-office would not be entitled to continue the hearing of the case from the stage left over by his predecessor....

11. It is with respect to the second category of case that it has held that the Judge is "seized of the matter" and his jurisdiction to deal with it had not been terminated. In the second category of cases, the Judge would continue to exercise jurisdiction.

12. Undisputedly the case before us does not belong to the second category but it belongs to the first category. Consequently it cannot be held that [the jurisdiction of Shri Garg to proceed with the trial has not been terminated and he is still seized of the matter. The case, cannot, therefore, be transferred to his Court for trial.

13. Shri Keshav Sahai has urged that the above decision of Punjab Singh's case (supra) applies to the first category also. It is with this submission of Sri Keshav Sahai that I do not agree. As already pointed out above, the observations in the Punjab Singh's case with this category of case are "Section 326 in terms may not apply". It clearly means that in this case it has not been affirmatively held that to this first category of cases Section 326 Code of Criminal Procedure applies. When this Section is not applicable to this category of cases, the jurisdiction of the Judge or Magistrate who has only framed a charge in the case cannot be held to survive when he is transferred from that Court. With his

transfer he ceases to have a jurisdiction in the case. No doubt it has been observed in the Punjab Singh's case that in cases of this category where Section 326 Code of Criminal Procedure does not apply, "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". Obviously this observation speaks about the jurisdiction of the successor Judge to proceed in the trial from the stage left over by his predecessor or frame the charge again. It will be for the successor Judge to take note of this observation while proceeding with the trial but it does not mean that this observation purports to hold that in such cases also where Section 326 does not apply, the predecessor Judge shall be deemed to be seized of the matter and his jurisdiction to proceed with the trial continues.

14. Therefore, I have no doubt in my mind that in this case, the jurisdiction of Sri O.P. Garg to proceed with the trial continues or that he is still seized of the matter. The prayer for the transfer of this case to his Court cannot be granted.

15. The application is, therefore, dismissed. The stay order, if any, is also vacated. There is no order as to costs.