CALCUTTA HIGH COURT

Superintendent and Remembrancer of Legal Affairs

Vs.

Abani Kumar Banerjee

Criminal Revn. No. 92 of 1950

(Das Gupta and Lahiri, JJ.)

09.05.1950

JUDGMENT

Das Gupta, J.

1. On and 2nd February 1948, a petition of complaint was filed before the Chief Presidency Magistrate of Calcutta by one Haridas Mukherjee. On that petition of complaint, the learned Magistrate passed the following order :

> "To D.C.D.D., for enquiry and report. If it is found that the Bank has ceased functioning, the enquiring officer to seize the books at once on the strength of a search warrant I should issue on his application. If the Bank is functioning he should apply to me for instructions. To 13/2."

On 9th February 1948, a report was received that the Bank had ceased functioning. On 10th February 1948, the learned Chief Presidency Magistrate ordered issue of a search warrant. A report from the police was received on 23rd March 1948. On 14th June 1948, the learned Chief Presidency Magistrate passed the following order :

> "Heard learned Pleader. Let D.C.D.D., take cognizance of this case at once, and seize the books of this Bank that are necessary."

Thereafter a challan was sent up by the police under Section 408, Penal Code, against Abani Kumar Banerjee. On 7th February 1949, the learned Chief Presidency Magistrate recorded the receipt of the challan under Section 408, Penal Code, and then transferred the case to Mr. C.C. Chakravartti for disposal.

2. This learned Magistrate came to the conclusion that the learned Chief Presidency Magistrate

had acted illegally and that the accused Abani Kumar Banerjee was before him on the basis of illegal arrest, and accordingly ordered him to be set at liberty; and he fixed a date for the examination of the complainant, apparently under Section 200, Criminal Procedure Code.

3. It is against this order of the learned Presidency Magistrate Mr. C.C. Chakravarti, that the present Rule is directed.

4. The real question for decision is whether the learned Magistrate is right in his view that when a petition of a complaint was filed before the Chief Magistrate, he was bound to take cognizance under Section 190(1)(a), Criminal Procedure Code. If he was so bound, he was certainly bound also to examine the complainant under Section 200, Criminal Procedure Code, and thereafter proceed in the ways indicated in subsequent Sections 202, 203 and 204 of the Code. If, however, he was not so bound, the action of the learned Chief Presidency Magistrate in sending the case to the police without himself examining the complainant under Section 200, Criminal Procedure Code, cannot be said to be illegal as he would be entitled to order investigation by the police, under Section 156 (3), Criminal Procedure Code.

5. Sen, J., in the case of *Samaddar v. Sures Chandra*[1], and in some other cases has taken the view that a Magistrate duly empowered to take cognizance is bound to take cognizance of the petition of complaint as soon as it is filed before him. The contrary view has been taken by several Division Benches of this Court of which mention need be made only of two recent decisions, viz., decision of Roxburgh and Chakravartti, JJ., in *Robinul Hossain v. K.K. Ram*[2], and the decision of Harries, C.J. and Das, J., in *Pulin Behari Ghosh v. King*[3], In these cases, the view has been clearly expressed that when a petition of complaint is filed before a Magistrate the Magistrate may take cognizance under Section 190 (1) (a), Criminal Procedure Code and proceed to examine the complaint under Section 200, and thereafter proceed according to the subsequent sections of the Code, or in the alternative, may not take cognizance and may instead send it to the police for investigation under the provisions of Section 156(3), Criminal Procedure Code. I feel bound to follow these decisions.

6. Mr. Mukherjee has, however, tried to convince us that the view taken in these decisions mentioned above is wrong, and that we should refer the matter to the Full Bench.

7. I have for myself no hesitation in feeling that there is nothing which would justify our referring the matter to the Full Bench. As I read Section 190, Criminal Procedure Code, and the subsequent sections, it seems to me to be clear that a Magistrate is not bound to take cognizance of an offence, merely because a petition of complaint is filed before him. Mr. Mukherji's argument is that a Magistrate cannot possibly take any action with regard to a petition of complaint, without applying his mind to it, and taking cognizance of the offence mentioned in the complaint necessarily takes place, when the Magistrate's mind is applied to the petition. Consequently, Mr. Mukherji argues, whenever a Magistrate takes the action, say, of issuing search warrant, or asking the police to enquire and to investigate, be has taken cognizance of the

ease. In my judgment, this is putting a wrong connotation on the words "taking cognizance." What is "taking cognizance" has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190 (1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, - proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the

[1]53 CWN 270; (AIR 1949 Cal197 : 50 Cr LJ 368) [3]53 CWN 653

[2]82 CLJ 222

purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind. e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. My conclusion, therefore, is that the learned Magistrate is wrong in thinking that the Chief Presidency Magistrate was bound to take cognizance of the case as soon as the petition of complaint was filed.

8. Mr. Mukherjee wanted to draw our attention to the evidence of some of the witness examined before Mr. Chakravarti to show that really there was something suspicious about the whole complaint. In my judgment, it is not necessary or proper for us to go into the matter at this stage. The learned Magistrate has, in my opinion, clearly committed an error in law in treating the proceedings after the filing of the petition on 2nd February, 1948, up to 7th February 1949, as invalid, and in deciding to start proceedings anew.

9. I would, therefore, make this Rule absolute, set aside the learned Magistrate's order directing the accused to be set at liberty, and direct that the Court should proceed with the trial of the case on the basis that the proceedings up to the order of the Chief Presidency Magistrate on 7th February 1949, ordering transfer of the case to Mr. C.C. Chakravarti are valid.

10. We understand that the Magistrate, Mr. C.C. Chakravarti, has since been transferred. This would necessitate that the case should be tried either by the Chief Presidency Magistrate or by such other Presidency Magistrate to whom he may think fit to transfer the case.

Lahiri, J.

11. I agree.

Rule made absolute.