State of West Bengal

Vs

Bejoy Kumar Bose and Others

Criminal Appeal Nos. 109-111 of 1977

(P. K. Goswami, V. D. Tulzapurkar JJ)

07.12.1977

JUDGMENT

GOSWAMI, J. -

1. These appeals by certificate are from the common judgment of the Calcutta High Court of May 28, 1975 disposing of three Criminal Miscellaneous Revisions 304, 318 and 371 of 1975. There is a common question of law and will be disposed of by this judgment.

2. Briefly the facts are as follows :

2A. A complaint was made against the accused by Shri J. F. C. McMohan, Dock Manager, Calcutta Port Commissioners, to the South Port Police Station alleging offences under Sections 120B/420/ 379/466/468/471, IPC against several accused including the respondents who happened to be public servants at the material time. The State Government issued a Notification 3165-J on April 8, 1970 under] Section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act (hereinafter referred to as the Act) allotting the said case for trial to the Third Additional Special Court, Calcutta constituted under the provisions of the said Act for trial of the offences mentioned in the schedule to that Act. There is no dispute about the particular order of allotment of the case to the Special Court under the said Act. Following the notification of April 8, 1970 the State of West Bengal through Ranajit Roy, Sub-Inspector of Police, filed a complaint before the Third Additional Special Court, Calcutta on September 11, 1970 detailing all the allegations against the accused and indicating the material facts that transpired in the course of the investigation of the case. The Special Court Judge after perusal of the complaint and hearing the Public Prosecutor took cognizance of the case under Sections 409/109 and 409/34, IPC which are offences mentioned in the schedule of the Act. The learned Judge thereupon issued processes against the respondents and other accused. In due course trial commenced. The prosecution after examining 70 witnesses closed its case on May 2, 1974. The Court framed charges against four accused including the respondents and discharged the remaining two accused by a lengthy order with reasons on February 26, 1975. Charges were framed under various sections including Sections 409 and 420 read with Section 120-B, IPC.

3. The respondents moved the Calcutta High Court in revision for quashing the trial on March 25, 1975. The High Court allowed the Petition on May 28, 1975 and granted certificate to appeal to this Court under Article 134(1)(c) of the Constitution on March 26, 1976. Hence these appeals.

4. The High Court accepted the contentions of the respondents that no legal and valid cognizance of the offence was taken by the learned Judge. Special Court, and, therefore, the entire proceedings became vitiated and hence were quashed. The High Court in disposing of the matter in this way

followed two earlier Division Bench decisions of the said court in Sudhir Chandra Bhattacharjee v. The State, Criminal Appeals 23 to 26 of 1961 decided on March 29, 1967 and Shyama Saran Das Gupta v. The State, Criminal Appeal No. 434 of 1967, decided on April 11, 1975.

5. The question that falls foe decision in these appeals relates to the cognizance of the offences by the Special Judge under the Act. As the preamble shows, the Act provides for the more speedy trial and more effective punishment of certain offences specified in the schedule thereto. Section 4(1) of the Act provides that 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 : Provided that when trying any case a Special Court may also try any accused may under the Code of Criminal Procedure, 1898, be charged with at the same trial. These is, however, no dispute that the offences charged are exclusively triable by the Special Court.

6. Section 5 of the Act which is material for our purpose may be read :

> A Special Court may take cognizance of offences, in the manner laid down in clauses (a) and (b) of sub-section (1) of Section 190 of Code of Criminal Procedure, 1898 without the accused being committed to his Court of trial, and trying the 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.

This section underwent some changes by two amendments in 1956 and 1960. Prior to the amendments, Section 5(1) did not contain the words "in the manner laid down in clauses (a) and (b) of sub-section (1) of Section 190 of the Code of Criminal Procedure, 1898" and the words "instituted otherwise than on a police report". We are not concerned in these appeals with the amendment of 1956 by which the words "instituted otherwise than on a police report" we inserted.

7. It may be of interest to note that in a case under the unamended section before the Special Court this Court had to deal with the question of cognizance canvassed before it in Ajit Kumar Palit v. State of West Bengal (1963 Supp 1 SCR 953, 965-966 : AIR 1963 SC 765 : (1963) 1 Cri LJ 797). This Court held on the terms of the provisions of the unamended Section 5(1) of the Act as follows :

> 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 of Judge, to take notice of judicially. It was stated in Gopal Marwari v. Emperor (AIR 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 SCR 312, 320 : AIR 1951 SC 207 : 52 Cri LJ 775) that the word, 'cognizance' was use 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 ILR 37 Cal 412, 416), "taking cognizance does not involve any formal action : or indeed action of any king, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence" ..... 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.

8. The above decision of this Court could have concluded the matter, but it is pointed out by Mr. A. K. Sen, appearing on behalf of the respondent that in view of the amendment of Section 5(1) of the Act by the West Bengal Act XXIV of 1960 introducing the words "in the manner laid down in clauses (a) and (b) of sub-section (1) of Section 190 of the Code of Criminal Procedure, 1898", the legal position has completely changed. His submits that it is now obligatory for the Special Judge to examine the complainant under Section 200, Cr. P.C. prior to taking cognizance of the offence. Since in the present case, proceeds the argument of Mr. Sen, the Special Judge took cognizance merely on the complaint of the Sub Inspector of Police without proceeding in accordance with Section 200, Cr. P.C., the entire proceedings are vitiated.

9. We are unable to accede to the above submission of Mr. Sen. It is true that the amendment has introduced the manner of taking cognizance in accordance with Section 190(1) (a) and (b), Cr. P.C. appearing in Chapter XV of the Criminal Procedure Code, 1898, but the Legislature in this amendment, at the same time, has advisedly omitted to include Section 200, Cr. P.C. and the other provisions of the next chapter which is Chapter XVI dealing with "complaints to Magistrates".

10. It is clear that under Section 4(2) of the Act, the allotment by the State Government to the Special Judge of a case involving of scheduled offences vests the necessary jurisdiction in the Special Judge to proceed to trial and is, therefore, equivalent to the Court's taking congnizance of the offence [see Ajit Kumar Palit's case (supra)]. Because of the amendment of Section 5(2) in 1960, it may be now open to the Special Judge to apply his judicial mind to the complaint apart from allotment of the case in order to come to a decision as to whether he is satisfied on the materials laid before him at that stage to take cognizance of the offence and proceed to trial. If he chooses to examine the complainant of any witness before issuing process against any accuse, there is nothing in law to prevent him from doing so. If he does not do so and is satisfied on perusal of the complaint after allotment of the case by the Government that an offence has been disclosed against definite persons, no valid objection could be taken against his taking cognizance on the written complaint without complying with the provisions of Section 200, Cr. P.C. No grievance can be made then that the Special Judge has not examined the complainant under Section 200, Cr. P.C. prior to issuing of process.

11. Section 200, Cr. P.C., in terms, comes into play after taking cognizance of an offence by a Magistrate (see Gopal Das Sindhi v. State of Assam (AIR 1961 SC 986, 988, 989)). There is, therefore, no merit in the submission that taking cognizance of the offence in this case is invalid for which the whole trial is vitiated.

12. The words "in the manner laid down in clauses (a) and (b) of sub-section (1) of Section 190 of the Criminal Procedure Code, 1898" do not automatically introduce the provisions of Section 200, Cr. P.C. of Chapter XVI; nor do the above words in Section 5(2) of the Act mandatorily compel the Special Judge to resort to the provisions of Chapter XVI.

13. Apart from this, Chapter XVI in terms refers to "complaints to Magistrates" and thereby excludes Special Judges who are to be guided by the special provisions of the special Act in the matters provided therein. There is nothing in Section 5(1) of the Act even after the amendment in 1960 to compel the Special Judge to comply with the provisions of Section 200, Cr. P.C.

14. The objection of the respondents to the trial is on the score of the invalidity of the cognizance

taken by the Special Judge on perusal of the written complaint after allotment of the case by the Government for the sole reason after the complaint had not been examined under Section 200, Cr. P.C., prior to issuing of process. The objection is clearly untenable for the reasons given above.

15. The appeals are, therefore, allowed and the judgment of the High Court is set aside. Since the case is an old one, trial before the Special Judge shall be expedited.

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