

Karam Chand and Another Vs State of U.P.**Criminal Miscellaneous Application No. 762 of 1980**

Court: Allahabad High Court**Date of Decision:** April 22, 1980**Acts Referred:**

Arms Act, 1959 " Section 27#Criminal Procedure Code, 1973 (CrPC) " Section 2, 209, 225, 226, 227#Penal Code, 1860 (IPC) " Section 207, 304, 34

Citation: (1980) AWC 505**Hon'ble Judges:** C.S.P. Singh, J**Bench:** Single Bench**Advocate:** Rameshwar Nath, for the Appellant;**Final Decision:** Allowed

Judgement

C.S.P. Singh, J.

This is an application for transfer of S.T. No. 234 of 1978, pending in the court of the III Additional Sessions Judge,

Nainital. The accused have been implicated in a case under Sections 207/34 of the I.P.C. and 27 of the Arms Act. After investigation of the crime,

the case was committed to the court of Sessions. The District and Sessions Judge transferred the case to the court of the II Additional Sessions

Judge, Sri K.C. Jain. Charges were framed by him u/s 307/34 I.P.C. on 16-3-79 and 27-4-1979 was fixed for evidence; that the District &

Sessions Judge transferred the case to the court of III Additional Sessions Judge, Nainital. An application was moved by the accused to the

District and Sessions Judge stating that the transfer of the case from the court of the II Additional Sessions Judge to the court of the III Additional

Sessions Judge was without jurisdiction, but was dismissed. The District & Sessions Judge appears to have exercised his powers u/s 409 of the

Code of Criminal Procedure for withdrawing the case from the court of the II Add. Sessions Judge, and sending it to the court of the III Addl.

Sessions Judge. Section 409, so far as relevant runs thus:

40.(2): At any time before the trial of the case or hearing of the appeal as fixed before the Additional Sessions Judge, a Sessions Judge may recall

any case or appeal which he has made over to any Additional Sessions Judge.

2. The only question in the present case is as to whether the trial of the case had started before the court of the II Additional Sessions Judge. For if

the trial of the case was started before the II Additional Sessions Judge, the District and Sessions Judge could not, in exercise of powers u/s

409(2) Code of Criminal Procedure withdraw the case from the file of the II Additional Sessions Judge, and send it to the file of the III Additional

Sessions Judge. The word "trial" has not been defined in the Code. All that the Code defines is an inquiry u/s 2(g), which defines inquiry as

meaning every inquiry other than trial conducted under the Code by a Magistrate or a court. The Code of Criminal Procedure of 1872 had defined

a "trial" as meaning, "the proceedings taken in court after a charge has been drawn up, and included punishment of the offender." This definition

was dropped in the later Acts of 1882, 1898 and 1923. It does not also occur in the Act of 1973. There is uniformity of judicial opinion that the

word "trial" has no fixed or universal meaning, and has to be considered with regard to the particular context in which it is used, and with regard to

the scheme and purpose of the particular Act--See *Pyare Dusadh v. Emperor* 1944 Federal Court I *Yeluhuri Venkata Chennava v. Emperor* AIR

1920 Mad. 377, *Ram Jeet v. The State* 1958 AWR 139. These views have received the stamp of approval of the Supreme Court in the case of

State of Bihar v. Ram Naresh Pandey 1957 AWR 430, where the Supreme Court after referring to *Strouts Judicial Dictionary* and *Wherlins Law*

Lexicon has held that the word "trial" used in the Code of Criminal Procedure has no fixed meaning, and the meaning to be ascribed to it depends

on the context, and the provision in which it is used. It could be profitable to refer Chapter XVIII of the Code for appreciating the true meaning

ascribed to word "trial" as occurring in Section 409 Code of Criminal Procedure Chapter XVIII deals with the trial before a court of Session as is

the case here. Section 225 requires a Public Prosecutor to conduct every trial before a court of session. Section 226 of the Code of Criminal

Procedure sets out the proceedings when the accused appears or brought before the court in pursuance of the commitment made u/s 209. On the

accused appearing before the court, the prosecutor has to open his case by setting out the charge brought against the accused, and state the

evidence by which he proposes to prove the guilt of the accused. The Sessions Judge then has to consider the record of the case and documents

submitted by the prosecution, and after hearing the statement of the accused and the prosecution, the Judge, if he considers that there is no

sufficient ground for proceeding against the accused, can discharge the accused after recording his reasons for doing so (Section 227). In the event

of the Judge being satisfied that there are grounds for presuming that the accused has committed an offence, in case not exclusively triable by court

of session, he has to transfer the case to the court of the Chief Judicial Magistrate, and in a case which is exclusively triable by court of sessions,

the Sessions Judge has to frame charge. The charge then has to be read out and explained to the accused, and he has to be asked whether he

pleads guilty of the offence or claims to be tried. This procedure is contained in Section 228 of the Code of Criminal Procedure. Then, in case the

accused pleads guilty, a conviction is recorded u/s 229 of the Code of Criminal Procedure. If he does not do so or does not plead at all, or claims

to be tried, the Judge has to fix a date for the examination of witnesses: See Section 230 Code of Criminal Procedure--one has to glean from

these provisions as to when trial of sessions case starts. If the Code had contained the old definition of the word "trial" the trial would start only

after the charge had been framed and not earlier. This is what the Learned Counsel has contended, but in view of the fact that the Legislature had

abandoned that definition, it will not be proper to be guided by the voices of past. It will be safer to seek indication from the provisions of Chapter

XVIII of the Code. This method of interpreting the word trial wherein it has not been defined in the statute, was used by the Supreme Court in the

case of Harish Chandra Bajpai Vs. Triloki Singh, , a case arising under the Representation of People Act, where it was held that the word "trial"

was a word which had not definite meaning, and its meaning depends on the context in which it is used.

3. Let us now scrutinize Chapter XVIII of the Code again. Section 225 of the Code of Criminal Procedure does not start the trial, for that relates

to appointment of a public prosecutor to conduct the trial. Section 226 of the Code does, for at this stage prosecutor opens his case, describes the

charge against the accused and states what evidence he proposes to give against the accused to prove the guilt of the accused. This begins after the

accused is brought before the court, for till such time the accused is not brought before the court, the case cannot be opened and a fortiori the

trial against the accused cannot begin, as there is no provision of ex parte trial against an accused. Even in case of absconding accused all that the

court can do is to record evidence of witnesses u/s 299 of the Code, which can be used later when the accused is produced before the court.

Then, u/s 227 of the Code, the court applies its mind to the record of the case consisting of the documents submitted by the Public Prosecutor, and

the argument addressed to it, and to decide whether the accused to be discharged or not. In case he decides to do so, he has to record his reason.

In the event of its taking the view that there are grounds for presuming that the accused had committed an offence, it has to frame a charge u/s

228 of the Code of Criminal Procedure. The judicial function of the court begins as soon as the Public Prosecutor opens his case, and produces

documents in support of his case. Hearing arguments and considering documents produced by a party in the presence of the accused is the

exercise of a judicial function, and once that is done the trial starts.

4. In the present case it is not disputed that a charge had already been framed against the accused. This being so, the trial of the case had already

been started, and the District and Sessions Judge could not in exercise of his powers u/s 409 of the Code of Criminal Procedure transfer the case

from the file of the II Additional Sessions Judge to that of the III Additional Sessions Judge. Counsel for the Applicant referred to me a number of

other cases on the question as to when a trial concludes, but no useful purpose would be served by referring to those cases, for they do not help in

resolving the controversy.

5. The application is accordingly allowed and the case is transferred to the court of the II Additional Sessions Judge from the court of the III

Additional Sessions Judge, Nainital.