CALCUTTA HIGH COURT

Jiban Banerjee

Vs.

State (Calcutta)

Full Bench Ref. No. 1 of 1959 and Criminal Revn. No. 1587 of 1958

(K.C. Das Gupta, C.J., R.S. Bachawat and S.N. Guha Ray, JJ.)

25.03.1959

JUDGMENT

Das Gupta, C.J.

1. This reference has been made by a Division Bench of this Court as the learned Judges (Guha Ray, J. and N.K. Sen, J.) found themselves in disagreement with the decision of another Division Bench in *Bisseswar v. Emperor*[1] on the important question whether a Court which, has jurisdiction to try an offence of conspiracv having been committed within the local limits of its jurisdiction has also jurisdiction to try offences committed in pursuance of the conspiracy, though, committed outside the local limits of the Court's jurisdiction. The question arose before Guha Ray, J. and N.K. Sen, J. in an application under Section 439 of the Code of Criminal Procedure made by one Jiban Banerjee. Jiban along with 23 other persons were committed to the Court of Sessions, 24 Parganas, by the Police Magistrate, Sealdah, to take their trial on charges under Sections 489-A, 489-B, 489-C and 489-D read with Section 120-B of the Indian Penal Code. Against Jiban there was a charge for a specific offence under Section 489D of the Indian Penal Code alleged to have been committed in pursuance of the conspiracy. There were, it may be mentioned, similar charges for specific offences, said to have been committed in pursuance of the conspiracy, against some of the other persons. Before trial commenced in the Sessions Court, all application was made by Jiban praying that the specific charge of Section 489D of the Indian Penal Code should be excluded from the trial on the ground that the Police Magistrate had no jurisdiction to hold the enquiry under Chapter XVIII into this offence and the Sessions Judge had no jurisdiction to try this offence of Section 489D, inasmuch as the offence was alleged' to have been committed at Murigram, Howrah, which was admittedly beyond the territorial jurisdiction of the Magistrate's Court as well as of the Sessions Court.

2. It appears that Ramani Mohan Das, who was one of the 24 accused and against whom there was a further charge under Section 489-D of the Criminal Procedure Code, was tendered pardon

by the Sessions Court, under Section 338 of the Criminal Procedure Code. It was contended by the petitioner that the tender of this pardon was illegal as the Sessions Court had no jiirisdiction to try the offence under Section 489D as against Ramani Mohan, that offence having been committed on the prosecution case beyond the

[1]28 Cal WN 975 : (AIR 1924 Cal1034)

jurisdiction of the Alipore Court.

3. One Dilip Kumar Roy Choudhary, one of the 24 accused, committed for trial on a charge of conspiracy, was also tendered pardon by the Sessions Court. It was contended that this tender was illegal.

4. On this application by Jiban Banerjee a Rule was issued by the Division Bench calling upon the District Magistrate and also on Dilip Kumar Roy Choudhary and Ramani Mohan Das to show cause why the charge under Section 489D of the Indian Penal Code against Jiban, should not he quashed and also why the order referred to in the petition, tendering pardon to the two accused persons Dilip Kumar Roy Choudhary and Ramani Mohan Das, should not be set aside.

5. At the hearing of the Rule it was conceded by the learned Advocate for the petitioner that the Sessions Court had jurisdiction to try the offence of conspiracy. On the authority of the decision in Bisseswar's case, 28 Cal WN 975: (AIR 1924 Calcutta 1034) it was contended, however, that the Sessions Court had no jurisdiction to try the offence under Section 489D against the petitioner as it was committed, on the prosecution case, outside the local limits of the Magistrate's jurisdiction and the Sessions Court's jurisdiction. The referring Judges were of opinion that the provisions of Section 239(d) and Section 235 (1) Criminal Procedure Code should reasonably be read as partial exceptions to the general rule laid down in Section 177 Criminal Procedure Code with the result that "when an offence of conspiracy has been already taken cognizance of by the Court concerned, it was entitled to try at the same trial the specific charges arising our of overt acts against individual accused persons although those overt acts or some of them may have been committed outside the local limits of that court's jurisdiction." As this view, however, goes directly against the view taken by another Division Bench in 28 Cal W.N. 975 : (AIR 1924 Calcutta 1034), they have referred the matter to the Full Bench. The question is referred are in these words :

> "(1) Whether Section 235 (1) and Section 239 (d) Criminal Procedure Code, are to be read partly as exceptions to the general rule laid down in Section 177, Criminal Procedure Code, so as to permit the trial of specific offences alleged. to have been committed by one of more of the accused who are all charged with having conspired to commit such offences by a Judge who legally takes cognizance of the offence of conspiracy when the specific acts are alleged to have been committed outside the local limits of the jurisdiction of that Judge.
> (2) Whether Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034) was rightly

decided by this Court."

6. It is obvious that the real question is whether provisions of Sections 235 (1) and 239(d) of Criminal Procedure Code confer on a Court which has jurisdiction to try an offence of conspiracy, jurisdiction to try offences committed in pursuance of the conspiracy even though committed outside the local limits of the Court's jurisdiction. Chapter XV of the Criminal Procedure deals with the question of jurisdiction of Criminal Courts in enquiries and trials. The general provision as regards jurisdiction is contained in Section 177 which is in these words :

> "Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed."

Special provisions as regards jurisdiction for enquiry and trial are contained in the 9 Sections 178 to 185 and Section 188 of this Chapter. Thus Section 178 provides that

> "Notwithstanding anything contained in Section 177, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division Section 179 provides that
> "When a person is accused of the commission of an offence by reason of anything which has been done and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued."

Section 180 provides that

> "When an act is an offence by reason of its relation to any other act which is also an offence or which would ho an offence, if the doer were capable of committing an offence a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done."

Section 181 contains special provisions as regards jurisdiction in respect of several specified offences Section 182 provides that

> "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." Section 183 contains special provisions as regards jurisdiction in respect of offences committed on a journey. Section 184 contains special provisions as regards jurisdiction in respect of offences against Railways, Telegraphs the Post Office and Arms Act. Section 185 (1) provides that :

> "Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court"

Sub-Section (2) of that section contains special provisions as regards cases where two or more Courts not subordinate to this High Court have taken cognizance of the same offence. Section 188 provides that when an offence is committed by any citizen of India at any place without and beyond India or any person committed any offence in a ship or aircraft registered in India, wherever it may be he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.

7. None of the Sections contain any provision to the effect that all offences committed in pursuance of a conspiracy may be tried by a Court which has jurisdiction to try the offence of conspiracy. Nor does any of these Sections contain a provision that all offences committed in the course of the same transaction may be tried by at Court having jurisdiction to try any of them.

8. The position, therefore is that while it is undoubtedly correct that there are many exceptions to the general rule laid down in Section 177 that an offence has to be inquired into or tried by a Court within the local limits of whose jurisdiction it has been committed, there is no exception contained in any of the provisions in Chapter XV either generally as regards offences committed in the come of the same transaction or particularly as regards offences committed in pursuance of a conspiracy.

9. The question is whether Section 235 (1) or Section 239 contains any such exception. The relevant portion of Section 235 is in these words :

> "If in one series of acts so connected together as to form the same transaction, more offences; than one are committed by the same person, he may be charged with and tried at one trial for every such offence."

The relevant portion of Section 239 is in these Words :

> "The following persons may be charged and tried together, namely :-
> (a) persons accused of the same offence committed in the course of the same transaction;
> (d) persons accused of different offences committed in the course of the same transaction;"

10. It is quite clear that there is no express conferment by these provisions on a Court having jurisdiction to try one of the offences which may be charged and tried together at one trial of jurisdiction to try all the offences which may be so tried.

11. Is there such conferment by necessary implication ? If even without words conferring expressly jurisdiction in a manner similar to the way in which special jurisdiction has been conferred in the Sections 178 to 184 and Section 188 mentioned above these Sections 235 and 239 had used instead of "may be charged with and tried at one trial" and "may be charged and tried together", the words "shall be charged with and tried at one trial" and the words "'shall be charged and tried together" there would have been great scope for argument that jurisdiction to try alt such offences were conferred by necessary implication, as such implication was required in order to give effect to the provisions that all such offences "shall" be tried together. It would have been necessary in law that one single Court should have jurisdiction to try all of them; and so the legislature could reasonably be assumed to have intended that a Court having jurisdiction to try any of such offences, would have jurisdiction to try all the offences triable at the same trial. The legislature has however in its wisdom not used the words "shall be" but has used the words "may be". It has been held again and again that the provisions for joint trial in Sections 235 and 239 are merely enabling sections and did not compel the same trial. There is no justification therefore, for reading "may be" in these Sections as "shall be". There is thus no basis for holding that the legislature necessarily intended that a Court having jurisdiction to try one of the offences shall have jurisdiction to try all the other offences triable at the same trial. There will be many cases where these enabling provisions for joint trial will be effective, namely in all cases where the same Court has jurisdiction under other provisions of the law to try all the offences proposed to be tried at the same trial. It is not as it the intention of the legislature as embodied in the Section becomes frustrated unless a Court having jurisdiction to try one of the offences is assumed to have jurisdiction to try all of them.

12. It is proper to remember in this connection that Sections 235 and 239 are exceptions to the general rule laid down in Section 233 that every offence shall be tried separately. The legislature, when laying down the general rule in Section 233 added the words "except in the cases mentioned in Sections 234, 235, 236 and 239." The express object of the legislature in enacting Sections 235 and 239 was therefore to provide exceptions to the general rule that every offence shall be the subject matter of a separate trial. This is an additional reason to think that if the legislature had intended the provision of joint trial in Sections 235 and 239, to operate as exceptions to the rule laid down in other parts of the Code as regards jurisdiction, that intention would have been expressed in certain terms.

13. It is necessary to remember in this connection the very great importance the law attaches to the jurisdiction of Courts. It is proper to think that such an important matter as regards providing an exception to the ordinary rule as regards jurisdiction should be dealt with by the legislature, directly and precisely and would not be effected by a "side wind".

14. It is reasonable on the contrary, to think that in making provisions for joint trial, the legislature took it for granted that before any offence could be tried jointly with other offences the Court had jurisdiction to try it.

15. It is to be noticed in 'this connection that on Section 526 Criminal Procedure Code, the legislature intending that the provisions as regards jurisdiction in Sections 177 to 184 should not stand in the way of an order of transfer being made by the High Court, used clear words to express that intention, viz. "may order that any offence be inquired into and tried by any Court not empowered under Sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence."

16. I cannot, therefore, see any escape from the conclusion that Section 235 or 239 does not expressly or by necessary implication confer on a Court having jurisdiction to try an offence of conspiracy, to try all the offences committed in pursuance of the conspiracy and that they are not exceptions to the law as regards jurisdiction as laid down in Section 177.

17. This was the view which found favour With this Court in Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034). In that case the petitioner Bisseswar and some other persons were tried by the Alipore Police Magistrate on a charge of conspiracy to commit theft and offences punishable under Sections 411 and 414 Indian Penal Code and also charges of specific offences punishable under Sections 411 and 414 of the Indian Penal Code. The petitioner having been convicted for an offence under Sections 411 and 414 could not be said to have been committed within the jurisdiction of the Alipore Magistrate. The Alipore Magistrate had no jurisdiction to try him for the specific offences. It was not disputed that the conspiracy itself was alleged to have been entered into within the jurisdiction of the Alipore Police Magistrate. The Alipore Police Magistrate had, therefore, jurisdiction to try the charge of conspiracy. This Court held that the contention that

> "if a conspiracy is entered into District A and acts are committed in pursuance of that conspiracy in District B, the Magistrate of District A can try the offence of conspiracy but cannot try the accused in the same trial for offences committed outside his District is correct." They observed that "unless there is something to be found in Chapter XV which would enable the Magistrate in Alipore to try the accused for offences committed outside his jurisdiction the mere fact that the offences could have been tried jointly under Section 239, Criminal Procedure Code, if committed within his jurisdiction, will not give him jurisdiction to try them." Holding further that there was no provision in Chapter XV which would enable the Magistrate in Alipore to try the accused for offences under Sections 411 and 414 of the Indian Penal Code outside his jurisdiction, the Court set aside the order of conviction of Bisseswar.

18. The question that was raised and decided in Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034) does not appear to have come up for consideration in any other case of this Court. The Madras High Court, however, had occasion to consider the similar questions in at least two cases. In *Sachidanandam v. Gopala Ayyangar*[2], the facts were that an offence of abetment of criminal breach of trust with which one of the accused was charged and an offence of receiving

stolen property with which another accused was charged had both been committed outside the Magistrate's territorial jurisdiction, though the offence of criminal breach of trust itself had been committed within his jurisdiction. It was argued on the basis of Section 239 Sub-Sections (b), (e) and (f) of the Criminal Procedure Code that as there were no controlling words in Section 239 that it was subject to provisions as to jurisdiction, the Magistrate had jurisdiction to try all the offences. It was urged against this that jurisdiction must always be the foundation of a charge and must be imported into Section 239. Odgers, J. was in some doubt about the matter but after referring to Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034). he concluded in these words :

> "Giving the best consideration I can to it and with this expression of opinion of the Calcutta High Court I am inclined to think that jurisdiction being the foundation of the charge is to be imported or understood as present in all the subsequent procedure set out in the Codes and if that is so, it clearly must govern Section 239."

In this view he affirmed the order of the Magistrate who had acquitted two accused persons in the view that he had no jurisdiction to try the offences charged against them.

19. *In re : Dani*[3]*,* the question raised was converse to the question in the present case. A criminal conspiracy was entered into in Bombay and certain offence, in pursuance of the conspiracy were committed within the jurisdiction of a Magistrate of Pollachi. The question was whether because the conspiracy and offences in pursuance of the conspiracy formed one transaction, the Magistrate of Pollachi had jurisdiction to try the offence of

[2] AIR 1929 Mad 839

[3] AIR 1936 Mad 317

conspiracy. Menon J. held : "The lower court cannot be clothed with, jurisdiction to try the charge of conspiracy merely because the conspiracy and different acts of cheating might form part of the same transaction and that the charges in respect of them might be tried together. It can have jurisdiction only in respect of the acts of cheating alleged to have been committed within its jurisdiction."

20. We are not concerned in this case whether the Magistrate at Pollachi might be held to have jurisdiction to try the conspiracy charge by virtue of Section 180 or Section 182 of the Criminal Procedure Code. What has to be noticed is that in this case also the view was taken that the Magistrate who has jurisdiction to try some of the offences committed in the course of the same transaction does not by that alone acquire jurisdiction, because or Section 235 Criminal Procedure Code, to try other offences committed outside the local limits of his jurisdiction.

21. There appears to be no case in any of the Courts of this country which has so far taken a view different from that taken in Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034).

22. In this connection it is necessary to take into consideration the fact that when the legislature undertook the task of revising the Criminal Procedure Code in the year 1955, it had before it these decisions - the decision of the Calcutta High Court in Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034) and the decisions of the Madras High Court in which the question whether provisions of Sections 235 and 239 as regards trial of several offences at the same trial or of several persons at the same trial conferred on a Magistrate having jurisdiction to try some of the offences, jurisdiction to try all the offences which under these sections might be tried at the same trial, had been considered and an answer had been given that such jurisdiction was not conferred. It was with the knowledge of these decisions, we must presume, that the legislature decided to make no alteration in the words of Section 235 and Section 239. We are bound to hold, therefore, that the legislature's intention when they repeated in Sections 235 and 239 the words which had been judicially interpreted was to give effect to that interpretation. This is an additional and, in my opinion, a strong reason to1 think that the provisions of Section 235 or Section 239 do not counter on a Magistrate having jurisdiction to try some of the offences, jurisdiction to try other offences which under these sections might be tried at the same trial.

23. The correct position in law, in my opinion, is that the provisions as regards joint trial as provided in Section 235 and Section 239 will have application only if the Court concerned has jurisdiction under other provisions of law to try the offences sought to be tried together. Thus it under other provisions of the Criminal Procedure Code or any other law a Magistrate has jurisdiction to try offences A, B and C, these offences may be tried together if they come within the provisions of Section 235 or Section 239; if, on the other hand, of these offences A, B and C the Magistrate has under other provisions, jurisdiction to try offences A and B but not the offence C, only offences A and B can be tried together but not the I offence C.

24. There can be no doubt that the view which has been taken in Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034) and which I have indicated above is, in my opinion, correct, may and ordinarily will result in great inconvenience to both the prosecution and the accused. That, however, can be no reason for us to put on the words of Sections 235 and 239 a meaning which cannot reasonably and on the accepted principles of interpretation be put there. There is, in my opinion, a lacuna in the provisions as regards jurisdiction and it is well worth the consideration of the legislature whether, in Section 235 and Section 239, suitable words should be introduced to provide that a Magistrate having jurisdiction to try any of the offences which may be tried together will have jurisdiction to try all of them. It is not for us, the Court, to read such words into these Sections that will be legislating and not interpreting.

25. The referring Judges have suggested action under Section 185 of the Criminal Procedure Code. It appears to be clear, however, that Section 185 does not empower the High Court to give any Court jurisdiction to try an offence which under the law it has not got.

26. Action under Section 526 of the Criminal Procedure Code may, however, be taken in suitable

cases, as that Section empowers the High Court to order "that any offence be inquired into or tried by any Court not empowered under Sections 177 to 184.....-"

27. For all these reasons I have come to the conclusion that the questions referred to the Full I Bench should be answered thus :-

Q. 1. No.
Q. 2. Yes.

28. Under the rules of this Court, the entire revision case has been referred to the Full Bench. As I have already stated, the rule was issued to show cause why the charge under Section 489 D of the Indian Penal Code against the petitioner should not be quashed and also whether the order referred to in the petition tendering pardon to the two accused persons Dilip Kumar Roy Choudhury and Ramani Mohan Das should not be set aside.

29. The necessary consequence of my conclusion on the question of law as mentioned above is that the Police Magistrate of Sealdah had no jurisdiction to inquire into the offence under Section 489 D alleged to have been committed by the petitioner and the Sessions Court of Alipore had no jurisdiction to try that offence. The proceedings of inquiry into the offence in the Court of the Magistrate at Alipore and the order committing him to the Court of Sessions should therefore be set aside.

30. It appears that several other persons have been committed to take their trial on charges oft offences committed outside the Magistrate's jurisdiction. The necessary consequence of our conclusion on the question of law is that these orders of commitment are invalid in law.

31. As regards the pardon tendered to Ramani Mohan Das, it is to be noticed that the pardon is in respect also of all the offences including the specific offence under Section 489 D. which he is alleged to have committed at Bilashi Town, Deoghar. The Sessions Court of 24 Parganas has no-jurisdiction to try this specific offence and so, the tender is ineffective as regards this offence. If Ramani Mohan Das accepts the tender of pardon made to him, that acceptance will be ineffective in law. I would, therefore, set aside the order of the Court tendering pardon to Ramani Mohan Das. This will not affect the power of the Court to tender a pardon in respect of the offence of conspiracy.

32. Pardon was also tendered to Dilip Kumar Roy Choudhury and though this face was not clearly mentioned in the body of the application to this Court under Section 439 Indian Penal Code, it was mentioned in the prayer portion of the application and a prayer that a rule be issued why this pardon should not be vacated was made. It was in the basis of this prayer that the Rule as regards the pardon to Dilip Kumar Roy Choudhury was issued. From the records I find that Dilip Kumar Roy Choudhury was charged only with the offence of conspiracy and that there was

no charge against him for any specific offence. As the Sessions Courts had jurisdiction to try the offence of conspiracy, the order, of pardon tendered to Dilip Kumar was entirely with jurisdiction.

33. I would, therefore, dispose of the Rule in the following manner :-

(1) The proceedings of inquiry into the offence under Section 489 D said to have been committed by Jiban Banerjee and the order committing him to the Court of Sessions for trial for that offence, are set aside.
(2) The rule in so far as it is in respect of pardon tendered to Dilip Kumar Roy Choudhury be discharged.
(3) The tender of pardon to Ramani Mohan Das be set aside.

Bachawat, J.

34. I agree.

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Guha Ray, J.

35. Having had the privilege of going through the judgment of my Lord, the Chief Justice and, baying given fuller consideration to the matter in controversy in this reference, I agree that the view taken in Bisseswar's case, 28 Cal WN 975 : (AIR 1924 Calcutta 1034) is correct and, also agree with the order made by my Lord. I should, however, like to add a few words of my own more by way of an explanation as one of the referring Judges than by way of supplementing my Lord's judgment. The reason for the reference is the inconvenience that arises both to the prosecution and to the defense from the fact that although at the conspiracy trial evidence of the various overt acts may go in, the trial or trials for the various overt acts themselves, if they occur outside the territorial jurisdiction of the trying Judge have to be taken up by one or more other Courts having territorial jurisdiction, the inevitable consequence being a multiplicity of trials. If a multiplicity of charges in one trial is an evil and should be avoided as far as practicable, a multiplicity of trials is probably a much greater evil which it is certainly desirable to avoid, of course, if the law permits it. To say this is not to say that in construing a section one should in any way be influenced by a consideration of this inconvenience, but merely to say that if on the general principles of construction, a provision can be so construed as to make it possible to avoid such inconvenience, that should be preferred. The question, therefore, is whether the law permits it and that depends on a consideration of the question whether or not Sections 235 and 239 of the Code of Criminal Procedure can be construed partially as exceptions to the general rule laid down in Section 177 of that Code. It is true that Sections 235 and 239 of the Code are primarily exception to the general rule laid down in Section 233. It is equally true that Sections 235 and

239, like Sections 234 and 236 are all enabling sections, that is, they enable the Court to depart in. appropriate cases from the general rule laid down in Section 233. The question, however, that arises in this reference is what is the precise extent of the enabling power which these sections confer on the Court. Do they enable the Court to depart from the general rule laid down in Section 233 only in case of offences within the territorial jurisdiction of the Court under any of the provisions in Part A of. Chapter XV which deals with the place of enquiry or trial, or, do they enable the Court to assume jurisdiction even in the case of offences where under Part A of Chapter XV it has no territorial jurisdiction Y In making the reference, we took the view that there icing nothing in Sections 235 and 239 themselves to suggest that these are restricted only to cases of offences, for the trial of which the Court has territorial jurisdiction under one or the other provisions of Part A of Chapter XV, no such limitation should be read into it. What, however, we omitted to consider is that whenever there is an exception to the general rule laid down in Section 177 Criminal Procedure Code, the exception is couched in unambiguous terms and nothing is left to inference or implication, but the construction we were putting on Sections 235 and 239 of the Code left the matter entirely to inference or implication from the absence of any expression to indicate their limited scope. This, to my mind, reinforces the first reason assigned by my Lord, the Chief Justice, for the view he has token. This reason is that there is nothing in these sections even to suggest that where the Court is lacking in territorial jurisdiction under Part A of Chapter XV such jurisdiction was being conferred by them. It is true that the exceptions the general rule laid down in Section 177 of the Code of Criminal Procedure are not contained only in the other sections in part A of Chapter XV. There are exceptions to it in other parts of the Code of Criminal Procedure and there are exceptions In certain provisions of other statutes also. It mentioned in my referring judgment Section 288 of the Indian Merchant Shipping Act. I have since found that there; are similar provisions in Section 291 of the Central Excises and Salt Act (1 of 1944), Section 5 of the Diplomatic and Consular Officers-(Oaths and Fees) Act (XLI of 1948), Section 7 of the Foreign Recruiting Act, (IV of 1874), Section 66 of the Inland Steam Vessels Act (1 of 1917), Section 134 (1) of the Railways Act (Act IX of 1890) and Section 72 of the Indian Stamp Act (Act II of 1890). These sections clearly indicate that they are exceptions to the general rule laid down in Section 177 of the Code of Criminal Procedure and they were expressed in such terms as leave no room for doubt that they are meant to be exceptions to the general rule laid down in Section 177 of the Code of Criminal Procedure. An examination of these sections, therefore, convinces me that wherever the Legislature intended, to enact an exception to this general rule it has expressed that intention in clear terms without leaving anything to be interred or implied. In other words, jurisdiction has always been conferred in express terms, whether in the general rule in Section 177 of the Code, or the other sections in part A of Chapter XV of elsewhere in the Code or in other statutes. From this it follows that if the Legislature intended Sections 235 and 239 to confer jurisdiction on courts which have no jurisdiction under any other provision, it would in all probability have done so in express terms and as it has not done so, one has to inter that it was not intended rather than that it was intended because of the absence of any limiting words.

36. The second reason assigned by my Lord for the view he bas taken, I must confess, did not

occur to us at all when we made the reference. This reason is that the Legislature in its recent extensive amendments of the Code of Criminal Procedure, did not consider it necessary to amend Section 235 or 239 or any other section so as to confer jurisdiction in certain cases on Courts for trying offences committed outside their territorial jurisdiction. The Legislature may be presumed to have been aware of the construction that was judicially put on Sections 235 and 239 and yet it they did not introduce amendments to nullity that construction, it follows that the Legislature accepted that construction. At page 307 of Maxwell on Interpretation of Statutes, 10th Edition, there occurs the following passage. The long acquiescence of the Legislature in the interpretation put upon its enactment by notorious practice may perhaps be regarded as some sanction and approval by it." James L.J., "The Anna", (1876) 1 P.D. 253. On reconsideration of the matter, therefore, I reel satisfied that the view taken in Bisweswar's case 28 Cal WN 975 : (AIR 1924 Calcutta 1034) is correct and the questions before the Full Bench should be answered in the way in which my Lord has answered them and the application should be disposed of in the manner in which he has disposed of it.

37. The problem however, that more or less gave rise to the reference still remains unsolved because of the existence of a lacuna in the law, revealed by a close examination of the relevant sections, as pointed out by my Lord and, it will be for the Legislature to consider how far it is desirable to have this lacuna removed by appropriate amendments of the relevant sections.

Reference answered accordingly.