

CALCUTTA HIGH COURT

Ramendra Singh

Vs.

Mohit Choudhary

Criminal Revn. No. 1018 of 1967

(A.K. Das and K.K. Mitra, JJ.)

22.04.1969

JUDGMENT

Das, J.

1. This revisional application under Section 439 of the Code of Criminal Procedure is directed against an order passed by the learned Additional Chief Presidency Magistrate, Calcutta on September 6, 1967, holding that the accused petitioner was entitled to copies of documents referred to under Section 173 of the Code of Criminal Procedure.

2. What happened is as follows :- A case was registered against the opposite party in Burtola P. S. under Sections 505 of the Indian Penal Code and Section 11 of the West Bengal Security Act and also of Section 3 of the Official Secrets Act. Investigation was taken over by Central Bureau of Investigation and the opposite party and others were arrested and removed to custody from time to time. The case, however, was not proceeded with and the opposite parties were discharged. Before the order of discharge was made the investigating Officer, Ramendra Singh, filed a petition of complaint against them under Section 120B read with Sections 3, 5 and 9 of the Official Secrets Act and also under Sections 3, 5 and 9 of the said Act and the opposite parties were summoned. This case also was not proceeded with and the opposite parties were discharged. Thereafter, the present complaint was filed by Ramendra Singh, Deputy Superintendent of Police, who investigated the case and the opposite parties were summoned to stand the trial under Section 5 of the Official Secrets Act and under Section 120B of the Indian Penal Code read with Section 3 (1) (c) of the Official Secrets Act.

3. On September 6, 1967, opposite party, Sunil, filed a petition before the Additional Chief Presidency Magistrate for being furnished with copies of documents, referred to in Section 173 of the Code of Criminal Procedure. The learned Advocate contended that the case was instituted on the report of the police officer who investigated the case and cognizance was therefore taken under Section 190 (1) (b) of the Code of Criminal Procedure. The trial should therefore be according to procedure laid down in Section 251A of the Act and the petitioner was entitled to copies of documents referred to in Section 173 of the Code of Criminal Procedure. The Public Prosecutor appearing for the State, contended that the provision of Section 252 of Code of

Criminal Procedure would govern the trial as the present case was instituted on the complaint of Ramendra Singh and cognizance was taken under Section 190 (1) (a) of the Code of Criminal Procedure. The learned Magistrate held that it was a case started on a police report and as such cognizance was taken under Section 190 (1) (b) and the opposite parties were entitled to get copies of documents mentioned in Section 173 of the Code of Criminal Procedure. In arriving at his decision the learned Magistrate referred to a single Bench decision of this Court reported in AIR 1967 Calcutta 352, where it was held that the term 'police report' in Section 251-A has been used by the Legislature in a generic sense including both police report under Section 173 of the Code of Criminal Procedure as also the report of a police officer. The learned Magistrate also held that report of a police officer otherwise than under Section 173 of the Code cannot be a complaint as defined in Section 4 (h) of the Code of Criminal Procedure.

4. Against the decision of the learned Additional Chief Presidency Magistrate there was an application in revision before a single Bench of this Court. Talukdar, J. referred the matter for determination by a Division Bench in view of the important point which appeared to be one of first impression and in view of the possibility of a conflict of decision on the point at issue.

5. The simple point that arises for determination in this case is as follows :-

Whether it was a prosecution on a police report of which the cognizance was taken by the learned Magistrate under Section 190 (1) (b) or whether it was a complaint by a Police Officer as required under the provision of the Official Secrets Act and taken cognizance of by the learned Magistrate under Section 190 (1) (a). In the latter case, whether opposite parties are entitled to free copies under Section 173 of the Code of Criminal Procedure.

6. Section 13 of the Official Secrets Act provides for a restriction on trial of offences and subsection (3) reads as follows :-

"No Court shall take cognizance of any offence under this Act unless upon complaint made by order of or under authority from, the Governor General in Council, the Local Government or some officer empowered by the Governor General in Council in this behalf".

7. Section 14 provides for exclusion of public from proceeding and the relevant portion reads as follows :-

".....If in the course of proceedings before a Court against any person for an offence under this Act, or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect.....".

8. This provision invests the Court with powers to hold trial in camera for reason of State. Criminal Procedure Code lays down the procedure for trial of all criminal cases except as

otherwise provided in special statute.

9. Section 5 of the Code of Criminal Procedure provides as follows :-

"5(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provision but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences". Section 190 of the Code of Criminal Procedure lays down the procedure for taking cognizance and it reads as follows:

(1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or sub-divisional Magistrate and any other Magistrate specially empowered in this behalf, may take cognizance of any offence -

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a report in writing of such facts made by any police-officer;

(c) Upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The "State Government" or the District Magistrate subject to the general or special orders of the "State Government" may empower any Magistrate to take cognizance under sub-section (1) Clause (a) or Clause (b) of offences for which he may try or commit for trial.

(3) The "State Government" may empower any Magistrate of the first or second class to take cognizance under sub-section (1), Clause (c), of offences for which he may try or commit for trial."

10. Clause (a) of sub-section (1) speaks of receiving a complaint of facts, while Clause (b) of the same sub-section speaks of report in writing of such facts. Obviously Legislature used two words "report" and "complaint" in the same section of this Act with different meaning and they are not synonymous. Section 3 of the Official Secrets Act provides a special procedure for taking cognizance and for trial in camera and the procedure herein provided therefore applies in supersession of the general procedure laid down in the Code of Criminal Procedure for the purpose of taking cognizance and trial. Section 3 provides that no Court shall take cognizance of an offence unless upon a complaint made by order of or under the authority of the Government or of some responsible officer who was empowered in this behalf. This is obviously to take precaution against frivolous prosecution and that was necessary in view of the provisions of Section 14 and of the importance of the matter in the interest of security of the State. This sub-section refers to complaint and there is no restriction about the status of the officer to be empowered nor is there any bar against empowering a police officer to lodge a complaint. There is no dispute that this particular officer who filed the complaint, that is the petitioner, was empowered to lodge the complaint and what he did was to make a complaint. He did not submit a charge sheet nor was he purported to have done it, as the special procedure laid down in Section 13 of the Official Secrets Act, provides for a complaint by an officer specially empowered. Sub-section (3) of Section 13 empowers the Court to take cognizance upon a

complaint made by order of or under the authority of the Government or some officer specially empowered. The word "complaint" is apparently purposely used by the Legislature to exclude a police-report or a chargesheet as contemplated in Clause (b) of sub-section (1) of Section 190 of the Code of Criminal Procedure.

11. Investigation undoubtedly was made by the police but charge sheet earlier submitted for other offences was either withdrawn or not pursued and therefore nothing turns on the earlier investigation so far as the present complaint is concerned.

12. The learned Magistrate has referred to a decision of this Court reported in (*Malay Banerjee v. State*¹) where T. P. Mukherji, J. held that the term 'Police report' in Section 251A of the Code of Criminal Procedure has been used by the Legislature in a generic sense including both police report under Section 173 of the Code as also the report of the police officer. The learned Judge also held that the report of a police officer otherwise than under Section 173 of the Code cannot be a complaint, as defined in Section 4 (h) of the Code. This was a prosecution under Sections 7 (1) (a) (ii) and 11 of the Essential Commodities Act for contravening Clauses 4 and 5 of the Iron and Steel Control Order 1956. The special procedure for taking cognizance under the Essential Commodities Act lays down that no Magistrate shall take cognizance except on the report of a police officer of a certain status. This decision is therefore no authority for the proposition under examination in this case, for the Official Secrets Act speaks of a complaint and not of a report of a police officer and we have pointed out that the word 'complaint' is not synonymous with report of a police officer in Section 190 of the Code of Criminal Procedure. It is settled law that where a different statute prescribes a special procedure, it operates in supersession of the general procedure in the Code of Criminal Procedure and what is contemplated for prosecution under the Official Secrets Act is a complaint, in respect of which cognizance is taken under Clause (a) of Section 190 sub-section (1).

13. We may point out that the word used in Rule 41 of the Defense of India Rules is a 'report' and not 'complaint' and apparently the Legislature put the prosecution under the Official Secrets Act in a different category and therefore used the word 'complaint' as opposed to the word 'report'.

14. This view is not in conflict with the definition of the word 'complaint' in Section 4 (h) of the Code.

15. The definition is as follows :- "4(h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include a report to a police officer." What is excluded is a report of police officer but it does not preclude a police officer from lodging a complaint. What is essential is that an allegation is made to a Magistrate with a view to his taking action under the Code that some person has committed an offence. The ingredients of a complaint are :- (1) an allegation that some person has committed an offence: (2) made to a Magistrate and (3) with the object that he should take action under the law. The fact that there was a previous investigation or that a report was submitted to a Magistrate for some other offence is of no importance, if the requirements are otherwise satisfied. The investigation, in the present case was on report of an offence under Sections 124A, 505, Indian Penal Code and Section 11 of the West Bengal Security Act and Section 3 of the Official Secrets Act and the present complaint is for an offence under the Official Secrets Act. (Section 5 and Section 3 (1)

¹ AIR 1967 Cal 352

(c)).

16. The learned Magistrate has in this connection referred to another decision of the Court reported in *Chattaranjan Das v. State of West Bengal*² to point out that the form of the report is not material if the police report is submitted after investigation and contains all the informations required. That was a prosecution under Sections 366 and 366/120B of the Indian Penal Code and investigation was in connection with a complaint for the offence of abduction. Code of Criminal Procedure applied and the Court can take cognisance on police report under Clause (b) of Section 190 (1) of the Code of Criminal Procedure. To all intents and purposes, it was a charge-sheet, though described otherwise, but in the present, case, the special law viz., the Official Secrets Act, prescribes a special procedure viz., a complaint by the Government or the specially authorized person. That makes the important difference in the two cases which was overlooked.

17. The important point that distinguishes the decisions considered by the Court below is that the Official Secrets Act provides a special procedure for taking cognisance viz., a complaint by the Government or an officer specially empowered and the words 'complaint' and 'report' of a police officer in Section 190 of the Code of Criminal Procedure are not synonymous according to well accepted rules of interpretation. Section 190 (1) (a) of the Code of Criminal Procedure therefore applies and cognisance is taken under Clause (a) of Section 190 (1) of the Code of Criminal Procedure and the trial must be held according to the procedure laid down in Section 252 of the Code of Criminal Procedure.

18. The prosecution is under the Official Secrets Act and it is unlikely that the Legislature would provide for a camera trial and at the same time provide for giving copies of all documents under Section 173 to the accused. This strikes at the root of secrecy and goes counter to the provisions of trial in camera and this is why the Legislature purposely used the word 'complaint' and provided for a special procedure regarding cognisance. This view finds support from the provisions of Section 14 of the Act providing for camera trial.

19. The Official Secrets Act provides for a special procedure of complaint and if it was upon a complaint by a person authorised under the Act, cognisance was taken under Section 190 (1) (a) and not under Section 190 (1) (b). The procedure for trial would, therefore, be under Section 252 of the Code of Criminal Procedure and not under Section 251-A. In respect of prosecution under Section 252 of the Code of Criminal Procedure there is no compulsory provision for giving copies of documents referred to under Section 173 and the opposite parties are not, therefore, entitled to copies as of right.

20. We are, therefore, unable to support the learned Additional Chief Presidency Magistrate's order and the order is set aside. The trial will proceed under the provision of Section 252 of the Code of Criminal Procedure and the Rule is made absolute. Let the records be sent down immediately.

K. K. Mitra, J.

²AIR 1963 Cal 191

1. I agree.

Rule made absolute.

