

(2009) 07 AHC CK 0150

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2256 of 2009

Shiv Pal Singh @ S, F.Singh

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 9(6)

Citation : (2011) 8 RCR(Criminal) 1298

Hon'ble Judges : Alok Kumar Singh, J

Final Decision : Disposed Of

Judgement

Alok K. Singh, J.—Heard Sri K.K. Singh, Advocate, learned counsel for the petitioner/applicant, Sri Kunwar Mridul Rakesh, Senior Advocate, Special Public Prosecutor, assisted by Sri Rajeev Singh, the learned Counsel for the complainant and perused the material available before this Court.

2. By means of this petition two prayers have been made. The first prayer is for quashing of the order, dated 11062009, passed by the learned District and Sessions Judge, Lucknow transferring the trial of the petitioner from the Court premises to the jail premises and the second prayer is for according mandamus commanding the opposite parties to make available all the required treatment to the petitioner, so that, he may perform routine activities while in custody and if needed the petitioner be admitted in hospital. The impugned order, dated 11.6.2009 is as under:

"I have perused the letter, dated 06062009 and considered the circumstances of the case. Considering the position of the accused it will be expedient and proper to try his case in the Court constituted in jail premises.

Let the cases mentioned in the letter be transferred to the Court of Special Judge (SC/ST) Act, Lucknow for trial of the cases inside the jail premises along with other cases."

Session Judge, Lucknow. 11062009

3. There is no quarrel on the point that the Court of Session is ordinarily required to hold its sitting at such place or places as the High Court may, by notification, specify, as envisaged in section 9 (6) of the Cr.P.C. But if in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein, as has been further provided in the aforesaid provision.

From bare perusal of the aforesaid provision, it comes out that consent of the prosecution and the accused is a condition precedent for passing such order under the aforesaid provision. Concededly, no such consent was obtained in this case. The obtaining consent of the parties can be waived only when it appears expedient to do so, considering the internal security or public order as envisaged in U.P. Amendment of section 9 (6) Cr.P.C. The relevant provisions are as under:

"Provided that the Court of Session may hold, or the High Court may direct the Court of Session to hold, its sitting in any particular case at any place in the sessions division, where it appears expedient to do so for considerations of internal security or public order and in such cases the consent of the prosecution and accused shall not be necessary."

4. But in the impugned order the learned Session Judge did not mention anything about either internal security or public order.

5. The learned Sessions Judge may have had something to say in this regard. Therefore a report was sought from him twice vide order, dated 30062009 and 15072009. But unfortunately, on both the occasions he merely forwarded reports of the Additional Session Judge, where the case is presently pending. The reports sent by the Additional Session Judge has in fact no relevance because the impugned order has been passed by learned Session Judge himself. As discussed here in above, therefore, the impugned order definitely suffers from embellishment because it was not passed after taking consent of the prosecution as well as the defence in view of the section 9 (6) of the Cr.P.C. The consent could have been waived only on the ground of internal security and public order, as has been provided in the U.P. Amendment of section 9 (6) Cr.P.C. But in the impugned order nothing has been mentioned either regarding internal security or public order. Therefore, the impugned order deserves to be quashed and accordingly it is so ordered.

6. Learned Sessions Judge, Lucknow is directed to hear the parties and then to pass a speaking judicial order afresh in this regard in accordance with the aforesaid provisions of Criminal Procedure Code.

7. In respect of the second prayer pertaining to treatment of the petitioner, it is brought to the notice of the Court that an application has already been moved before the Trial Court concerned, which is still pending. Therefore, this Court refrains itself from passing any order in this regard at this stage. The learned

trial Court concerned shall pass appropriate orders in this regard expeditiously preferably within a period of ten days from the date a certified copy of this order is produced before it.

8. With the aforesaid observations and directions, this petition under section 482 Cr.P.C. stands disposed of finally.

Copy of this order be sent to the learned Session Judge, Lucknow and learned Special Judge (SC/ST) Act, Lucknow for necessary compliance.