

HIGH COURT OF CHHATTISGARH, BILASPURTransfer Petition (Cr.) No.35 of 2022

Toman Lal Yadav, S/o Shri Shyam Lal Yadav, aged about 26 years, R/o Sahu Para, Ward No.19, Bemetara, District Bemetara (C.G.)

(Complainant)
---- Petitioner

Versus

1. State of Chhattisgarh, through the Station House Officer, Police Station Bemetara, District Bemetara (C.G.)
2. Shubham @ Bhima Gupta, S/o Ashok Gupta, aged about 22 years, R/o Kachhari Para, Near Pandey Talab, Bemetara, Police Station and District Bemetara (C.G.)
3. Daulat Yadav, S/o Kuntram Yadav, aged about 21 years, R/o Ward No.7, Prabha Nirvani Gali, Mohbhattha Road, Bemetara, Police Station and District Bemetara (C.G.)
4. Ankit @ Bauva Mandavi, aged about 19 years, R/o Wad No.5, Bramhan Para, Sweeper Basti, Bemetara, Police Station and District Bemetara (C.G.)

(Accused persons)
---- Respondents

For Petitioner: Mr. Barun Kumar Chakrabarty, Advocate.
For State / Respondent No.1: -
Mr. Sudeep Verma, Deputy Govt. Advocate.
For Respondent No.2: Mr. Bharat Rajput, Advocate.
For Respondents No.3 & 4: -
Mr. Goutam Khetrapal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

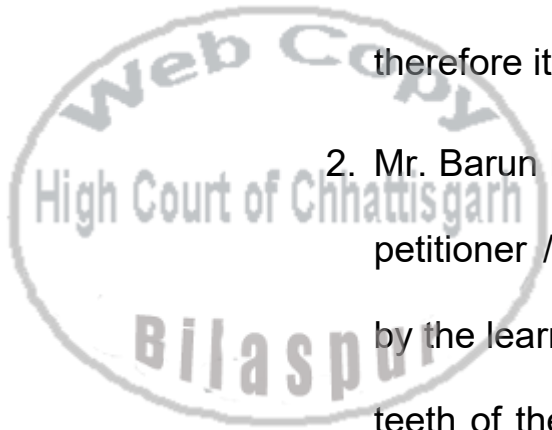
20/01/2023

1. This petition under Section 407 of the CrPC has been preferred by the complainant / petitioner herein stating inter alia that charge-sheet against the accused persons / respondents No.2 to



4 herein was preferred before the Sessions Judge, Bemetara and the case was committed to the Court of Sessions by the Chief Judicial Magistrate, Bemetara on 28-6-2022 and thereafter, the Sessions Judge, Bemetara transferred the case to the Additional Sessions Judge, Bemetara on 8-7-2022, and thereafter charges were framed on 18-7-2022. However, thereafter, exercising power under Section 409(1) of the CrPC, the learned Sessions Judge, withdrawn the case from the Court of 1st Additional Sessions Judge, Bemetara and proceeded to hear the matter. It has been stated that the same runs contrary to the provisions contained in sub-section (2) of Section 409 of the CrPC and therefore it is liable to be quashed.

2. Mr. Barun Kumar Chakrabarty, learned counsel appearing for the petitioner / complainant, submits that the transfer order passed by the learned Sessions Judge on 10-8-2022 is contrary to and in teeth of the provisions contained in Section 409(2) of the CrPC, therefore, it is liable to be set aside.
3. Mr. Goutam Khetrupal, learned counsel appearing for respondents No.3 & 4, submits that the learned Sessions Judge under Section 409(1) of the CrPC has power to withdraw any case or appeal from any other court, or recall any case or appeal which he has made over to any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him, as such, the impugned order is in accordance with law.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the





material available on record with utmost circumspection.

5. It is admitted position on record that the accused persons have been charge-sheeted before the Chief Judicial Magistrate, Bemetara and the CJM by order dated 28-6-2022 committed the case to the Court of Sessions being triable by the Court of Sessions and the Sessions Judge by its order dated 8-7-2022 made it over to the 1st Additional Sessions Judge for hearing and disposal in accordance with law, thereafter, the said Court started hearing the case and ultimately, by order dated 8-7-2022, charges were framed against the accused persons and on 18-7-2022, trial programme has been submitted and case for fixed for evidence on 6-9-2022, 7-9-2022, 8-9-2022, in the meanwhile, on 10-8-2022, exercising power under Section 409(1) of the CrPC, the learned Sessions Judge withdrawn the sessions case / sessions trial from the Court of the 1st Additional Sessions Judge, Bemetara and started hearing the case against which this petition under Section 407 of the CrPC has been preferred by the complainant.

6. In order to consider the plea, it would be appropriate to notice sub-sections (1) & (2) of Section 409 of the CrPC, which states as under: -

“409. Withdrawal of cases and appeals by Sessions Judges.—(1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the





Additional Sessions Judge, as Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.”

7. A careful perusal of sub-section (1) of Section 409 of the CrPC would show that the Sessions Judge has power to withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him, but it is subject to rider or sub-section (2) of Section 409 provides that such power can be exercised by the learned Sessions Judge before trial of the case or hearing of the case has commenced before the Additional Sessions Judge and once the trial has commenced which includes sessions trial and hearing of the case is commenced, the Sessions Judge has no power and jurisdiction to withdraw the case or recall the case.

8. The M.P. High Court in the matter of Deepchand s/o Laxminarayan and others v. State of M.P.¹ has held that withdrawal of case or appeal from an Additional Sessions Judge can be made only before trial of the case or hearing of appeal has commenced and thereafter, the Sessions Judge stood divested of the jurisdiction in view of the bar contained under Section 409(2) of the CrPC after the commencement of trial.

9. A Full Bench of the Allahabad High Court in the matter of Radhey Shyam and another v. State of U.P.² has held that the power of Sessions Judge conferred under Section 409 of the CrPC to withdraw the case is an independent judicial power which is not

1 1998(2) M.P.L.J. 670

2 1984 SCC OnLine All 365

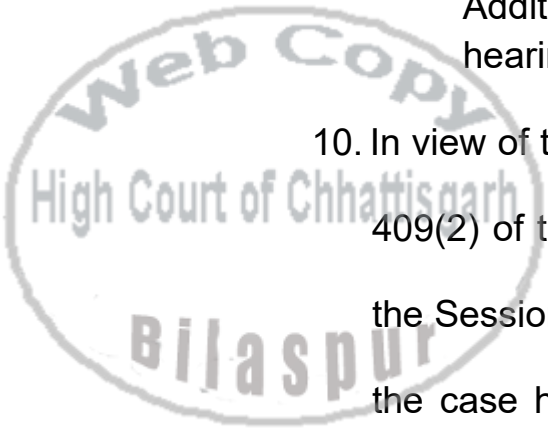


subject to the bar imposed by Section 409(2) on the administrative power of the Sessions Judge of recalling a case or an appeal from an Additional Sessions Judge after the trial of the case or hearing of the appeal has commenced and held in paragraph 17 as under: -

“17. The power conferred on the Sessions Judge under Section 408(1) Cr.P.C. to transfer a case or an appeal pending in the Court of an Additional Sessions Judge to another Additional Sessions Judge in his sessions division whether its hearing has commenced or not, is thus an independent judicial power which is not subject to the bar imposed by Section 409(2) Cr.P.C. on the administrative power of the Sessions Judge of recalling a case or an appeal from an Additional Sessions Judge after the trial of the case or hearing of the appeal has commenced.”

10. In view of the aforesaid legal position, it is quite vivid that Section 409(2) of the CrPC creates a bar on the administrative power of the Sessions Judge for recalling the sessions trial after the trial of the case has commenced. Admittedly, in the instant case, the hearing of S.T.No.22/2022 (State of Chhattisgarh v. Shubham @ Bhima Gupta and two others) had already commenced, as the learned Additional Sessions Judge has framed charges on 8-7-2022 and therefore the Sessions Judge stood divested of the administrative jurisdiction in view of the bar contained under Section 409(2) of the CrPC and in view of the trial of the sessions case having been commenced, the order dated 10-8-2022 is admittedly, without jurisdiction and without authority of law.

11. In the result, the instant transfer petition (criminal) succeeds and it is allowed. The order impugned dated 10-8-2022 is set aside





and the case shall now come back to the Court of the 1st Additional Sessions Judge, Bemetara for hearing and disposal in accordance with law. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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