

Ajoy Kumar Mukherjee Vs. the State

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Court : Guwahati

Decided On : Jun-25-1958

Judge : Sarjoo Prosad, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367 and 561A; Indian Penal Code (IPC) - Sections 120B

Appeal No. : Criminal Revn. No. 7 of 1958

Appellant : Ajoy Kumar Mukherjee

Respondent : The State

Advocate for Def. : D.N. Medhi, Govt. Adv. (Sr.)

Advocate for Pet/Ap. : J.P. Bhattacharjee and N.M. Lahiri, Advs.

Disposition : Application allowed

Judgement :

Sarjoo Prosad, C.J.

1. This is an application under Section 561-A of the Code of Criminal Procedure for expunging certain remarks made by Mr. B. C. Hazarika, Magistrate, First Class, Barpeta, in an order dated 7-11-57. The petitioner was neither a party nor a witness to the proceeding.

2. It appears that a complaint was lodged by one Darbesh Ali Sarkar against the accused in the case, Safaruddin Sarkar and others, charging them of an offence of conspiracy for murdering the complainant, under Section 120B of the Indian Penal Code. The defence case was that the accused were entirely innocent and that the case had been falsely started at the instance of the petitioner who was the owner of a parallel 'hat' called-Khorma Hat, of which the complainant Darbesh was a lessee.

Several prosecution witnesses appear to have been examined in the case, and the learned Magistrate who held the enquiry was not prepared to accept the prosecution evidence. He held that there was nothing to show that there was any such conspiracy between the accused persons for the alleged murder of the complainant, and that it was not possible to rely upon the testimony of the prosecution witnesses.

Whether the estimate of the evidence by the Magistrate is correct or incorrect, is not a matter for me to decide at this stage. He held that in the case before him there was no vestige of evidence as to which of the accused took what part in the alleged conspiracy.

3. This, in my opinion, should have been enough to dispose of the matter, but the Magistrate was not content with that and proceeded to make certain observations against the petitioner which are now seriously challenged before me as being without any foundation and quite uncalled for. It may be stated at the outset that there was no defence witness examined in the case, and that the petitioner Ajoy Kumar Mukherjee was never examined by any party; nor did the Court consider it necessary to examine him.

In his absence, therefore, it is fundamental that any prejudicial remark against him should have been scrupulously avoided as far as it was consistent with the ends of justice--he being not represented before the Court in any capacity whatsoever, unless the remark was absolutely justified on the materials placed before the Court and essential for the proper decision of the case. In this case, it was neither. There was no such positive material before the Court at all to implicate the petitioner and make him responsible for the false prosecution.

There were only some suggestions made that Ajoy Mukherjee was the owner of a 'hat' of which the complainant was a lessee, and that the petition on behalf of the complainant had been written in either case by one Nagen Mohori or at his dictation, who happened to be a tenant of Ajoy Mukherjee. On the above materials alone the Court proceeded to found its judicial remark that the contention of the defence advocate that the case was entirely a got-up one at the instance of Ajoy Mukherjee who remained behind the scene, had sufficient force in it.

It was not permissible; in my opinion, for the Court to indulge in any such speculation in the absence of any direct evidence on the point, specially when it did not affect its consideration of the prosecution evidence on merits. The Magistrate further proceeded to observe that the case was an offshoot of some dispute regarding Khoroma Hat; he posed the question 'why of all the Mohoris, Dorbesh has chosen Nagen Mohori who lives near Ajoy Mukherjee;' and then concludes that 'the drafting of the petition together with mentioning the names of the witnesses 'might have been done in consultation with Ajoy Mukherjee who remains behind the scene' (the underline here into ' ' is mine). It is quite clear that this conclusion of the Magistrate is pure speculation.

Whatever may be said against Nagen Mohori, there was nothing positive against Ajoy Mukherjee himself, and no evidence had been given by the defence on the point. Therefore, the speculation that the drafting of the petition and the mentioning of the names of the witnesses might have been done in consultation with Ajoy Mukherjee, is quite untenable; and even Mr. Medhi who has very strenuously tried to defend the observation of the learned Magistrate in the earlier part in respect of the defence argument, has not been able to support this part of the learned Magistrate's observation.

It is unfortunate that the learned Magistrate failed to observe the fundamental principle, of criminal jurisprudence that nothing should be presumed against a person who was neither a party nor a witness to the proceeding before him, and when no positive material had been placed before him for making any prejudicial remark against the person concerned. Besides it was quite unnecessary for his decision on merits.

The speculation, therefore, in which the learned Magistrate has indulged is wholly illegal, and as it is likely to prejudice the reputation and character of the petitioner, it is only fair that those remarks should be expunged from the record. The expunging of those offending remarks does not in any manner affect the Magistrate's decision on the merits of the prosecution case.

4. I accordingly allow this application and direct that those remarks should be expunged from the record.

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