
(1962) 07 MP CK 0015
In the Madhya Pradesh High Court

Ramchandra Choubey and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-07-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 526

Citation : (1963) CriLJ 684 : (1962) JLJ 850

Hon'ble Judges : Shiv Dayal, J

Bench : Single Bench

Judgement

Shiv Dayal, J.

1. This is an application u/s 526 Criminal Procedure Code, for transfer of Criminal Case No. 141 of 1961, pending in the Court of Shri R.S. Baipal, Magistrate, First Class, Baikunthpur.

2. The only ground urged before me is that the collector, who is also the District Magistrate, is unduly interested in this case. It is said that there is a controversy Between different executive authorities as to the advisability of the prosecution. The petitioners say that they have an apprehension in their minds that the trial Magistrate, who is in a way subordinate to the District Magistrate, would be influenced by the latter.

3. All that emerges from the material placed before me is that the opinion of the Revenue Authorities is a. variance with that of the Forest Department as to the advisability of this prosecution. That can hardly be a ground for transfer. No official, howsoever high he may be and whatever his attitude may be in his executive capacity, can influence a judicial Court in the administration of justice. It is a fundamental concept of the independence of the judiciary of our land that a person occupying the seat of justice discharges his judicial functions without fear or favour and no one, even by virtue of his official position, can influence him in the discharge of such functions. Any apprehension to the contrary must be substantiated by facts. District Magistrates in their executive capacity have

something to do with the prosecution of offenders. Merely because a Judicial Magistrate is subordinate to the District; Magistrate for certain limited purposes cannot by itself create a reasonable apprehension in the mind of the accused that he would not receive justice at the hands of the Judicial Magistrate. Otherwise, perhaps every case would have to be transferred to another district: In the discharge of his judicial functions, a Magistrate cannot be influenced:] by the presiding officer of a superior court, however high it may be.

4. In this case, no particular facts are placed before me to show that the so-called apprehension in the mind of the accused is well founded or is at least reasonable. The trial Court cannot be concerned with any difference of opinion or controversy between the officers of different Government Departments. The case shall be decided on the material placed before the Court. Copies of certain communications addressed by some executive officers to others have been filed with this petition. It is unnecessary to refer to that correspondence because they are not addressed to the Court, nor have they any relevance to the trial.

5. Shri Dharmadhikari relies on *Emperor v. Wahid Ali Khan* ILR 32 All 642 and AIR 1944 320 (Nagpur) . These cases are not in point. It all depends upon the peculiar circumstances of a case whether or not the apprehension of the accused can be held to be reasonable.

6. I have perused the report of Shri K.S. Bajpai, Magistrate First Class, Baikunthpur, which is in these words:

(1) Since the Collector had called the case and had detained it for unusually long time, this fact alone is sufficient to transfer the case.

(2) Revenue and Forest Departments are at tug of war and forest employees are being harassed." The first ground is too vague to be entertained, it is not disclosed in the report why and when the District Magistrate called for the case. As regards the second point, it is no concern of the judicial Court what attitude two departments take about a certain prosecution. It is the material brought before the Court on which the case will be learned. In fact, the learned Magistrate should not have bothered at all to know what was going on between the Revenue Department and the Forest Department. It was undesirable for the trial Court to take notice of their correspondence and develop a complex. It does not appear from the Magistrate's report that the District Magistrate, either directly or indirectly, tried to influence him. If any such attempt were made, it would have called for a very serious action.

7. In the result, this petition is dismissed.