

Mrs. K. A. A. Brinnand

Vs

Sh. Bijoyanand Patnaik and Another

Criminal Appeal No. 43 of 1970

(K. S. Hegde, A. N. Grover, J. C. Shah JJ)

27.02.1970

JUDGMENT

SHAH, J. -

1. Special leave to appeal is granted. Printing dispensed with. Mr. Setalvad, appearing on behalf of Respondent No. 1 waives notice.

The appeal is heard by us.

The Chief Presidency Magistrate, Calcutta, framed charges against the first respondent under Section 406, I.P.C. in Case No. C/1023 of 1967, filed in his Court. Against that order a revision application was moved in the High Court of Calcutta, and it was prayed that the order framing the charge be quashed. Eight grounds were set up in support of the petition. The first ground was that the Chief Presidency Magistrate had no jurisdiction to entertain and try the complaint for it was alleged that all the ingredients which constitute an offence of criminal breach of trust had, even on the allegations made by the appellant, taken place outside the territorial jurisdiction of the Chief Presidency Magistrate. We are informed at the Bar that this objection was raised before the Presidency Magistrate, 5th Court, who was asked to make a report, and the learned Magistrate observed that it was uncertain where the offence was committed. No objection as to the territorial jurisdiction was thereafter raised before the Chief Presidency Magistrate. The High Court considered the matter in some detail, and after referring to a large number of authorities, held that the provisions relating to the territorial jurisdiction of the Magistrate were mandatory and "non-conforming to the mandatory provisions of law had vitiated the entire proceedings". Without expressing any opinion on the remaining contentions the High Court quashed the order of the Chief Presidency Magistrate framing a charge against the first respondent. This appeal is preferred against that order.

2. It is true that under Section 181(2) of the Code of Criminal Procedure "the offence of criminal mis-appropriation or of criminal breach of trust may be inquired into or tried by a court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed". This provision has to be read with Section 182 which provides :

"When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a court having jurisdiction over any of such local areas."

In view of the report made by the 5th Presidency Magistrate that it was uncertain in which of the local areas the offence was committed, which was not challenged before the Chief Presidency Magistrate, plea of absence of territorial jurisdiction which appealed to the High Court has no substance.

3. We express no opinion on the question whether by virtue of Section 531 of the Code of Criminal Procedure the High Court was prohibited from investigating the question, in the absence of a plea, that assumption of jurisdiction had occasioned the failure of justice. We may, however, point out that the order of the High Court suffers from the infirmity that the High Court did not express any opinion as to the Court which had jurisdiction to try the case. It is obligatory, when a question as to the jurisdiction of a court is raised, to decide, if it is contended that the offence was committed in another jurisdiction, to determine in which jurisdiction the offence was committed (Section 185 of the Code of Criminal Procedure). The High Court has failed to do so.

4. In the view taken by us, in our judgment, the Chief Presidency Magistrate was competent to enquire into and to try the proceedings before him. The High Court has not dealt with the other seven contentions which were raised before it. We cannot at this stage express any opinion on the merits of those contentions.

5. The order passed by the High Court is set aside and the case remanded to the High Court to deal with and to dispose of the case on the other contentions which have not been disposed of by it.

Special Leave Petition (Cri.) No. 190/70

6. Bijoyanand Patnaik, respondent in S.L.P. (Cri.) No. 132 of 1970, is not impleaded as a party respondent in this petition. This is the only petition which seeks to raise the question as to the correctness of the order refusing to frame a charge under Section 120-B against the two alleged offences. The question cannot be dealt with by us in the appeal arising out of Special Leave Petition (Cri.) No. 132 of 1970. It will be open to the appellant to move the Chief Presidency Magistrate to frame a charge under Section 120-B against J. P. Koszarck. Special Leave Petition No. 190/1970, is allowed to be withdrawn.

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