

(1990) 11 AHC CK 0044

In the Allahabad High Court

Case No : Cril. Miscellaneous Transfer Application No. 8309 of 1990

Ram Nazar Tiwari

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 26-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 380, 409

Citation : (1991) CriLJ 1698 : (1991) 3 RCR(Criminal) 237

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : R.B. Tripathi, for the Appellant; A.G.A., for the Respondent

Judgement

Palok Basu, J.—In this transfer application u/s 407, Cr.P.C. a short question arises to decide which the necessary factual background needs to be mentioned.

2. There is a shop known as Janta Kendriya Upbhokta Sahkari Bhandar Ltd. situated in Rudrapur, district Deoria, Ram Nazar Tiwari, applicant was allegedly the salesman in the said Bhandar and one Gaya Prasad Dwivedi was said to be the Secretary. On 16-2-1988 an F.I.R. was lodged by the applicant against Gaya Prasad Dwivedi which gave rise to the case Crime No. 444 of 1990 of Police Station-Rudrapur. After investigation the police has admittedly filed a charge sheet u/s 380, I.P.C. against Gaya Prasad Dwivedi which is now pending in the court of I Judicial Magistrate, Deoria. Another F.I.R. has been lodged by Gaya Prasad Dwivedi through the Co-operative Cell at Gorakhpur u/s 409, I.P.C. against Ram Nazar Tiwari, applicant. After due investigation the said case has been charge-sheeted by the police and is now pending as Case No. 1958 of 1990 u/s 409, I.P.C. in the court of Judicial Magistrate, I, Gorakhpur.

3. The controversy is as to whether the two cases which admittedly relate to the goods belonging to the said Bhandar should be tried together by the same court or not. Sri R.B. Tripathi, learned counsel for the applicant stressed that since all the witnesses even in the case instituted at Gorakhpur belonged to Deoria, the

place of incident also happens to be Rudrapur situated in the district of Deoria and that the allegations pertain to the district Deoria, interest of justice requires that two trials should be held in Deoria. 4. Sri Surendra Singh, learned A.G.A. for the State, however, stated that since the Gorakhpur F.I.R. was properly investigated by the Co-operative Cell has jurisdiction to institute the charge-sheet in Gorakhpur, the said trial should remain in Gorakhpur. He has, however, not been able to dispute the fact and the assertions that the witnesses and the subject-matter of the trial pertains to district Deoria because it is the alleged embezzlement or theft in the Bhandar which is the subject-matter of the trial in either of the cases in the two districts.

5. It would, therefore, be convenient for the witnesses and the parties to get the trials adjudicated in the district Deoria.

6. Sri Tewari has, however, made a prayer that the case at Deoria should be sent to Gorakhpur. During the course of arguments, however, he amended his prayer and said that in order to do substantial justice the case at Gorakhpur should be sent to Deoria.

7. In view of the aforesaid discussions this application is to be allowed. The trial No. 1958 of 90 arising out of the F.I.R. dated 31-3-88 u/s 409, I.P.C. now pending in the court of I Judicial Magistrate, Gorakhpur shall stand transferred to the district Deoria. The C.J.M. Deoria is directed to try the two cases referred to above himself or direct both of them to be tried by a competent court.