

as the daughter's son of Sant Singh is a preferential heir to the property in dispute than the collaterals.

In view of my finding on this point it is not necessary to go into any other question. I would, therefore, dismiss this appeal with costs in this Court and in the Court below.

HARNAM SINGH, J. I agree in dismissing the appeal with costs.

Lal Singh and others
v.
Roor Singh and others
—
Kapur, J.
Harnam Singh,
J.

REVISIONAL CRIMINAL

Before Khosla and Falshaw, JJ.

PADAM PARSHAD AND OTHERS,—*Petitioners.*
versus
THE STATE,—*Respondent.*
Criminal Revision No. 869 of 1952.

1952
December,
17th

Criminal Law Amendment Act (No. XLVI of 1952)—Section 8—Cases transferred from the Courts of Magistrates to the Courts of Special Judges—Trial whether to start de novo or should start from the stage at which the cases were in the previous courts—Code of Criminal Procedure (Act V of 1898)—Section 350—Applicability of.

Held, that provisions of Section 350 of the Code of Criminal Procedure apply to those cases only which are transferred from one Court to another court of the same kind whether under section 526 or section 528 of the Code or by reason of the presiding officer of that court ceasing to have jurisdiction because of his transfer or otherwise. This section does not apply to cases which are transferred from a court of one kind to a court of another kind. The court of the Special Judge constituted under Criminal Law Amendment Act (No. XLVI of 1952) is an entirely new kind of court as compared with the court of the magistrate and, therefore, the provisions of section 350 of the Code cannot be applied to cases transferred from the Courts of Magistrates to the new courts of Special Judges created by Act No. XLVI of 1952. The Special Judge must, therefore, try the cases *de novo* and not from the stage at which they were in the court of the Magistrate from which they have been transferred.

Case reported by Shri J. S. Bedi, District and Sessions Judge, Ambala, with his letter No. 713-H, dated the 29th October, 1952 (under Section 438, Criminal Procedure Code).

Padam
Parshad and
others
v.
The State
—

By virtue of the provisions of Criminal Law Amendment Act, 1952 (No. XLVI of 1952), number of cases were transferred to this court which were pending in the courts of the Special Magistrates. Some of those cases were fixed for today for hearing arguments, on the point, whether the trial in those cases should start *de novo* or should start from the stage, at which the cases were in the courts before. The counsel for the accused have submitted that by virtue of sections 8(1) and 8(3), if these are read together, there is no room left for doubt that the cases should be taken up from the same stage, at which those were in the lower courts, in accordance with the provisions of section 350 of the Criminal Procedure Code.

The Public Prosecutor, however, on the other hand, submits that this court is a court of Sessions and is trying these cases as such, as is laid down in section 8(3) of this Act, the provisions of section 350, Criminal Procedure Code, do not apply to the court of Sessions. This is conceded by the counsel for the accused. I have also carefully gone through the Act and find that the point involved is not free from difficulty. As number of cases are pending in this court and in fact in all the other Sessions Courts in the whole Province, therefore, it will perhaps be expedient in the interest of justice, if the opinion of the High Court is solicited on this point. I, therefore, refer this case under section 438, Criminal Procedure Code, to the High Court for the above purpose.

The date fixed for arguments in the High Court be informed to this court, so that necessary notices be sent to the accused concerned.

ORDER OF THE HIGH COURT

Falshaw, J.

This reference by the learned Sessions Judge at Ambala has arisen on account of the fact that by operation of the Criminal Law Amendment Act XLVI of 1952 all offences punishable under section 161, section 165 or 165A of the Indian Penal

Code or subsection (2) of section 5 of the Prevention of Corruption Act II of 1947, or involving a conspiracy to commit any of these offences, have now to be tried by so-called Special Judges who are in effect Sessions Judges or Additional Sessions Judges. According to the Act the procedure to be followed by the Special Judges in trying these cases is to be that for the trial of warrant cases, and by subsection (3) of section 8 the provisions of the Criminal Procedure Code generally, so far as they are not inconsistent with the Act, are made applicable to these trials, and finally by section 10 it is directed that all cases now triable by Special Judges already pending in the Courts of Magistrates are to be forwarded to the Special Judges having jurisdiction.

Padam
Parshad and
others
v.
The State
—
Falshaw, J.

The particular case in which the reference has been made to this Court is one involving a number of accused and it has unfortunately been pending already in the Court of a Magistrate for more than two years and has reached an advanced stage. The point which arose when the case was received by the learned Sessions Judge Ambala in his capacity as a Special Judge under the Act was whether the trial was to begin again from the start, or whether it could be taken up by the learned Special Judge from the point which it had reached when he took cognizance of it. Apparently all the accused excepting one, who are now represented by Mr. M. L. Sethi, shared the view of the learned Special Judge himself and the learned Public Prosecutor, that whatever the wishes of the parties might be in the matter, it was necessary when the case was transferred from the Court of a Magistrate to a new kind of Court constituted under the Act that proceedings must naturally be commenced again from the start, but one of the accused, who is now represented by Mr. A. R. Kapur, put forward the view that this was not necessary and that under the provisions of section 350, Criminal Procedure Code, it was open to the learned Special Judge to take up the case from the stage at which it had reached him. Since the point is one which might arise in several cases partly heard by Magistrates which

Padam
Parshad and
others
v.
The State
—
Falshaw, J.

had been forwarded for trial by the learned Special Judge, he thought it fit to refer the matter to this Court, and the learned Single Judge before whom the reference originally came up for hearing thought the point involved sufficiently difficult and important to be referred to a Division Bench. It has accordingly come before us.

Prima facie it would appear to me that the point of view supported by Mr. A. R. Kapur could hardly be seriously argued since section 350, Criminal Procedure Code, which deals with the question of *de novo* trials refers in terms to cases in which the place of one Magistrate is taken by another Magistrate, either by reason of a change in the identity of the presiding officer of the Court or by transfer, and it does not seem to me that by any stretch of imagination the words of the section can be made to apply to a case which is transferred from the Court of a Magistrate to an entirely new kind of Court set up by a new Act. Mr. Kapur, however, relies on the provision in the new Act whereby the provisions of the Criminal Procedure Code are generally made applicable to trials in Courts of Special Judges, and in particular on the provisions of section 350, Criminal Procedure Code, which occurs in Chapter XXIV headed 'General provisions as to inquiries and trials'. His argument is that since under the new Act Special Judges have taken the place of Magistrates for the trial of these particular offences all that is necessary is to read "Special Judge" for "Magistrate" wherever the word occurs in the Criminal Procedure Code. The relevant portion of section 350 reads as follows:—

"350 (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor

and partly recorded by himself or he may re-summon the witnesses and recommence the inquiry or trial ;

Padam
Parshad and
others

v.

The State

Provided as follows :

- (a) in any trial the accused may when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

Falshaw, J.

* * * * *

- (3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of subsection (1) ”.

It seems to me, however, that if the argument of the learned counsel is adopted and the words ‘Special Judge’ substituted for ‘Magistrate’ in this section, it will not help him at all, since the effect would merely be that the option regarding a *de novo* trial could only be exercised either by the Special Judge or by the accused in a case which goes from one to another Special Judge either by transfer or succession in office, and for the argument of the learned counsel to have any force it would be necessary still to read the word ‘Magistrate’ in the place where it first occurs and then read ‘Special Judge’ after the word ‘another’ and this, it seems to me, would be absurd. However, apart from the inconsistency involved in retaining the original wording at one place in subsection (1) and substituting the words “Special Judge” in another place, it seems to me that the provisions of subsection (3) definitely rule out the application of this section to cases transferred from Courts of Magistrates to Courts of Special Judges, i.e. new Courts set up under the Act of 1952. Subsection (3), clearly refers to cases transferred from the Court

Padam
Parshad and
others
v.
The State
———
Falshaw, J.

of one Magistrate to another either by the High Court under section 526 or by the District Magistrate under section 528, whereas cases falling under the sections referred to in the new Act are specifically transferred to the Courts of Special Judges by virtue of section 10 of the Act itself and not under any existing provision of the Code of Criminal Procedure. I am therefore of the opinion that even if all the accused were agreed that they did not want a *de novo* trial of a case already partly heard by the Magistrate and transferred to the Special Judge, it would not be possible to accede to their wishes in the matter, since the only provision which enables a Court to deal with a partly heard criminal case without beginning the proceedings afresh is section 350, Criminal Procedure Code, and this section cannot be applied to cases transferred from the Courts of Magistrates to the new Courts of Special Judges created by the Act of 1952. I would accordingly return the case to the Court of the learned Sessions Judge at Ambala with a direction to proceed with the trial of the case in the light of the above remarks.

Khosla, J.

KHOSLA, J.—I agree.