

**(1983) 12 AHC CK 0007**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 8393 of 1983

Surendra Singh and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision :** 13-12-1983

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 327, 9(6)

Criminal Procedure Code, 1973 (CrPC) — Section 327, 9(6)

Criminal Procedure Code, 1973 (CrPC) — Section 327, 9(6)

**Citation :** (1982) 8 ACR 76

**Hon'ble Judges :** M. Wahajuddin, J

**Bench :** Single Bench

**Advocate :** Murlidhar, for the Appellant;

## Judgement

M. Wahajuddin, J.—The trial is held up, so I would like to dispose of the application finally, as only law points are involved and I have also been addressed on all such points.

2. The Respondent's Counsel in support of his case relied upon the case of Municipal Board v. Bhim Singh, 1962 AWR 199 that in case of court of sessions the Sessions Judge and Additional Sessions Judge exercises similar powers u/s 9(6) Code of Criminal Procedure. Reliance has also been placed upon the case reported in Visheshwar Pathak v. State 1976 CriLJ 521. In that case also the implications of Section 327 read with Section 9(6) Code of Criminal Procedure were considered and it was held that the Sessions Judge can give directions and pass suitable orders for the place of trial.

3. In this case what transpired was that an application for trial of the accused persons in jail was made before the v. Additional Sessions Judge, where the Sessions trial itself is pending, and vide Annexure "4" to the affidavit, filed in support of the application the v. Additional Sessions Judge by his order dated 15-4-1983 rejected the prayer and held that the accused be brought before the court. Thereafter a similar prayer was made before the Sessions Judge, who vide

its order dated 20-7-1983 directed that the trial of the accused should take place in the District Jail premises and the Judge concerned is advised accordingly.

4. While the powers may be co-existing if the order is taken as a judicial order, about which there is no dispute here, there is no power of review. The Additional Sessions Judge and Sessions Judge both exercise concurrent powers. Of course any of the two could have been approached, but once the very court in which the trial was pending was approached first and it rejected the prayer, the Sessions Judge could not review that order on the authority of Naresh and Others Vs. State of Uttar Pradesh, . In fact after perusing both the orders I find that the then v. Additional Sessions Judge has also not exercised his mind. In the circumstances, I set aside both the orders that of the Sessions Judge dated 20-7-1983 and that of v. Additional Sessions Judge dated 15-4-1983. I can do so when I am exercising my inherent powers. The matter will be considered afresh by the court of Additional Sessions Judge where the trial is pending, who will bear in mind the provisions of Section 9(6), Code of Criminal Procedure along with the proviso introduced by the Government of Uttar Pradesh and decide the matter after hearing both the sides and considering all the materials which are placed before him or which are already on the record. He will do so within a month, so that the trial may then proceed accordingly and smoothly.

5. In the result, the application is allowed to the extent aforesaid and both the orders dated 20-7-1983 of the Sessions Judge and 15-4-1983 of the v. Additional Sessions Judge are set aside and the court, where the trial is pending, is directed to consider the matter afresh and decide it in the light of the observations made in the body of the judgment within a month.

6. A copy of this order may be given to any of the parties within two days on payment of usual charges.