Ajit Kumar Palit

Vs

State of West Bengal

Criminal Appeal No. 188 of 1961

(Syed Jafar Imam, N.Rajgopala Ayyangar, J. R. Mudholkar JJ)

07.11.1962

JUDGMENT

AYYANGAR, J. –

This appeal raises for consideration the proper construction of ss. 4 and 5 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 (W.B. XXI of 1949) to which we shall refer as the Act. The preamble to the Act recites that it was enacted to provide for the speedy trial of the offences specified in the Schedule. Section 2 empowers the State Government to constitute by notification in the Official Gazette one or more special courts. Section 4 enacts, to extract only the portion relevant to this appeal :

> "S. 4(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, or in any other law, the offences specified in the Schedule shall be triable by Special Courts only.
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> (2) The distribution amongst Special Courts of cases involving offences specified in the Schedule, to be tried by them, shall be made by the State Government."

This is followed by s. 5 reading, again confining ourselves to the portion material for this appeal :

> "S. 5(1). A Special Court may take cognizance of offences without the accused being committed to his Court for trial, and in trying accused persons, shall follow the procedure, prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates, instituted otherwise than on a police report.
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> (2) Save as provided in sub-section (1) or sub-section 1(a), the provisions of the Code of Criminal Procedure, 1898 shall, so far as they are not inconsistent with the present Act, apply to the proceedings of a Special Court; and for the purposes of the said provisions, a special Court shall be deemed to be a Court of Session trying cases without a Jury, and a person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor."

As recited in the preamble and in s. 4, there is a Schedule setting out the offences which are triable solely by these Special Courts.

The facts giving rise to the present appeal may now be stated. The police filed a report before the Chief Presidency Magistrate at Calcutta in February, 1958 charging ten accused persons including the appellant; of offences under s. 120-B read with s. 409 and s. 477, Indian Penal Code. Subsequently, by an order of the State Government dated June 1, 1959, notified in the official Gazette the said case was assigned to the Calcutta Additional Special Court under s. 4(2) of the Act, and in the said communication the names and description of the accused as well as the offences with which they were charged were set out. Sometime later amendments were made to this Notification but nothing turns on them. On September 26, 1959, the Investigating Officer of the Enforcement Branch, Calcutta, filed a petition before the Special Judge praying that the Judge might be pleased to take cognizance of the case which had been allotted to him and issue process against the several accused and pass such orders as he might deem just. On the same day (September 26, 1959), the Additional Special Judge took cognizance of the offences and issued notices to the accused persons fixing a date for their appearance.

On receipt of this notice the appellant made an application before the Special Judge stating that the initiation of the proceedings against him based on the petition of the Investigating Officer, Enforcement Branch, Calcutta, was not proper and legal and that in consequence the Special Judge was incompetent to proceed in the matter. The Additional Special Judge rejected that petition. The appellant then moved the High Court of Calcutta in revision, urging the same ground, namely, that the Special Judge could not take cognizance of the offence on the "complaint" of the police officer and had therefore no jurisdiction to proceed with the trial of the case. At this stage, it is necessary to mention that in two earlier decisions of the Calcutta High Court the view had been held that a Special Judge did not acquire jurisdiction to proceed with the trial of a case merely on an allotment of a case to him under s. 4(2) of the Act duly notified in the Gazette, but that to enable him to take "cognizance" of a case the provisions of s. 190(1) of the Criminal Procedure Code had to be complied with and that having regard to the concluding words of s. 5(1) of the Act, extracted earlier, this had to be "otherwise than on a police report."

In the previous decisions the learned Judges drew a distinction between "cognizance" of a case and jurisdiction to proceed with the trial and held that unless the Special Judge had material before him in the proper statutory form, he could not take "cognizance" notwithstanding the allotment of the case to him by the State Government with the result that he was incompetent to proceed with trial of such a case.

The Division Bench before which the revision of the present appellant came on for disposal entertained doubts about the correctness of these two earlier decisions and accordingly the matter was referred for the consideration of a Full Bench. The questions referred were :

> (1) Does the Special Judge appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, to whom a case has been allotted by notification u/s 4(2) of the Act need a petition of complaint for taking cognizance of the case or does he take cognizance when on receiving the Government notification and the record of the case from the court of the Magistrate, he applies his mind to the facts of the case ?
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> (2) There was a second question which specifically referred to the two earlier decisions and raised a query as to whether they had been correctly decided.
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> The learned Judges of the Full Bench by a majority answered questions in the

following terms :

> "A Special Court is said to have taken cognizance when on receiving the Government Notification of the allotment or distribution of the case and the records of the case, it applies its mind to the facts of the case and takes some steps for proceeding under the subsequent sections of Chap. XXI of the Code."

The second question was answered by saying that the earlier decisions referred to were incorrect.

After the order of reference to the Full Bench and before the hearing of the reference, the West Bengal Legislature enacted Act XXIV of 1960 - The West Bengal Criminal Law Amendment (Special Courts) (Amending) Act, 1960. Section 2 of this enactment effected changes in s. 5 of the Act as extracted earlier, so that after the amendment it read :

> "S. 5(1). A Special Court may take cognizance of offences in the manner laid down in clauses (a) and (b) of Sub-sec. (1) of s. 190 of the Criminal Procedure Code, 1898, without the accused being committed to his Court for trial, and in trying accused persons, ..."

The portion italicised being that newly added.

One of the points canvassed before the Full Bench related to the applicability of this provision to the present proceedings. The learned Judges observed that though the amendment being in relation to a matter of procedure might ordinarily apply to pending proceedings as well, it did not however have the effect of invalidating proceedings already taken, in the absence of a specific provision to that effect and in consequence they held that the validity of the proceedings before the Special Judge and his jurisdiction to proceed with the trial of the accused was governed solely by the Act as it stood before the amendment.

Following the opinion expressed by the Full Bench the revision petition file by the appellant was dismissed. The appellant who comes here by special leave contests the correctness of the answer of the Full Bench on these points.

We shall first take up for consideration the main question that arises in the case as regards the jurisdiction of the Special Judge to take cognizance of an offence without the procedure prescribed by s. 190(1) being complied with.

In order to appreciate the scope of the s. 190(1) of the Criminal Procedure Code it is necessary to mention that it is the first of a fasciculus of sections comprised in Part B of Ch. XV containing ss. 190 to 199 dealing with the statutory conditions necessary for the initiation of criminal proceedings. Of these ss. 190 to 194 form one group and it is sufficient to confine attention to them :

> "190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence -
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> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

#(2).....(3).....,.....
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"191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate."

"192(1). Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly."

"193. (1). Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf."

"194. (1). The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

'Nothing herein contained shall be deemed to affect the provisions of any letters patent or law by which a High Court is constituted or continued, or any other provision of this Code.'

(2).(a). Notwithstanding anything in this Code contained, the Advocate-General may, with the previous sanction of the State Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of justice in England.

(b)..... .....

(c)..... .....

(d)....."

A perusal of these would show that proceedings may be initiated and cognizance of an offence taken either directly or upon transfer of a case or by commitment, or on information filed by the Advocate-General. Direct cognizance can be taken only by certain classes of Magistrates specified in s. 10(1). It should be noticed that the application of this section is limited to Presidency

Magistrates, District Magistrates, Sub-divisional Magistrates and other Magistrates specially empowered in that behalf and it is common ground that the judge of the Special Court appointed under s. 2 of the Act is not within the class of Magistrates designated by s. 190(1) and hence there can be no question of such a judge having to comply with its requirements before he can "take cognizance of an offence." Nor is it the contention of the appellant that such Court is a Sessions Court or a High Court as to require an order of committal by a Magistrate as a precondition for the emergence of its jurisdiction to proceed judicially with the matter.

It is thus clear that there is no statutory requirement under the Criminal Procedure Code as to the class or character of material that must be before a special judge before he can assume and exercise jurisdiction over a case. It was common ground that the same is not a requirement of the Special Courts Act either.

There were however certain matters which were relied on as pointing to a different inference to which we shall immediately refer. In the first place it was urged that s. 5(1) of the Act merely precluded an objection being taken to the jurisdiction of the Special Court by reason of their being no commitment, but did not positively provide whether or not other material was necessary before cognizance could be taken of the offence besides, of course, the order of allotment under s. 4(2). In other words, the argument was that the order of allotment was not either expressly or by necessary implication to be equated to a committal order under s. 193(1). This contention was sought to be reinforced by reference to the language employed in s. 5(2) of the Act whereunder the special court was not constituted "a court of session" but was only deemed to be one such indicating, as it were, that it was not that in truth. We consider that this submission totally lacks substance. We are unable to draw the inference which learned Counsel for the appellant does from the word "deemed" in s. 5(2) of the Act. The fact is that the words "court of session" have a well-understood meaning and significance in the hierarchy of courts under the Code of Criminal Procedure and the Special Court is constituted not such a court but as it is being vested with the powers of a sessions court though with modifications, the word "deemed" is used. If the special court is "deemed" to be a court of session, a doubt might arise as to whether the provision in s. 193(1) of the Code is or is not inconsistent with the Act (vide s. 5(2) of the Act), and hence to clear the position s. 5(1) enacts, so to say, that notwithstanding that a special courts is "deemed" to be court of session, section 193(1) does not apply to it and that an initial cognizance by a Magistrate followed by an order of commitment is not necessary for cognizance being taken by the Special Judge.

If s. 190(1) and s. 193(1) of the Code do not apply, the next question that calls for consideration is what more besides the order of the State Government u/s 4(2) of the Act is needed to vest that court with jurisdiction to proceed. It was suggested that s. 5(1) of the Act might at the best obviate the necessity for an order of commitment but that it did not on that account negative the need for some proper material on the basis of which alone "cognizance" may be taken and it was further submitted that in the case of a Judge of a Special Court cognizance of a case was different from jurisdiction to conduct the trial, the former being dependent on the existence of material which alone invested the court or judge with jurisdiction, so to speak, to initiate the proceedings. Throughout the arguments of the learned Counsel for the appellant there was an underlying assumption that jurisdiction to proceed with the trial of the case was different from "Cognizance" which was some technical requisite necessary to invest the Judge or Magistrate with jurisdiction and that in the absence of proper material for cognizance being taken he was incompetent to proceed with the trial of the case allotted to him.

Much of the arguments on this head was based on a passage in the judgment of this court in

Bhajahari Mondal v. The State of West Bengal [[1959] S.C.R. 1276] which dealt with the Act. That passage runs :

> "The crucial date for the purpose of determining the jurisdiction of the Court would be the date when the Court received the record and took cognizance of the case and took any step in aid of the progress of the case and not when the evidence of the witnesses began to be recorded. Under s. 4 of West Bengal Act (W.B. Act XXI 1949) as amended by the Act of 1952 the jurisdiction of the Court arises when the notification is issued distributing the case to a particular special court giving the name of the accused and mentioning the charge or charges against him which must be under one of the offences specified in the Schedule. In the absence of any of these elements the special Court would have no jurisdiction."

It was stressed that reference was here made to two matters as necessary to confer jurisdiction on the special court : (1) The issue of notification under s. 4(2) of the Act., (2) Receipt of the record and "the taking cognizance of the case" and the taking of a step in aid of the progress of the case and it was urged that the latter requirement brought in really the substance of s. 190(1) of the Criminal Procedure Code. We are satisfied that these observations were not meant to suggest that the jurisdiction of the Special Judge to proceed with the trial of a case duly allowed to him did not spring wholly from the allotment which really was a substitute for a commitment under s. 193(1) of the Code, but depended in part at least on the existence of other material of a nature prescribed by statute disclosing the commission of an offence. Our reading is further strengthened by the fact that in a later portion of the same judgment when dealing with the applicability to the special judge of the curative provision in s. 529 of the Code reading :

> "If any Magistrate not empowered by law to do any of the following things, namely :
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> (e) to take cognizance of an offence under s. 190, sub-section (1), clause (a) or clause (b);
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> #..... ....##
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> erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered."

It was specifically pointed out that the provision which is applicable to Magistrates designated in s. 190(1) is not applicable to the special judge who does not take cognizance in that manner.

The provisions of s. 190(1) being obviously, and on its own terms, inapplicable, the next question to be considered is whether it is the requirement of any principle of general jurisprudence that there should be some additional material to entitle the Court to take cognizance of the offence. The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means - become aware of and when used with reference to a Court or Judge, to take notice of judicially. It was stated in Gopal Marwari v. Emperor [A.I.R. (1943) Pat. 245] by the learned Judges of the Patna High Court in a passage quoted with approval by this Court in R. R. Chari v. State of Uttar Pradesh [[1951] S.C.R. 312, 320] that the word, 'cognizance' was used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in Emperor v.

Sourindra Mohan Chuckerbutty [(1910) I.L.R. 37 Cal. 412, 416], "taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence." Where the statute prescribes the materials on which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled. Thus, a sessions judge cannot exercise that original jurisdiction which magistrates specified in s. 190(1) can, but the material on which alone he can apply his judicial mind and proceed under the Code is an order of commitment. But statutory provision apart, there is no set material which must exist before the judicial mind can operate. It appears to us therefore that as soon as a special judge receives the orders of allotment of the case passed by the State Government it becomes vested with jurisdiction to try the case and when it receives the record from the Government it can apply its mind and issue notice to the accused and thus start the trial of the proceedings assigned to it by the State Government.

Some little point was made of the words "otherwise than on a police report" occuring at the end of s. 5(1) of the Act. In our opinion, nothing turns on them. These words were not there in the Act as originally enacted in 1949, but were introduced by an amendment effected by W. B. Act 26 of 1956. In 1949 at the date of the original enactment there were not two procedures prescribed for being followed by magistrates taking cognizance under the different clauses of s. 190(1) of the Code. But the Criminal Procedure Code was amended by Act 26 of 1955 when s. 251A was introduced and under this new provision a special procedure was introduced for the trial of cases of which cognizance was taken on a police report (s. 190(1)(b)). The amendment of the Act by the inclusion of those words was merely to ensure the inapplicability of s. 251-A to the procedure to be followed in special courts and has obviously no further significance.

The next point for consideration is the effect of the amendment of 1960 on the jurisdiction of the special court to deal with the case of the appellant. Learned Counsel for the appellant addressed an elaborate argument on it but in substance the contention was that the amending Act was in essence declaratory since it had accepted the correctness of one of two interpretations which had been placed upon s. 5(1) of the Act as it originally stood. He therefore invited us to hold that the Legislature had thereby intended that that interpretation should govern the provision from the date when the Act was originally enacted. Before considering this point it is necessary to put aside certain matters : (1) It was not contended that there were any express words in the amending Act which made it retrospective or retroactive to operate from the commencement of the Act, (2) The amendment relating to, as it is, obviously a matter of procedure would have applied to pending proceedings, but it was not suggested that there was anything in the amending Act invalidating proceedings commenced without reference to the amended provisions; in other words, the special judge having validly acquired jurisdiction to proceed with the trial of the case allotted to him, there was nothing in the amending Act to deprive him of that jurisdiction.

It is in the background of these considerations which the learned Counsel did not dispute, that his submissions have to be considered. Learned Counsel referred us to a very considerable number of decisions on the interpretation of statutes, but we have not found them of assistance or even relevance. The amending Act does not purport to be declaratory but seeks in terms to carry out an amendment, in other words, to effect a change. The mere fact that the change effected conforms to a particular interpretation which the words which previously existed might bear and which found acceptance at the hands of the courts in a few cases, is, in our opinion, a wholly insufficient foundation to base an argument that it is declaratory and further that it must be taken to have declared the law from the commencement of the parent Act so as to invalidate all proceedings validly taken on a proper construction of the law as it then stood.

We find therefore that there is no substance in the argument regarding the effect of the amending Act upon which reliance is placed for the purpose of impugning the jurisdiction of the special court and we have no hesitation in repelling that argument.

The result is that the appeal fails and is dismissed.

Appeal dismissed.

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