

State Vs. Man Mohan Lal and anr.

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Court : Orissa

Decided On : Dec-23-1965

Reported in : AIR1966Ori219; 1966CriLJ1301

Judge : G.K. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 10(2), 177, 179, 190, 191, 435(1) and 528(2); Prevention of Corruption Act - Sections 5(2); Indian Penal Code (IPC) - Sections 161 and 165; [Limitation Act, 1963](#) - Sections 5; Limitation Act, 1908 - Sections 5

Appeal No. : Original Revn. Nos. 456, 457, 458 and 459 of 1965

Appellant : State

Respondent : Man Mohan Lal and anr.

Advocate for Def. : Rajendra Ch. Mohanty, ;P.K. Patnaik, ;K.M. Panda and ;P.C. Das, Advs.

Advocate for Pet/Ap. : Standing Counsel (Vigilance) and ;Panda, Adv.

Disposition : Revision allowed

Judgement :

ORDER

G.K. Misra, J.

1. The learned courts below have passed common orders in all the four cases. It is unnecessary to give facts of all the four cases. It would be sufficient to refer to the facts in G. R. Case No. 385 of 1962. The connected proceedings arising out of this case in which the question of transfer was considered at previous stages are Misc. Case No. 8 of 1966 in the Court of the Additional District Magistrate (Judicial), Cuttack, Criminal Revision No. 269 of 1965 in the High Court, Criminal Revision No. 8 of 1965 in the court of the Sessions Judge, Cuttack, and Criminal Revision No. 459 of 1965 in the High Court. A chart was supplied by Mr. Parida, counsel for the Vigilance Department. No exception has been taken to correctness of that chart by Mr. Mohanty for the accused. The facts narrated in this Criminal Revision is on the basis of that Chart.

The charge against the accused is under Section 420/120B- I.P.C. The prosecution case is that the accused contracted to supply superior G. I. pipes 'B' class, but in fact they supplied inferior pipes 'A' Class. The rate of 'A' class 4' fis. pipes is Rs. 6.50 per rft. (running feet) and that of 'B' class pipes is Rs. 11.49 per rft. 'A' class pipes have brown colour band. The accused re-painted the brown colour band by yellow colour band to indicate 'B' class. The tender for the supply was invited by the Joint Director, Agriculture (Engineering) at Bhubanes. war on 7-12-61. Tenders were submitted by the accused on 11-12-61 which were opened at Bhubaneswar on 14-12-61. Orders were placed by the Joint Director of Agriculture at Bhubaneswar on 12-1-1962 for 5780 rft. of 4' dis. G. I. pipes of 'B' Class variety. Bills for the costs in triplicate were submitted to the said office through the Assistant Agricultural Engineer (Mechanical), Cuttack in charge of workshop at Jobra, Cuttack, for payment.

Accused supplied 274 pieces of 4' dis. 'A' class pipes representing them to be 'B' class variety at the Agricultural Workshop at Jubra on 15-2-62 for supply to Kendrapara, Banki, Bayalsish Mouza, Hinjilicul Aska, Rushukulya and Athgarh works. Seven bills were submitted to the joint Directorate of Agriculture (Engineering), Bhubaneswar on 21-2-62 to the tune of Rs. 69, 971-10 paise charging the price of 'B' class G. I. Pipes and demanding 90 per cent against the

supply. On 14-3-1961. 90 per cent of the total price amounting to Rs. 63,000 was paid. In all 262 pipes were seized.

2. On the aforesaid facts, charge-sheet was submitted on 6-5-64 Cognizance was taken by the Additional District Magistrate (Judicial), Cuttack on 30-6-64. On the very date the cases were transferred to the Sub Divisional Magistrate, Bhubaneswar. Charge was framed on 12-11-64. Accused filed an application for transfer before the Additional District Magistrate (Judicial), Cuttack on 19-3-65 On 6-5-1965 the Additional District Magistrate (Judicial) transferred the cases from the file of the Sub Divisional Magistrate- Bhubaneswar, to the file of Shri K. C. Mohapatra, Magistrate of the first class, Cuttack. The State filed Criminal Revision No. 269 of 1965 on 31-5-65 against the order of the Additional District Magistrate (Judicial). On 7-6-65 this Court dismissed the revision with an observation that the State should move the Sessions Judge at the first instance. The State filed a Criminal Revision before the Sessions Judge, Cuttack, which was dismissed on 23-8-65. This revision has been filed on 21-9-1966 against the Order of the Additional District Magistrate (Judicial) dated 5-6-65.

3. The learned Sessions Judge, Cuttack found that the Additional District Magistrate (Judicial), Cuttack, had jurisdiction and power to withdraw the case from the Court of the Sub Divisional Magistrate, Bhubaneswar, to his own file under Section 528 Cr. P. C. and to transfer the same to a Magistrate of the first class at Cuttack. The Additional District Magistrate (Judicial) was of opinion that the Magistrate, both at Bhubaneswar and Cuttack, had co-ordinate jurisdiction to try cases under Section 420/120B, I. P. C. The learned Sessions Judge, took a contrary view that a Magistrate at Cuttack was not competent to try these cases. He, however, dismissed the revisions on the view that they should have been filed before the Sessions Judge, Puri, and that he had no jurisdiction to entertain them.

4. The following questions require examination.

(i) Has the Additional District Magistrate (Judicial) Cuttack, power to withdraw cases from the Court of the Sub-Divisional Magistrate, Bhubaneswar, to his own file under Section 528 (2) Cr. P. C. and to transfer the same to the Court of a Magistrate at Cuttack?

(ii) Are the cases exclusively triable by Magistrate in the district of Puri or have the Magistrate at Cuttack co-ordinate jurisdiction?

(iii) Were the revision before the Sessions Judge, Cuttack, competent?

(iv) Are the present criminal revisions before this court barred by limitation? if so, whether delay should be condoned?

(v) Was the Additional District Magistrate (Judicial) justified in transferring the cases to Cuttack in the facts and circumstances?

5. In exercise of the powers conferred by Sub-section (1) of Section 14 of the Code of Criminal Procedure, 1898 (Act V of 1898), the State Government conferred upon the Additional District Magistrate (Judicial) in the district of Cuttack, the powers of a Magistrate of the first class under the said Code in respect to cases instituted and investigated by the Vigilance Branch throughout the Central Division comprising of the districts of Cuttack, Puri, Balasore and Mayurbhanj. (See Home Department Notification No. 1741-SJE/7-2/69. H. C. dated Bhubaneswar, the 25th January 1963 at p. 67 of the Vigilance Police Instructional Hand-book. Part I, 1964 Edition).

Section 14 (1) Cr. P. C. lays down that the State Government may confer upon any person who holds or had held any judicial post under the Union or a State or possesses such other qualifications as may, in consultation with the High Court be specified in this behalf by the State Government by notification in the official gazette all or any of the powers conferred or conferable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular case or particular classes of cases, or in respect to cases generally in any local area outside the presidency towns. It would thus be apparent that for convenience only, the Additional District Magistrate (Judicial) in the district of Cuttack and not the Additional District Magistrate (judicial) in the district of Puri, Balasore and Mayurbhanj was vested with the powers of a Magistrate of the first class to deal with cases of the Vigilance Department outside his jurisdiction.

In exercise of the powers conferred by Sub-section (2) of Section 10 of the Code of Criminal Procedure, 1898 (Act V of 1898), the State Government appointed the Additional District Magistrate (Judicial) in the district of Cuttack on whom powers of a Magistrate of the first class had been conferred under Sub-section (1) of Section 14 of the said Code in notification of the Government of Orissa in the Home Department No. 1741 dated, 25-1-68, as Additional District Magistrate (Judicial) to receive Police Reports of cases instituted and investigated by the Vigilance Branch throughout the Central Division comprising the districts of Cuttack, Puri, Balasore and Mayurbhanj. It was stated in the notification that after the charge-sheet is received, he shall transmit the same to the concerned Special Judges in respect of offences under Section 5 (2) of the Prevention of Corruption Act and Sections 161 and 165 of the Indian Penal Code and in respect of other offences, shall take cognizance and himself either try or commit for trial or transfer them to competent Magistrates within the said Division for hearing and disposal (See Home Department Notification No. 1826-SJ E/7-2/62-HC dated, Bhubaneswar the 28th Jan. 1963, at p. 65 of the Vigilance Police Instructional Hand book. Part I, 1964 Edition).

Section 10 (2) Cr. P. C. enacts that the State Government may appoint any Magistrate of the First Class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force as the State Government may direct,

A District Magistrate under the Code has many powers. Whether the Additional District Magistrate (Judicial), Cuttack has all or any of such powers depends upon the contents of the notification issued by the State Government under Section 10 (2) Cr. P. C. In this case, the power conferred upon the Additional District Magistrate, (Judicial). Cuttack, is of ft restricted character. All his powers have been enumerated in the notification. He can exercise only those and no other powers under the Code. For clarity, at the cost of repetition, those powers may be recalled.

(i) He can receive Police reports of cases instituted and investigated by the Vigilance Branch not only arising out of Cuttack district but for the Central Division comprising of the four districts.

(ii) After charge-sheet is received, he shall transmit the same to the concerned Special Judges in respect of offences under Section 5 (2) of the Prevention of Corruption Act and Sections 161 and 165. I. P. C. In respect of these cases he had no power of cognizance. He is merely forwarding agency to the Special Judges, who alone have power to take cognizance in respect of those offences.

(iii) In respect of other offences he has the power to take cognizance. Ordinarily the Additional District Magistrate (Judicial), Cuttack, would have no power to take cognizance of offences triable by Magistrates in the District of Puri, Balasore and Mayurbhanj. On the strength of the notification under Section 10 (2), the Additional District Magistrate (Judicial) Cuttack, gets power to take cognizance in respect of offences triable outside his jurisdiction in the other three districts.

(iv) After taking cognizance, he can try the case himself. It is for this reason, by notification No. 1741 dated. 25-1-1963 the powers of a Magistrate of the First class in respect of cases instituted and investigated by the Vigilance Branch of the entire Central Division were first conferred upon him.

(v) If the offence is triable by a Court of Sessions, he is to commit the case.

(vi) If the offence is triable by any other Magistrate, he can transfer the case to a competent Magistrate within the said Division for hearing and disposal. This does not however, mean that he can transfer any of the Vigilance case exclusively triable by a Magistrate of the first class at Cuttack to Magistrates of the other three districts who have no power or jurisdiction to try such a case. The expression 'that he can transfer cases to competent Magistrates within the Central Division' does not mean that he can transfer to any Magistrate in that Division. The essential pre-requisite for the assumption of jurisdiction by a Magistrate to whom the case is transferred is that he must be competent to try that case. The significance of this concept would be apparent from the fact that the Additional District Magistrate (Judicial), Cuttack, himself cannot try such cases unless he is appointed a

Magistrate of the First Class for all the other three districts in the Central Division by a notification under Section 14 (1) Cr. P. C. The Magistrates of each of the four districts have not been vested with powers to try cases pertaining to the other three districts.

From the aforesaid analysis it would be clear that the power of the District Magistrate under Sections 190 and 191 Cr. P. C., only has been conferred upon Additional District Magistrate (Judicial), Cuttack and not the power under Section 528 (2) Cr. P. C. Once he transfers a case to any competent Magistrate for trial, he cannot withdraw it to his own file to be transferred again to some other Magistrate. Such a power vested in the District Magistrate or Additional District Magistrate (Judicial) or the Sessions Judge of that particular district.

The initial power of transfer can only be to a competent Magistrate within a Division. For instance, a Vigilance Offence is exclusively triable by a Magistrate in the district of Mayurbhanj Though by virtue of the notification under Sections 10 (2) and 14 (1) Cr. P. C., the Additional District Magistrate (Judicial) Cuttack can try it himself, he cannot transfer it to a Magistrate in the district of Balasore who himself is not competent to try the case arising within the jurisdiction of the district of Mayurbhanj.

That the Additional District Magistrate (Judicial). Cuttack, after having taken cognizance of these offences validly transferred the cases to the Sub-Divisional Magistrate, Bhubaneswar, who is a competent Magistrate to try offences is not disputed. Unless the power of withdrawal under Section 528 (2) Cr. P. C., is expressly conferred upon the Additional District Magistrate (Judicial), Cuttack by the notification under Section 10 (2) Cr. P. C., he has no power of withdrawal. He becomes functus officio in relation to those cases after he exercises his power of transfer The view of the learned Sessions Judge and the Additional District Magistrate (Judicial). Cuttack. that the latter has the power of withdrawal of the cases from the Court of the Sub-divisional Magistrate. Bhubaneswar, is mis-conceived. They have completely ignored to notice the restricted power conferred by the notification under Section 10 (2) Cr. P, C. All the powers of a District Magisrtate were not conferred upon the Additional District Magistrate (Judicial),

Cuttack, but only some powers. The power of withdrawal under Section 528 (2) Cr. P. C., was not included amongst those powers.

6. The next question is whether the offences under Section 420/120B, I. P. C., were triable by a Magistrate at Cuttack. In AIR 1961 SC 1589, Purushottam Das v. State of West Bengal and AIR 1961 SC 1601, L. N. Mukherjee v. State of Madras, their Lordships held that the Court having jurisdiction to try the offence of conspiracy has also jurisdiction to try an offence constituted by the overt acts which were committed in pursuance of the conspiracy beyond its jurisdiction. The facts narrated show that the two accused Keshabchandra Panda and Manmohan Lal are Partners of Messrs. Allied Dealers, Tinconia Bagicha, Cuttack. The supply of the pipes were at the Agricultural Workshop, Jobra on 15-2-62 for supply to different places inside and outside the Cuttack district.

Though the tenders were given and accepted and prices were received at Bhubaneswar. the entire conspiracy, if any, to cheat the Government have necessarily be hatched at Cuttack, the epicentre of the* business of the accused. Even assuming that the act of cheating was complete at Bhubaneswar. the conspiracy took place both at Cuttack and Bhubaneswar. The offence of cheating could be tried at Cuttack where the conspiracy had its origin. On the aforesaid analysis I am satisfied that the cases are triable both at Cuttack and Bhubaneswar. The learned Sessions Judge's view that the offences are not triable at Cuttack is erroneous.

7. Questions (ii) and (iii) may be taken up together. The order dated 5-5-65 of the learned Additional District Magistrate (Judicial) was passed by him as Additional District Magistrate (Judicial). Cuttack. His view that he had the power to transfer the cases from the Court of the Sub-divisional Magistrate, Bhubaneswar to a Magistrate of first class at Cuttack may be right or wrong. If he exercised that power as Additional District Magistrate (Judicial) Cuttack, even wrongly, the appropriate forum to correct that wrong is the Sessions Judge of the concerned district. On that view, a revision before the Sessions Judge, Cuttack, may not be inappropriate. If the Sessions Judge, Cuttack, had jurisdiction to entertain the criminal revision, there is no limitation.

By the order of this Court dated 7-6-65, a criminal revision against the order dated 5-5-1965 of the Additional District Magistrate (Judicial) was dismissed directing the State to move the Sessions Judge in the first instance. Under Section 435(1) Cr. P C., the Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of his jurisdiction for the purpose of satisfying himself as to the correctness- legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court. By the explanation, all Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge, for the purpose of this sub-section. Under Section 438 (1), the Sessions Judge may, if he thinks fit, on examining under Section 435 the record of any proceeding, report for the orders of the High Court the result of such examination While the record would thus be pending before the Sessions Judge, the matter must necessarily take sometime.

Assuming that the Sessions Judge, Puri and not the Sessions of Cuttack, had jurisdiction over the cases, the Question arises whether the delay should be condoned The Additional District Magistrate (judicial), Cuttack, acts as a Magistrate of the first class and a District Magistrate with restricted powers for all the four districts under the Central Division for Vigilance cases. In the order he signs as 'A. D. M. (J), Cuttack.' This is Likely to Lead to some confusion. In the circumstances, the filing of the revisions before the Sessions Judge. Cuttack, and not before the Sessions Judge of Puri, none of whom has jurisdiction to pass final orders to quash the order of the Additional District Magistrate (judicial) is bona fide.

Prior to the [Limitation Act, 1963](#) (Act 36 of 1963), hereinafter referred to as the Act, no limitation had been prescribed for filing a criminal revision Article 131 of the Act prescribes that the period of limitation is 90 days from the date of the order to be revised for filing a revision to any court for the exercise of its powers of revision under the Code of Criminal Procedure Section 5 of the Act has been made applicable to an application under the Criminal Procedure Code It says that any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within such

period.

The State filed Criminal Revision No. 269 of 1965 in this Court on 31-6-65 against the order of the Additional District Magistrate (judicial) dated 5-5-65. It was within time. This Court dismissed that revision asking the State to come through the Sessions Judge so as to have the benefit of his opinion. The Sessions Judge's order was passed on 23-8-65 and the revision in the High Court has been filed on 21-9-65 within 30 days thereof. The order to be revised is the order of the Additional District Magistrate (judicial) dated 5-5-65 and not that of the Sessions Judge, who has no power to pass a final order under Section 436, Cr. P C. on this, question. Once the High Court directed the party to come through the Sessions Judge, the party cannot be penalised on the ground of limitation for no fault of its own as initially the revision was filed within time. The State prosecuted the proceedings before the Sessions Judge in accordance with the direction of the High Court bona fide and in good faith. The delay is explained by sufficient cause. In view of the matter the delay is to be condoned.

8. The last point for consideration is whether the order of transfer can be justified on merits even assuming that the Additional District Magistrate (judicial), Cuttack, had the power of withdrawal and transfer of the case from the file of the Sub-Divisional Magistrate, Bhubaneswar, to any Magistrate of the first Class at Cuttack Mr. Mohanty, learned counsel for the accused stated that the learned Standing Counsel (Vigilance) and the learned Advocates for the accused go from Cuttack to Bhubaneswar and it would be convenient for the counsel of both parties if the cases are tried at Cuttack Mr. B. M. Patnaik, the learned Standing Counsel (Vigilance) was asked whether the Department would agree to the trial of the cases at Cuttack. He stated that it would cause no inconvenience to the Department or to him to have the cases heard at Bhubaneswar. As the Department did not agree to the suggestion of having the cases heard at Cuttack, the question of transfer must be decided on merits.

From the chart supplied by Mr. Parida it appears that the joint Director of Lift Irrigation Department, the Cashier of the Irrigation Directorate and the Executive Engineer, Store Verification Party are the most important witnesses and they have

their headquarters at Bhubaneswar. The account books are also available there. Out of 31 witnesses given by the prosecution in the charge-sheet, only 4 formal witnesses belong to Cuttack. Thus most of the prosecution witnesses are at Bhubaneswar.

Mr. Mohanty's argument that the advocates shall have to go from Cuttack to Bhubaneswar to conduct the cases cannot be a circumstance in support of the transfer. Cuttack is at a distance of 20 miles from Bhubaneswar. It hardly takes half an hour to go from Cuttack to Bhubaneswar by car. There is a good Bar at Bhubaneswar. The Vigilance Department has no objection if its Standing Counsel has to go from Cuttack to Bhubaneswar. Even if the accused engage lawyers from Cuttack, there will be no difficulty to get their assistance. It is a matter of common experience that advocates daily go from and come back to their head-quarters to conduct cases at much longer distant places. This by itself cannot be a ground for transfer.

Mr. Mohanty advanced a contention that the learned Standing Counsel was at Cuttack and on various occasions he had taken time and the cases were unnecessarily adjourned at his instance. Though cognizance was taken on 30-5-64, evidence had not been taken until 19-3-65 when the application for transfer was filed before the Additional District Magistrate (judicial), Cuttack. The Statement of Mr. Mohanty is partly correct. The accused, however, is not free from blame. They themselves took time. Thus both the parties are responsible for the delay. The Court also did not exercise proper control in freely allowing adjournments. Both parties are in fault.

Thus most of the prosecution witnesses and the documents to be exhibited are at Bhubaneswar and no difficulty would be caused to the advocates to conduct the cases at Bhubaneswar by going from Cuttack. On merits there is no case for transfer.

9. My conclusion may be summed up-

(i) Both the learned Sessions Judge and the Additional District Magistrate (judicial), Cuttack failed to take notice of the restricted powers conferred by the

notification under Section 10(2), Code of Criminal Procedure, on the Additional District Magistrate (judicial). Cuttack, in respect of conferment of powers of a District Magistrate on him in districts beyond his jurisdiction.

(ii) The Additional District Magistrate (judicial), Cuttack, took the correct view that the Sub-Divisional Magistrate: Bhubaneswar and Magistrates at Cuttack had co-ordinate jurisdiction to try cases on charges under Sections 420/120B, I.P.C. The learned Sessions Judge's view on this point is erroneous.

(iii) It is not necessary to express final view on the matter whether the Sessions Judge of Cuttack or Puri had jurisdiction over criminal revisions filed against the order of the Additional District Magistrate (judicial) Cuttack. If the Sessions Judge, Cuttack had jurisdiction, there is no limitation. If the Sessions Judge, Puri, had jurisdiction, sufficient cause had been shown under Section 5 of the Act for condonation of delay.

(iv) Even if the Additional District Magistrate (judicial), Cuttack, had the power to transfer the cases from the Court of the Sub-divisional Magistrate, Bhubaneswar. to the Court of any Magistrate of the first class at Cuttack, and both the Courts had jurisdiction to try such cases, the order of transfer on merit cannot be supported. Even on this ground alone, the order of the Additional District Magistrate (Judicial), Cuttack is to be quashed.

10. In the result the criminal revisions are allowed, the order of the Additional District Magistrate (Judicial), Cuttack, dated 5-5-1965, which is the subject-matter of the four criminal revisions is set aside. The criminal cases would be heard at Bhubaneswar by the Sub-Divisional Magistrate in whose Court they were pending before the orders of transfer were passed. The Sub-divisional Magistrate is directed to start hearing of the cases from second week of January 1966. The hearing would continue from day to day as far as practicable. The cases have become very old. It is hoped that the Sub-divisional Magistrate would bestow proper care to see they are quickly disposed of. The trial Court records be sent to the Court of the Sub divisional Magistrate, Bhubaneswar within two days from today.

