

CALCUTTA HIGH COURT

Abdul Halim

Vs.

State of W.B

Criminal Revn. No. 1220 of 1959

(J.P. Mitter, J.)

12.08.1960

ORDER

J.P. Mitter, J.

1. This is a Rule for quashing a prosecution under Sections 467, 471 and 474 of the Indian Penal Code.

2. The facts leading to the prosecution are these :

Petitioner No. 1 Abdul Halim was alleged to have produced a sale certificate in respect of certain disputed properties before an Assistant Settlement Officer in the course of proceedings under Section 44(1) of the Estates Acquisition Act. The opposite party to those proceedings challenged the genuineness of the said certificate by producing a certified copy of the document which was in certain respects at variance with the one filed by the petitioner Abdul Halim. The Settlement Officer referred the matter to the police without any previous enquiry. There was no complaint by him as required under Sections 195 and 476 Criminal Procedure Code. The police held an investigation and submitted a charge-sheet against the petitioners under Sections 467, 474 and 471 of the Indian Penal Code. On receipt of the charge-sheet the learned trial Court took cognizance of the case and the present prosecution commenced.

3. Mr. Dutta for the petitioners has taken several points in support of the Rule. The first point urged is that the offences concerned being non-cognizable, the police investigation was illegal without an appropriate previous order under Sub-Section (2) of Section 155 Criminal Procedure Code. Consequently, it has been urged, the learned Magistrate had no jurisdiction to take cognizance of the case upon the charge-sheet submitted by the police. This point was urged before the trial Court. The learned Magistrate held that a charge-sheet could be regarded as a report by a Police Officer and that, therefore, he had power to take cognizance of the case under clause (b) of Sub-Section (1) of Section 190 Criminal Procedure Code. In my view, the

provisions of Section 155(2) cannot be rendered nugatory by regarding a police report in a non-cognizable case where there has been no previous order under Sub-Section (2) of Section 155 as a valid report under Section 190(1)(b) Criminal Procedure Code. I must, therefore, hold that the investigation concerned, resulting in a charge-sheet, upon which the learned Magistrate took cognizance, was wholly illegal. It would follow, therefore, that the learned Magistrate had no jurisdiction to take cognizance of the case upon the charge-sheet. In a recent case, Revision No. 897 of 1959, a Division Bench consisting of myself and Sen, J., took the view that a Magistrate could not take cognizance of a non-cognizable case as a result of an investigation by the police without an appropriate order having been obtained under Sub-Section (2) of Section 155 Criminal Procedure Code empowering the police to investigate the case.

4. In the result, I must quash the present prosecution for want of jurisdiction on the part of the Magistrate to take cognizance of the case.

5. The Rule is made absolute.

Rule made absolute.