

A.F.R.

Court No. - 65

Case :- CRIMINAL APPEAL No. - 2101 of 2020

Appellant :- Virendra Singh

Respondent :- State of U.P.

Counsel for Appellant :- Rajrshi Gupta, Dileep Kumar (Senior Adv.), Kartikeya Bahadur, Man Mohan Mishra, Satya Priya Mishra, Shambhawi Shukla

Counsel for Respondent :- G.A., Gyan Prakash (Senior Adv.), Sanjay Kumar Yadav, Satish Chandra Mishra

Hon'ble Suneet Kumar, J.

Hon'ble Om Prakash Tripathi, J.

Heard Sri Dileep Kumar, learned Senior Advocate assisted by Sri Rajrshi Gupta and Sri Rajiv Lochan Shukla, learned counsel for the appellant, Sri Gyan Prakash, learned Senior Advocate assisted by Sri Sanjay Kumar Yadav, learned counsel for the respondent-CBI.

The incident is of 21.02.1985. Charge sheet came to be filed before the Special Court at Rajasthan on 17.07.1985. On a petition by the complainant before the Hon'ble Supreme Court, the matter came to be transferred to the Mathura Sessions Court vide order dated 11.10.1989. The charge was framed by the Sessions Court, Mathura, and the trial concluded by judgment and order dated 22.07.2020.

A preliminary objection has been raised by learned counsel appearing for the respondent-CBI that this appeal is not entertainable before Allahabad High Court as the cause of action/incident took place in District Bharatpur, Rajasthan, accordingly, Rajasthan High Court would have territorial

jurisdiction to entertain the criminal appeal. In support of his submission, reliance has been placed on the decision of the Full Bench of this Court rendered in **Paritosh Kumar Vs. Union of India & Others**¹, wherein, it was held that a petition under Section 482 Cr.P.C. against an order passed by Special Judge, CBI, at Lucknow, is entertainable in Allahabad High Court. The court was dealing with the Amalgamation Order and held that jurisdiction would depend on the cause of action.

The facts and proposition of law of the said case is not similar to the case in hand. Present case relates to transfer of trial from one State to another by the Supreme Court in exercise of power under Section 406 of Code of Criminal Procedure, 1973².

Learned counsel appearing for the appellant submits that submission of learned counsel for the respondent-CBI is misconceived. A case came to be registered at Police Station Deeg, District Bharatpur, State Rajasthan. Investigation of the case was transferred to the Central Bureau of Investigation (CBI) vide notification dated 01.03.1985, thereafter, the trial came to be transferred to Mathura by the Supreme Court. The appellants, herein, came to be convicted and sentenced by the Sessions Court at Mathura. In this backdrop, it is urged that the appeal would lie before this Court and not at Rajasthan. In support of his submission, reliance has been placed on the decision rendered by the Division Bench of this Court passed in the case of **Vikas Yadav Vs. State of U.P.**³, wherein, the incident of crime took place in District Ghaziabad and the trial

1 2014 (2) ALJ 403

2 Cr.P.C.

3 2008 (7) ADJ 567 (DB)

was transferred from Ghaziabad to Tees Hazari Court, New Delhi. The Court was of the opinion that the appeal against the order of conviction and sentence was cognizable by Delhi High Court. The relevant portions of the decision rendered in *Vikas Yadav (supra)* is extracted:

“The undisputed facts relevant for this decision are that an offence is alleged to have been committed by the appellant along with others at Ghaziabad, which falls within the territory of Uttar Pradesh and, which is within the territorial jurisdiction of the main seat of the High Court at Allahabad. The case was committed to the Court of Session and was pending in the Court of the Sessions Judge, Ghaziabad. By an order dated 23.8.2002, the Supreme Court in exercise of powers under section 406 Cr. P.C. transferred the trial "to the Sessions Court in Delhi". This order was passed in Transfer Petition (Crl) No. 449/2002 - Nilam Katara Versus State of U.P. and others. Subsequently, another order was passed by the Supreme Court on 25.10.2002 saying that because by its earlier order dated 23.8.2002 the case has been transferred from Ghaziabad (U.P.) to the Sessions Court in Delhi, therefore, all proceedings in relation to the said criminal application would be filed only in Delhi High Court. The order further says that if the accused has filed any application for bail which is pending before the Allahabad High Court, that also shall stand transferred to the Delhi High Court. By the impugned judgment dated 30.5.2008, the Additional Sessions Judge, New Delhi has convicted the appellant and sentenced him to imprisonment for life under section 302/34 I.P.C., 10 years R.I. under section 364/34 I.P.C. and 5 years R.I. under section 201/34 I.P.C. and has also imposed fine of Rs. 1,00,000/-, Rs. 50,000/- and Rs. 10,000/- respectively with regard to the aforesaid offence.

The statutory provision relevant for the present appeal is section 374 (2) Cr. P.C., which is reproduced below for ready reference:

"374. Appeals from convictions.-

(1)

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or

against any other person convicted at the same trial, may appeal to the High Court.

(3)....."

In the definition clause that is section 2 of Cr. P.C. "High Court" has been defined in clause (e). The relevant part of the definition says that "High Court" means in relation to any State, the High Court for that State.

Section 374(2) quoted above does not talk at all about the commission of offence but merely talks about conviction, trial, Sessions Judge or an Additional Sessions Judge. The words "High Court" have also therefore to be interpreted in that context.

Section 406 gives the power to the Supreme Court to transfer a criminal trial inter alia from a criminal court subordinate to one High Court to another criminal court subordinate to another High Court. In exercise of that power and pursuant to the order of the Supreme Court, the trial was transferred from the sessions Court at Ghaziabad (subordinate to Allahabad High Court) to the Sessions Court in Delhi (subordinate to Delhi High Court). Thus, the trial took place at Delhi by an Additional Sessions Judge of Delhi State, the conviction was recorded by the said Delhi Court at Delhi and, therefore, the "High Court" for the purpose of section 374 (2) Cr.P.C. would also mean the High Court of Delhi State.

The Additional Sessions Judge of Delhi was not acting as a Judge of Uttar Pradesh while holding the trial. The learned Judge while holding the trial was not sub-ordinate to the Allahabad High Court but continued to be sub-ordinate to the Delhi High Court. The appeals ordinarily lie from the decisions of that Court to the Delhi High Court.

There is yet another reason for taking the above view. If while hearing the appeal, the High Court were to direct prosecution in respect of an offence covered by section 195 Cr.P.C. of any person connected with the trial, in respect of the offence committed in relation to the trial, it would have to be the Delhi High Court to which the Court of Additional Sessions Judge, Delhi is sub-ordinate. In this connection, the provisions of section 195(1) and 195(4) are relevant.

Again under section 397 Cr.P.C. the High Court of Delhi alone can exercise revisional powers and the Allahabad High Court cannot exercise revisional powers in respect of the trial by the Delhi Court as exercise of such power is contingent upon the court below (1) being inferior, and also (2) being situate within its local (i.e. territorial) jurisdiction. If the appellant had been acquitted in respect of some of the charges and the complainant (not being entitled

to file appeal {see section 378 (4)}, the case being not upon complaint but upon police charge-sheet), could have filed a revision against acquittal only in Delhi High Court. Permitting the accused to appeal against the conviction in one High Court and the complainant to file a revision against acquittal in another High Court, may lead to the undesirable result of conflicting orders. Normally in such situation the appeal and the revision are connected and heard together, because they are in the same Court.

Moreover, whenever, civil suits or criminal trials before Magistrates are transferred by the High Court from one district to another in exercise of powers of section 24 C.P.C. or section 407 Cr. P.C. and appeals or revisions from such suits or trials lie before the District Judge, it is always the District Judge of the district to which the case has been transferred, who hears the revisions and appeals and not the District Judge of the place from which the case has been transferred.

In view of this settled position of law, we have no hesitation in holding that this appeal is not maintainable in the Allahabad High Court for want of territorial jurisdiction. The appeal accordingly is dismissed as not maintainable.”

Before Three Judge Bench of the Supreme Court in **Jayendra Saraswati Swamigal alias Subramaniam v. State of Tamil Nadu**⁴, the question arose as to which State Government i.e. Tamil Nadu or Pondicherry is the appropriate government to appoint Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor. In the given facts, the Sessions case came to be transferred by the Supreme Court in exercise of power under Section 406 Cr.P.C. from the Sessions Court of Chinglepet in Tamil Nadu to the Principal District and Sessions Judge, Pondicherry. The Court held that once the case is transferred as per Section 406 Cr.P.C. to another State, the transferor State no longer has control over the prosecution to be conducted in a court situated in a different State to which the case has been transferred. It is the prerogative of the State Government (transferee State) to appoint a Public Prosecutor to

4 (2008) 10 SCC 180

conduct the case which is pending in the Sessions Division of that State.

The aforementioned authority came to be followed by a subsequent Three Judge Bench in **K. Anbazhagan v. State of Karnataka and others**⁵, the Supreme Court transferred prosecution of the case to the State of Karnataka under Section 406 Cr.P.C. from the State of Tamil Nadu. The State of Karnataka had appointed B as Special Public Prosecutor under Section 24(8) Cr.P.C. to conduct the trial. However, in the appeal before the Karnataka High Court, Tamil Nadu Government appointed B as Special Public Prosecutor to defend the said criminal appeal. The main issue before the Supreme Court was whether B had any authorization to defend the criminal appeal on behalf of the Tamil Nadu in the High Court at Karnataka.

The Court held that the State of Tamil Nadu (transferor State) could not have appointed B as Special Public Prosecutor to defend the criminal appeal against conviction in the transferred case. It could have been done by the State of Karnataka (transferee State). It therefore follows that once the case is transferred as per Section 406 CrPC to another State, the transferor State no longer has control over the prosecution to be conducted in a court situated in a different State to which the case has been transferred. It is the prerogative of the State Government (transferee State) to appoint a Public Prosecutor to conduct the case which is pending in the Sessions Division of that State. These powers are also to be exercised by

⁵ (2015) 6 SCC 158

the State Government of the transferee court where the Sessions case is pending.

In the same corollary, in the facts of the instant case, having regard to the provisions of the Cr.P.C., the appeal against the judgment and sentence in the Sessions case would be maintainable before the High Court of the transferee State (Uttar Pradesh) and not that of the transferor State (Rajasthan).

Preliminary objection raised by respondent-CBI regarding jurisdiction of this Court to entertain the appeal is rejected.

Present appeal is maintainable before this Court i.e. Allahabad High Court.

On the joint request of the learned counsel for the parties, list this case on 9th February, 2022.

Order Date :- 4.2.2022

Mukesh Kr.

(Om Prakash Tripathi,J.)

(Suneet Kumar,J.)