

In Re: P.D. Shamdasani (No. 2)

Court: Bombay High Court

Date of Decision: April 15, 1930

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 526

Citation: AIR 1930 Bom 480 : (1930) 32 BOMLR 1128 : 129 Ind. Cas. 399

Hon'ble Judges: Mirza, J; Broomfield, J; Amberson Marten, J

Bench: Full Bench

Judgement

Amberson Marten, Kt., C.J.

This is an application by the accused in a case brought against him for defamation asking us to review the

order of the learned Additional Presidency Magistrate Mr. Brown passed on April 10, 1930, on an application made by the accused for time on

the ground that he meant to apply to the High Court for transfer u/s 526 of the Criminal Procedure Code. The order made by the learned

Magistrate was :-

I grant Shamdasani time until 3-30 p. in. on Saturday to make an application before the Chief Presidency Magistrate for a transfer of this case to

some other Court. The time for an application to the High Court has not yet arrived as he has a right to go first to the Chief Presidency Magistrate.

2. The question is whether in effect the accused can, be obliged to go first to the Chief Presidency Magistrate for a transfer of the case u/s 528, or

whether he is u/s 526 entitled to go to the High Court direct. It may be, as stated by Mr. Velinker for the complainant, that the practice in the

Presidency Magistrates' Courts has been that any application for transfer of proceedings in any Court other than that of the Chief Presidency

Magistrate is normally made in the first instance to the Chief Presidency Magistrate and not to the High Court. As regards the moffusil Courts it

was laid down in In re Fonseca (1904) 6 Bom. L.R. 480 that ordinarily the High Court does not transfer a case pending before a Magistrate

unless the party applying for transfer has moved the District Magistrate before coming to the High Court. That was a case in 1904. But the present

Sub-section (8) of Section 526 has been incorporated by the Legislature since that date, and incidentally it makes it imperative on the Magistrate

to grant an adjournment if either the complainant or the accused signifies his intention of applying to the High Court for a transfer.

3. We think that although the learned Magistrate's order may have been made following the practice in the Presidency Magistrates' Courts and

although it may be that in many cases it would be a convenient course to go first to the Chief Presidency Magistrate, yet on the other hand, if an

accused claims the right to go direct to the High Court, we do not see how his right as a matter of law can be excluded under the Code, as in the

present circumstances, For instance, the accused may not wish to incur the expenses of a double application, first, to the Chief Presidency

Magistrate, and, secondly, to the High Court. In some other cases it may be that neither the complainant nor the accused would desire the extra

delay which the double application would cause. But, however that may be, it is we think reasonably clear that in the present case the learned

Magistrate's order was not strictly correct in point of law if the accused desired to go to the High Court direct.

4. We would, therefore, make the rule absolute and direct the learned Magistrate to adjourn the case for a reasonable time for the application in

question to be made to the High Court.

5. I should add that we were told by counsel for the complainant that subsequently the case came again before the learned Magistrate and he has

already adjourned it to April 16 in order that an application to the High Court for a transfer be made. But we have not got any official copy of the

learned Magistrate's subsequent order before us. All we have is the revisional application as regards the order of April 10. Therefore, it is clearly

to be understood that we are merely dealing with the order of April 10, and that we are not prejudging any subsequent order which the learned

Magistrate has made, or holding that any further order by him will be necessary. Nor again do we intend to give by means of this transfer

application any loophole for unreasonable delay in the disposal of this particular case which we understand has already been heard for very many

days by the learned Magistrate.

6. Our order accordingly will be, Rule absolute.

Mirza, J.

7. I agree.

Broomfield, J.

8. I also agree.