
Rubi Zehra & 2 Others Vs State of U.P. & Another

Transfer Application (Criminal) No. 133 of 2016

Court: ALLAHABAD HIGH COURT

Date of Decision: May 13, 2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 407

Citation: (2016) 95 ACrC 412 : (2016) 6 ADJ 10

Hon'ble Judges: Mrs. Vijay Lakshmi, J.

Bench: Single Bench

Advocate: Shiv Shankar, Pd Gupta and Girijesh Kumar Gupta, Advocates, for the Appellant;
G.A, for the Respondent

Final Decision: Dismissed

Judgement

Mrs. Vijay Lakshmi, J.â€"This is an application under section 407 Cr.P.C. praying for transfer of the Criminal Case No. 934 of 2014, under

Section 452, 323, 504, 427 I.P.C. P.S. Jaidpur, District Barabanki, presently pending in the court of Additional Chief Judicial Magistrate, Court

No. 19, Barabanki, to some other court of competent jurisdiction of district Hapur.

2. Heard learned counsel for the applicant and learned AGA. Perused the record.

3. The office has reported that this transfer application is not maintainable as the jurisdiction of Barabanki lies in Lucknow Bench of this High court.

4. The submission of learned counsel for the applicant is that being the principal Bench, High Court of Judicature at Allahabad, has jurisdiction to

hear all the cases notwithstanding whether they relate to the districts coming under the jurisdiction of Lucknow Bench or coming under main seat of

this High Court. The learned counsel for the applicant, in support of his contentions has placed reliance on the following judgments of the Hon"ble

Apex Court and also of this Court:

I. 1975 (2) SCC 671, Nasiruddin v. State Transport Appellate Tribunal.

II. AIR 1958 Allahabad 652, Union of India v. Chheda Lal Ram Autar.

III. Order dated 8.12.2014 passed by this Court in Transfer Application (Civil) No. 247 of 2014, Shaziya Khanm v. Shiftain Khan.

5. I have carefully perused all these judgments. The judgment rendered in the Case of Nasiruddin (supra) being decided by the Constitution Bench

of four Hon"ble Judges of the Supreme Court and being passed on a later date, will prevail over the two other judgments filed by the applicant.

6. In the case of Nasiruddin (supra) the Apex Court has clarified the legal position by quoting Article 14 of the Amalgamation Order of 1948,

which is as follows:

14. The new High Court, and the judges and division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the

Chief Justice may, with the approval of the Governor of the United Provinces appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs, such judges of the new

High Court, not less than two in number, as the Chief Justice, may, from time to time nominate, shall sit at Lucknow in order to exercise in respect

of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court;

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at

Allahabad.

7. The hon"ble Apex Court while interpreting the second proviso to Article 14 of the Order, quoted above, has held that the Judges at Lucknow

Bench are alone competent to hear the cases arising in the specified Oudh areas and unless there is an order of the Chief Justice under the second

proviso the case shall be heard at Lucknow. It is the order of the Chief Justice alone, which enables such cases being heard at Allahabad.

8. So far as the present case is concerned, there is no order of the Hon"ble Chief Justice enabling this court to hear this matter. As the present case

has to be transferred from the district of Barabanki, which comes under the jurisdiction of Lucknow Bench, hence the matter should be heard by

the Lucknow Bench of this High Court.

9. In view of the above, the transfer application is dismissed as not maintainable with liberty to the applicant to file a fresh Transfer Application

before the appropriate Bench at Lucknow.