

CASE NO.:
Appeal (crl.) 473-474 of 2008

PETITIONER:
S. Janak Singh etc

RESPONDENT:
State of Jammu & Kashmir etc. etc

DATE OF JUDGMENT: 10/03/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

O R D E R
CRIMINAL APPEAL NOS.473-474 OF 2008
[Arising out of S.L.P.(Crl.)Nos.5476-5477 of 2007]

Leave granted.

An FIR bearing No.77/2003 under Section 302/120-B, Ranbir Penal Code was registered by Crime Branch Srinagar against certain members of Special Operation Group Camp Pakarpur Budgam. Appellant-S. Janak Singh is the father of one of the accused, viz., Ichpal Singh and another appellant Gurmeet Singh is one of the accused named in the FIR.

Sessions Court, Budgam, started trial of the accused. It is contended that due to hostile atmosphere in Budgam District, no lawyer was ready to represent the present accused. The appellants somehow engaged a lawyer to represent them before the Sessions Court, Budgam, but, he also failed to represent them. In spite of the fact that the appellants were not represented, the Sessions Judge, Budgam, recorded the examination-in-chief of one of the witnesses. The present appellants, therefore, filed Crl.Transfer Applications before the High Court of Jammu & Kashmir for transfer of the trial to any other court of competent jurisdiction at Jammu. The High Court, however, transferred the case to 1st Additional Sessions Judge, Srinagar.
S.L.P.(Crl.)Nos.5476-5477 of 2007 (Contd.)

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Aggrieved by the said order, the appellants have filed the present appeals. In spite of several opportunities, including the last opportunity granted for filing reply, the State of Jammu & Kashmir has not filed any reply.

After hearing counsel for the parties, in the facts and circumstances of the case and in view of the fact that the appellants have remained unrepresented in the proceedings thus far, we feel that the rights of the appellants would be prejudicially affected if the proceedings are not conducted outside Srinagar. We, therefore, direct transfer of the proceedings arising out of aforementioned FIR No.77/2003 to the District & Sessions Judge, Jammu, Jammu & Kashmir who may try the case either himself or assign the same to a court of competent jurisdiction.

The appeals are allowed accordingly.