

CRIMINAL WRIT

Before Bhandari, C.J., and Falshaw, J.

SHRI RATILAL M. NANAVATI AND OTHERS,—Petitioners

versus

STATE OF DELHI,—Respondent

Criminal Writ No. 149-D of 1953

1953

Dec. 8th

Criminal Law (Amendment) Act (XLVI of 1952)—Section 7—Power to transfer a case allotted to one Special Judge to another Special Judge—Whether vests in the High Court or State Government.

Held, that the power to transfer a case from one Special Judge to another vests exclusively in the High Court as according to the general scheme of the Criminal Law (Amendment) Act, 1952, the court of a Special Judge is a court subordinate to the High Court.

Held further, that section 7 of the Act was enacted with the object solely of enabling Government to declare, where there are more Special Judges than one for a particular area, which particular offence shall be tried by which particular Judge. This section empowers Government to allot a particular case to a particular Judge in the first instance; it does not empower Government to transfer a pending case from one Judge to another. In other words, the power of allotment cannot be said to include the power of transfer. Indeed, it is contrary to the policy of the law that a pending case should be transferred by an order of the Executive Government.

Petition under Articles 226 and 227 of the Constitution of India, and under section 526 of the Code of Criminal Procedure, praying as under :—

- (a) *That this Hon'ble Court may be pleased to quash and set aside the impugned order of the Delhi State Government, dated 14th August 1953,*
- (b) *to direct that case No. 3 of 1953 against the petitioners be tried by Sardar Gurdev Singh, Special Judge, Delhi, who has been seized of the same since February last,*
- (c) *to direct Shri Sultan Singh Jain not to proceed with the case,*
- (d) *to summon the records of the case and to stay the proceedings till the disposal of this petition, and*
- (e) *to pass such other directions or orders as may be just, expedient and proper in the interests of justice and, if necessary, to order the transfer of the case from the Court of Shri Sultan Singh Jain to that of Sardar Gurdev Singh, Special Judge, Delhi.*

Sir TEK CHAND, for Petitioners.

BISHAMBAR DAYAL, for Respondent.

ORDER

BHANDARI, C. J. The question which falls to be determined in the present case is whether it is within the competence of a State Government to transfer a corruption case from one Special Judge to another Special Judge. Bhandari, C. J.

The petitioners in this case are Mr. S. Y. Krishna Swamy, I.C.S., former Joint Secretary in the Ministry of Agriculture, Mr. C. S. D. Swamy, former Director of Fertilizers in the said Ministry, and six employees of Messrs. Nanavati and Company, Limited. It is alleged that Mr. Krishna Swamy and Mr. Swamy entered into a criminal conspiracy with the other petitioners to give higher prices to the Company for the purchase of Sulphate of Ammonia and obtained illegal grati-

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fications for themselves. They were prosecuted under sections 120-B, 161 and 165 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act, 1947.

On the 24th January 1953, the Delhi Police Establishment presented two challans against the petitioners in the Court of S. Gurdev Singh one of the Special Judges appointed by the Delhi State Government under section 7(2) of the Criminal Law Amendment Act, 1952. S. Gurdev Singh recorded the statements of a number of witnesses but as a considerable volume of other work was pending in his Court, the progress of these cases was somewhat slow and on the 14th August 1953, the Delhi State Government, in consultation with this Court, passed an order that the cases against the petitioners be tried by Mr. Sultan Singh Jain. After these cases had been transferred to the Court of Mr. Jain, a question arose whether it is within the power of a State Government to transfer a pending case from the Court of one Special Judge to that of another and on the 20th August the High Court passed an administrative order transferring the cases to the Court of Mr. Jain. On the 25th August, the petitioners presented a number of petitions under Articles 226 and 227 of the Constitution of India and under section 526 of the Criminal Procedure Code in which they challenged the validity of the order passed by the Delhi State Government and requested that the cases be retransferred to the Court of S. Gurdev Singh.

Bakhshi Tek Chand, who argued these petitions with conspicuous ability, contended (a) that although a State Government has full power under section 7(2) of the Act of 1952, to allot a particular case to a particular Judge, it has no power to transfer a pending case from one Special Judge to another; and (b) that although a High Court has full power to transfer a pending case, the administrative order which was passed by this Court on the 20th August was of no legal affect as it was passed at a time when these cases were not

pending in the Court of S. Gurdev Singh but had already been transferred to the Court of Mr. Jain in pursuance of the order passed by the State Government.

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The second of the two contentions put forward on behalf of the petitioners appears to me to be wholly devoid of force. If the State Government had no power to transfer the cases from the Court of S. Gurdev Singh to that of Mr. Jain, then the order passed by it on the 14th August, must be deemed to be void and of no effect. If the order was void and of no effect no valid transfer could take place in pursuance thereof and the cases must be deemed to have been pending in the Court of S. Gurdev Singh on the 20th August. If it is within the competence of a High Court to transfer a pending case and if this Court passed an order of transfer on the 20th August when the cases were still pending in the Court of S. Gurdev Singh, the order must be deemed to have been passed in accordance with the provisions of law. It seems to me, therefore, that these two applications can be thrown out on the short ground that the cases were validly transferred from the Court of S. Gurdev Singh to that of Mr. Jain as at least one of the two authorities by whom the order of transfer was made had power to make the order.

Although these applications can be disposed of in this summary manner, Bakshi Tek Chand, requests that as an important point of law has arisen for decision and as these cases were actually transferred under the orders of the Delhi State Government, the Court might give an authoritative decision on two points, namely:—

- (1) whether it is within the competence of a High Court to transfer a case which has been allotted to a particular Special Judge under the provisions of section 7(2) of the Criminal Law Amendment Act, 1952; and

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(2) whether it is within the power of a State Government to transfer a pending case from one Special Judge to another Special Judge?

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Section 526 of the Criminal Procedure Code and clause 22 of the Letters Patent empower the High Court to transfer any criminal case from any Court subordinate to its authority to any other Court of equal or superior jurisdiction. The general scheme of the Criminal Law Amendment Act, 1952, makes it quite clear that the Court of a Special Judge is a Court subordinate to the High Court. The preamble shows that this Act was placed on the statute book with the object of amending the Indian Penal Code and the Code of Criminal Procedure and to provide for a more speedy trial of certain offences. Section 6 empowers the State Government to appoint as many Special Judges as may be necessary for a particular area. This provision is analogous to the provisions of section 14 of the Code of Criminal Procedure which enables the State Government to confer upon any person all the powers conferred on a Magistrate in respect to particular cases or to particular classes of cases or in regard to cases generally in any local area. Section 7 declares that certain offences shall be tried by the Special Judge for the area within which they were committed or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government. Section 8 enacts that a Special Judge shall follow the procedure prescribed by the Code of Criminal Procedure and that for the purpose of the said provisions the Court of the Special Judge shall be deemed to be a Court of Sessions. It empowers the Special Judge to pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted. Section 9 empowers the High Court to entertain appeals and revisions from the orders of Special Judges. These provisions make it quite clear that the Court of a Special

Judge is subordinate to the High Court and consequently that it is within the power of the said Court to transfer a case from the Court of one Special Judge to the Court of another such Judge. Had the Legislature contemplated that the High Court should not be at liberty to transfer cases from one Court to another, it would have made its intention plain by inserting an appropriate provision in this behalf as was done in section 8 of Central Act 4 of 1915, or in section 11 of Central Ordinance III of 1930, or in section 43 of Ordinance VIII of 1930, or in section 39 of Ordinance XI of 1931, or in section 26 of Ordinance II of 1942.

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The second and perhaps the more important of the two questions which have arisen in this case is whether it is within the competence of a State Government to transfer a case from the Court of one Special Judge to that of another. The learned Advocate-General, who appears for the State, contends that as every offence triable under the Criminal Law Amendment Act, 1952, must be tried by the Special Judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government and as the powers conferred on Government can be exercised from time to time, it was within the power of Government to cancel the order directing that the cases should be tried in the Court of S. Gurdev Singh and to pass a fresh order that the cases should be heard and decided by Mr. Jain. This contention is, in my opinion, wholly untenable. Section 7 states merely that every offence shall be tried by the Special Judge for the area within which it was committed. If, therefore, only one Special Judge has been appointed for a particular area, that Judge alone and no other is competent to deal with the offence committed within the said area. In such a case Government has no discretion whatsoever in the matter and must allow the case to be dealt with by that particular Judge. If, however, there are more Special Judges than one

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for such area, the State Government is at liberty to specify which particular offence shall be tried by which particular Judge. Provisions of this kind appear in the Code of Criminal Procedure, for example, section 14, but it has never been contended that such provisions empower Government to exercise the same powers in respect of cases as have been conferred upon the High Court by section 526 of the Code of Criminal Procedure. Moreover, the purposes for which the Act was enacted, the general scheme of the Act and the analogous provisions in other enactments leave no doubt, in my mind, that section 7 was enacted with the object solely of enabling Government to declare, where there are more Special Judges than one for a particular area, which particular offence shall be tried by which particular Judge. This section empowers Government to allot a particular case to a particular Judge in the first instance; it does not empower Government to transfer a pending case from one Judge to another. In other words the power of allotment cannot be said to include the power of transfer. Indeed, it is contrary to the policy of the law that a pending case should be transferred by an order of the executive Government. On the other hand, there is abundant material to show that, in the absence of a specific provision to the contrary, the powers of transfer are always exercised by the High Court. The general words used in the section ought not to be held to have abrogated the power vesting in the High Court and to have conferred that power on the State Government. As pointed out by Romilly M.R. in *Minet v. Lemon* (1), the general words of an Act are not to be so construed as to alter the previous policy of the law unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched.

For these reasons, I would accept the petition and declare that the power to transfer a case from one Special Judge to another vests exclusively in

the High Court. Mr. Jain, to whom these cases were transferred, has proceeded on leave and is likely to be posted to a station in the Punjab. I am accordingly of the opinion that these cases should be re-transferred to the Court of S. Gurdev Singh who has examined a considerable number of witnesses and has now more time to spare for the trial of these cases. I would order accordingly.

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Parties have been directed to appear before S. Gurdev Singh tomorrow.

Falshaw, J. I agree.