Cricket Association of Bengal and Others

Vs

State of West Bengal and Others

Criminal Appeal No. 270 of 1968

(C. A. Vaidialingam, A. N. Ray JJ)

24.03.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, is directed against the judgment and order, dated June 14/17, 1968 of the Calcutta High Court in Criminal Revision No. 475 of 1967, reversing the orders passed by the Court of the Chief Presidency Magistrate, Calcutta, discharging the accused-appellants.

2. The circumstances leading up to the order of the High Court may be indicated. The second respondent filed a complaint on January 3, 1967, before the Court of the Chief Presidency Magistrate, Calcutta, in respect of the incident which took place on the second day (January 1, 1967), of the Second Cricket Test Match between India and West Indies at the Eden Gardens. The Test Match was to be played under the control, management and supervision of the Cricket Association of Bengal, which had sold tickets of various denominations for the game. There were tickets sold for all the days of the Match and there were arrangements made for the sale of daily tickets. The game started as scheduled on December 31, 1966. The play was interrupted by a number of spectators scaling over the fencing erected around the play ground and entering the cricket field. However, nothing untoward happened on that day.

3. According to the prosecution, the prosecution, the first appellant started selling tickets announcing that arrangements had been made for the accommodation of about 60,000 spectators, while as a matter of fact nearly a lakh of spectators were admitted into the enclosure. The sitting arrangement was most inconvenient and highly unsatisfactory. The arrangements made by the first appellant for accommodating the persons inside the enclosure were so grossly inadequate that it tended to endanger the personal safety of the spectators. On the day in question, the complainant, who was a holder of a season ticket for Rs. 45/- went to attend the game and found all the stands jampacked. Notwithstanding this the people with tickets were being pushed into different enclosures with the result that the spectators within the enclosures started jumping over the fence and occupied the space between the lines of the field and the fencing. The police, unable to control the rush and confusion caused by the behaviour of the crowd, suddenly started a Lathi-charge followed by the bursting of tear gas shells, which resulted in causing injuries to various persons. This infuriated the crowd, which retaliated by acts of arson. The arrangements for going out of the enclosures were also grossly inadequate with the result that some of the spectators who wanted to clear out quickly in panic sustained injuries. The Match had to be abandoned for the day. On these facts the complainant alleged that the first appellant had acted most rashly and negligently in over-selling the tickets and admitting a large number of people than could be conveniently accommodated inside the ground and thereby endangered human lives and the personal safety of thousands of spectators. It was

further alleged that as a matter of fact the rash and negligent act of the first appellant also resulted in hurt being caused to a number of persons, who had come to witness the Match. Apart from the Cricket Association of Bengal, which was the first accused, he made 33 persons accused in his complaint petition. Those persons were the President, the Vice-President and other office bearers and Members of the Working Committee of the Cricket Association of Bengal. The complainant prayed for issuing summons against the 34 accused persons under Sections 337 and 338, read with Section 114 of the Indian Penal Code and to proceed against them according to law.

4. On January 3, 1967, the Chief Presidency Magistrate examined the complainant and heard his counsel. As the Chief Presidency Magistrate was prima facie satisfied there was a case, he issued summons to the persons shown as accused under Sections 337 and 338, read with Section 114 of the Indian Penal Code, fixing, February 13, 1967, for appearance. The complainant had also made a prayer for issue of search warrants and for seizure of the account books and other relevant papers in the custody of the first accused-appellant and search warrants were issued on January 6, 1967.

5. Some of the office bearers of the first appellant on receipt of summons challenged before the High Court in Criminal Revision No. 19 of 1967, the orders of the Chief Presidency Magistrate issuing summons and search warrants. They also prayed for quashing the complaint on the ground that the allegations even if fully established will not establish an offence under Section 337 and/or Section 338, read with Section 114 or any other section of the Indian Penal Code, and that the complaint was misconceived and constitutes an abuse of the process of the Court.

6. The learned Single Judge stayed further proceedings before the Chief Presidency Magistrate and issued summons to the State and the complainant. After hearing all parties, the learned Single Judge ultimately, by his order, dated February 24, 1967, dismissed the Criminal Revision No. 19 of 1967. There were three points to be noted in the order of the learned Judge, namely : (1) Mr. Dutt, counsel appearing for the complainant conceded before the High Court that the process issued by the Chief Presidency Magistrate under Sections 337 and 338, read with Section 114 of the Indian Penal Code is misconceived (2) the High Court has given a finding that the statements made in the petition of complaint do not constitute the essential elements to make out offences under Sections 337 and 338, I.P.C., and (3) nevertheless, prima facie it cannot be stated that the elements of an offence under Section 336, I.P.C. are not contained in the complaint, and therefore the prosecution will have to be given a chance to establish, if they can, that an offence under Section 336, I.P.C. has been committed. Though ultimately the criminal revision was dismissed, it will be seen from the aspects mentioned above that the complainant has conceded that the allegations in the complaint will not make out an offence under Sections 337 and 338, I.P.C. Apart from this concession, the learned Single Judge after independently considering the averments in the complaint has also held that no offence under Sections 337 and 338 is disclosed in the complaint and that the issue of summons in respect of those offences cannot be upheld. But the High Court was prepared to give an opportunity to the prosecution to establish, if they can, that an offence under Section 336, I.P.C., at any rate, has been committed by the accused. It is needless to state that the Chief Presidency Magistrate was bound to have due regard to these directions contained in the order of the High Court when the case was to be proceeded with again in his Court.

7. After the disposal of Criminal Revision No. 19 of 1967, by the High Court on February 24, 1967, and in consequence of the stay of proceedings being vacated, the Chief Presidency Magistrate proceeded to deal further with the complaint. On March 2, 1967, the complainant filed an application before the Chief Presidency Magistrate for leave to withdraw the complaint against eight accused, namely, accused Nos. 8, 10, 11, 22, 26, 31, 32 and 33. The reason given by the

complainant was that the said accused persons had ceased to act as members of the Working Committee at the material time. On March 20, 1967, the Chief Presidency Magistrate discharged, under Section 253(2), Cr.P.C. the eight accused as prayed for by the complainant in his application, dated March 2, 1967, after accepting the reasons given therein. The accused so discharged were Nos. 8, 10, 11, 22, 26, 31, 32 and 33. On May 31, 1967, the complainant filed another application before the Chief Presidency Magistrate seeking permission to withdraw the complaint against the rest of the accused. In that application he stated that he had filed the complaint to voice the grievances of the bona fide spectators, who had purchased tickets for witnessing the Cricket Test Match. He has further mentioned that an Inquiry Commission called the "Sen Commission" was already inquiring into the events connected with the incident that took place on January 2, 1967, in order to find out the persons responsible for the same. Under these circumstances, the complainant stated that he does not intend to continue the complaint instituted by him.

8. On June 8, 1967, the Chief Presidency Magistrate dismissed the complaint as against accused Nos. 16, 17, 18, 19, 23, 27, 30 and 34, under Section 204(3), Cr.P.C. on the ground that the complainant has not deposited the necessary charges for issue of summons. It was noted by the Chief Presidency Magistrate that the complainant though called was absent. Dealing with the application, dated May 31, 1967, filed by the complainant for permission to withdraw the complaint, the Chief Presidency Magistrate has stated that he cannot accord permission to withdraw the complaint as the proceedings under Section 338, I.P.C. are warrant procedure proceedings. But the Chief Presidency Magistrate has further stated that no useful purpose will be served by proceeding further with the complaint as the complainant was not present and was also not serious to proceed with the complaint as is evident from his conduct in committing severe defaults. For these reasons the Chief Presidency Magistrate passed an order discharging all the other remaining accused under Section 253(2), Cr.P.C. Therefore, it will be seen that by the two orders, dated March 20, and June 8, 1967, referred to above, the Chief Presidency Magistrate discharged all the accused and terminated the proceedings initiated by the second respondent.

9. The news regarding the termination of these proceedings appeared in some of the Dailies in Calcutta on June 10, 1967. On seeing the said news item, the High Court by its order, dated June 13, 1967, called for the record pertaining to the case from the Court of the Chief Presidency Magistrate Calcutta. On August 1, 1967, a Division Bench of the Calcutta High Court issued suo moto a Rule (Criminal Revision No. 475 of 1967) to the complainant and the 34 accused persons to show cause why the orders discharging the accused persons passed on March 20, and June 8, 1967, should not be set aside.

10. The learned Judges after hearing all the parties, by the impugned judgment set aside the two orders of the Chief Presidency Magistrate discharging the accused. The Chief Presidency Magistrate was directed to proceed with the complaint and dispose it of according to law. But the learned Judges directed that the proceedings need by continued only against the 14 accused, namely, Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15 and 26. The learned Judges have held that the discharge of some of the accused under Section 204(3), Cr.P.C. on June 8, 1967 on the ground that the complainant has not paid the process for issue of summons is not proper. According to the High Court there is no provision under the relevant rules framed by the High Court for payment of any process for issue of summons in respect of cognizable offences whether the case is instituted on a complaint or not. Similarly the High Court held that the orders discharging under Section 253(2), Cr.P.C. some of the accused on March 20, 1967, and the remaining accused on June 8, 1967, are also not justified as the proceeding under Section 338, I.P.C. was that of a warrant case.

11. Mr. C. K. Daphtary, learned counsel for the appellants, in attacking the order of the High Court has pointed out that there was no justification for the High Court to interfere suo moto with the orders passed by the Chief Presidency Magistrate discharging the accused, in the circumstances mentioned by him. The counsel also pointed out that the Division Bench has not properly appreciated and given effect to the directions given in the judgment of the learned Single Judge in Criminal Revision No. 19 of 1967. After the order of the learned Single Judge, the counsel pointed out that the proceedings have to be continued by the Magistrate only to inquire if an offence under Section 336, I.P.C. has been made out. In such a trial the summons case procedure has to be adopted and the Magistrate has got ample jurisdiction to permit the complainant under Section 248, Cr.P.C. to withdraw the complaint. Even on the basis that the charges under Sections 337 and 338 survive and the warrant case procedure is to be adopted, the Magistrate has jurisdiction under Section 253(2) to discharge the accused. Considering the matter from any point of view, the interference by the High Court is not justified.

12. Neither the State nor the complainant has appeared before us to support the order of the High Court. We have already referred in great detail to the circumstances under which the impugned order was passed as they give a clear and complete picture of the whole matter. We have gone through the reasoning of the learned Judges and we are satisfied that the interference with the orders of the Chief Presidency Magistrate by the High Court was not justified and was not warranted in the circumstances of the case.

13. The fundamental error committed by the Division Bench is that it has proceeded on the basis that the learned Single Judge on the former occasion in Criminal Revision No. 19 of 1967, has not held that the prosecution under Sections 337 and 338 is not made out. We have already referred to the fact that during the hearing of Criminal Revision No. 19 of 1967, Mr. Dutt, learned counsel, appearing for the complainant conceded that the issue of process under Sections 337 and 338, I.P.C. was misconceived. On the other hand, the Division Bench proceeds on the basis that no such concession has been made, which is erroneous as a fact. Again even apart from the concession, the learned Single Judge after discussing the essential ingredients of an offence under Sections 337 and 338, I.P.C., has categorically held in his order that the statements made in the complaint petition do not go to make up the essential ingredients for an offence under Sections 337 and 338. The learned Single Judge has also found that it is not possible at that stage to say that no offence even under Section 336, I.P.C. has been committed. It is on this reasoning that the learned Judge though technically did not quash the proceedings, gave a clear indication that the prosecution is given a chance to establish, if they can, that the accused have committed an offence under Section 336, I.P.C. After the concession of the counsel for the complainant and the categorical finding of the learned Judge that no offence under Sections 337 and 338, I.P.C. is made out and that an investigation is to be made only in respect of an offence under Section 336, I.P.C., it is idle to expect the Magistrate to ignore these clear directions and proceed with the trial again for an offence under Sections 337 and 338, I.P.C., as if nothing has happened. That is exactly what unfortunately the Division Bench has done. It has ignored the concession of the counsel. It has ignored the clear finding of the learned Single Judge as also the directions given by him. It is this serious mistake committed by the Division Bench that has resulted in the passing of the order under attack. The legality of the orders passed by the Chief Presidency Magistrate can be considered from two points of view. Assuming that the Chief Presidency Magistrate has still to proceed with the trial for offences under Sections 337 and 338, I.P.C. it is no doubt true that he has to follow the warrant case procedure. Even under such circumstances, the Magistrate has got ample jurisdiction to discharge the accused under Section 253(2), Cr.P.C. Section 253 deals with the discharge of accused. Sub-section (1) deals with the discharge of an accused when the Magistrate after taking all evidence

referred to in Section 252, Cr.P.C. and making such examination of the accused, if any, as may be found necessary, finds that no case against the accused has been made out, which if unrebutted, would warrant his conviction. Sub-section (2) of Section 253 is to the following effect :

> "253(2). Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by Magistrate, he considers the charge to be groundless."

This sub-section gives ample jurisdiction to the Magistrate to discharge an accused in the circumstances mentioned therein and the order of discharge can be passed at any previous stage of the case. Sub-section (1), under those circumstances will not operate as a bar to the exercise of jurisdiction by the Magistrate under sub-section (2). It is under sub-section (2) of Section 253 that the Magistrate has discharged the accused. He has given good reasons in the order for discharging the accused.

14. Assuming that the Division Bench is right in holding that the discharge under Section 204(3), Cr.P.C. is not justified we will proceed on the basis that the said order is one of discharge under Section 253(2). We have already referred earlier to the reasons given by the complainant in his application seeking permission to withdraw the complaint, as well as to the reasons given by the Magistrate for discharge the accused. There is no controversy that at the material time, the Sen Commission was inquiring into the identical matter which was the subject of the criminal complaint. Under those circumstances, it cannot be said that the discharge of the accused by the Magistrate is either illegal or not justified.

15. Even on the basis that the inquiry has to proceed for an offence under Section 336, I.P.C., the position will be that the summons case procedure will have to be followed. Even then under Section 248, Cr.P.C. the Magistrate has ample jurisdiction to permit the complainant to withdraw the complaint. In fact under Section 248, Cr.P.C. the Magistrate should acquit the accused, once he permits the complaint to be withdrawn. Even if the order of discharge is to be treated as passed in a case where summons case procedure is to be followed, it was within the jurisdiction of the Magistrate and hence it cannot be characterised as either illegal or not justified.

16. We accordingly hold that the Division Bench was not justified in interfering with the orders, dated March 20 and June 8, 1967, passed by the Chief Presidency Magistrate, in the circumstances of this case. We, however, make it clear that we have no doubt that in proper cases the High Court can take action suo moto against orders passed by the subordinate Courts without being moved by any party.

17. In the result the appeal is allowed. The judgment and order of the High Court in Criminal Revision No. 475 of 1967, are set aside and the orders of the Chief Presidency Magistrate, dated March 20, and June 8, 1967, will stand restored.

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