

not maintainable for want of requisite notice under section 80 of the Code of Civil Procedure. The petitioner will have the costs of this petition from respondent No. 1 Counsel's fee Rs. 200. The other respondents will bear their own costs.

K. S. K.

REVISIONAL CRIMINAL

Before R. S. Narula, J.

RAM PERSHAD,—*Petitioner.*

versus

STATE OF DELHI,—*Respondent.*

Criminal Revision No. 105-D of 1965.

May 17, 1966.

Code of Criminal Procedure (V of 1898)—S. 528—Exercise of power under—Notice of transfer application of a criminal case to the opposite party—Whether necessary to be given—S. 439—High Court—Whether can interfere with the order of District Magistrate made under S. 528 of the Code.

Held, that following are the propositions with regard to exercise of powers by District Magistrate under section 528 of Code of Criminal Procedure about giving notice to the opposite party before transfer of Criminal case from the Court of one Magistrate to that of the other :—

- (i) that a District Magistrate need not give any notice to one or other of the parties to a criminal proceedings from one Magistrate to the other or withdraw any criminal proceedings to his own file *suo motu* or in exercise of his administrative functions, (ii) that though section 528 of the Criminal Procedure Code does not, in so many words, require notice of transfer application being given to the opposite party, it is always desirable to do so in a case where the District Magistrate is moved by an application for transfer of a case, and (iii) that it would depend on the circumstances of each case whether interference in exercise of revisional powers of the High Court with any particular order which is passed by a District Magistrate in contravention of the above-said principle is or is not called for.

NEMO, for the Petitioner.

YOGESHWAR DAYAL AND BALBIR SINGH, GREWAQ, ADVOCATES, for the Respondent.

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JUDGMENT

NARULA, J.—Proceedings under section 145 of the Code of Criminal Procedure were pending in the Court of Shri N. L. Kakkar, S.D.M., Mehrauli. After the conclusion of the evidence and at the stage of hearing the final arguments an application was made by Ram Rakha Mal, respondent No. 2, under section 528 of the Code to the Additional District Magistrate for transfer of the case to some other Magistrate on the ground that the trial of the proceedings was being delayed in the Court of Shri Kakkar. By order, dated June 16, 1964, Shri S. C. Pandey, Additional District Magistrate, transferred the case under section 145, Criminal Procedure Code, from the Court of Shri N. L. Kakkar to that of Shri S. D. Arya, S.D.M., Nizam-ud-din, without issuing any notice of the transfer application to Ram Pershad petitioner. The solitary ground on which the order for transfer was passed is couched in the following words in the order under revision:—

“On a perusal of the record of the proceedings I find that though they were instituted more than 10 months ago, no final decision has so far been made by the learned S.D.M. In the case of this nature particularly where agriculturist's land is involved as the subject matter of the dispute it is imperative that proceedings are concluded as expeditiously as possible.”

It is somewhat strange that though the proceedings under section 145 had reached the stage of final arguments in the Court of the S.D.M., Mehrauli, they were transferred to another Court simply in order to expedite them, an object which has been totally defeated by the transfer proceedings.

Not satisfied with the order of the Additional District Magistrate, dated 16th June, 1964, Ram Pershad, went up to the Court of Session in revision and prayed for the said order being set aside. Shri P. P. R. Sawhney, Sessions Judge, Delhi, has on 25th March, 1965, recommended for the setting aside of the order under revision on the ground that the said order was passed without notice to the petitioner. Setting aside of the order under revision has also been recommended by the learned Sessions Judge, on the additional ground that the solitary reason of delay for which the case was transferred from one S.D.M., to the other by the Additional District Magistrate on the complaint of one of the parties was not a good ground for transfer of the proceedings in the circumstances of this case.

I am in full agreement with the recommendation of the learned Sessions Judge as to the invalidity of the ground on which the case was transferred by the Additional District Magistrate in the circumstances of this case. There is, however, a good deal of conflict of authorities on the second question. It has no doubt been held by S. B. Teja Singh, C.J., in *Joginder Singh v. Amar Singh* (1) and by some other Courts that when one of the parties applies for the transfer of a case under section 528 of the Code of Criminal Procedure, notice should be given to the other party though it is not so provided in the section. In the Pepsu case the order of the District Magistrate transferring a case on an application of a party was set aside on the ground that it had been passed without giving notice to the complainant. Similarly in *Gowardhan Das Kapur v. Abbas Ali* (2), it was held that the functions of the District Magistrate under section 528 of the Code of Criminal Procedure empower him to transfer a case, but not only sufficient ground for transfer should be shown but it is also necessary to give a notice of the transfer application to the other side before the application is granted.

Mr. Balbir Singh Grewal, Advocate for Ram Rakha Mal, respondent, has on the other hand invited my attention to the judgment of Broadway J., in *Hari Ram v. Allah Baksh and another* (3), wherein it was held that the mere fact that a District Magistrate had not done what the High Court in certain cases does by issuing notice on a transfer application is not a sufficient reason to hold that the order is bad in law. Broadway J., went to the length of holding in that case that although an officer transferring cases from one Court to another under section 528 ought to record his reasons for it, his omission to do so being only an irregularity is not a material ground for setting aside the order of transfer. In that case also the transfer of the case had been ordered on an application of a party. Reliance has next been placed by the learned counsel for the contesting respondent on the judgment of Zafar Ali J., in *Bagh Ali v. Muhammad Din and others* (4), wherein it was held that a transfer under section 528 is not illegal for want of notice to the opposite party. In this case the transfer was ordered on the application of an accused, but without notice to the other side and the High Court declined to interfere with the order on the ground of want of notice alone.

(1) A.I.R. 1952 Pepsu 97.

(2) A.I.R. 1930 Lah. 168.

(3) A.I.R. 1933 Lah. 385 .

(4) A.I.R. 1926 Lah. 156.

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Reference has also been made by the learned counsel for Ram Rakha Mal to some other cases including a judgment of the Oudh High Court in *Mt. Khemana v. Dularey* (5).

On a consideration of all the cases cited before me I am of the opinion (i) that a District Magistrate need not give any notice to one or other of the parties to a criminal case if he decides on transferring any criminal proceedings from one Magistrate to the other or withdrawing any criminal proceedings to his own file *suo motu* or in exercise of his administrative functions, (ii) that though section 528 of the Criminal Procedure Code does not in so many words require notice of transfer application being given to the opposite party, it is always desirable to do so in a case where the District Magistrate is moved by an application for transfer of a case, and (iii) that it would depend on the circumstances of each case whether interference in exercise of revisional powers of this Court is or is not called for with any particular order which is passed by a District Magistrate in contravention of the above-said principle.

In the above circumstances the recommendation of the learned Sessions Judge has to be accepted. I am, however, of the opinion that after all that has happened the main case under section 145, Criminal Procedure Code, should not be sent either to the Court of Shri N. L. Kakkar, or to that of Shri S. D. Arya, but should be sent to some other competent Magistrate having jurisdiction to hear and decide the proceedings. I accordingly accept the recommendation of the learned Sessions Judge, set aside the order of Shri S. C. Pandey, Additional District Magistrate, dated 16th June, 1964 and direct that the District Magistrate, Delhi, will now entrust the hearing and final disposal of the case under section 145, Criminal Procedure Code, pending between the petitioner and respondent No. 2 to any other Court of competent jurisdiction in his administrative capacity without the necessity of any fresh notices being issued for passing that order to any of the parties. The transferee Court shall be directed to dispose of the matter most expeditiously.

K.S.K.

(5) A.I.R. 1941 Oudh. 388.