

The State Vs. Golam Rasul

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Court : Kolkata

Decided On : Feb-07-1969

Reported in : AIR1970Cal162

Judge : Amaresh Roy and ;S.N. Bagchi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4(1), 492 and 492(1);
;Calcutta High Court (Extension of Jurisdiction) Act, 1953; ;[Code of Civil Procedure \(CPC\) , 1908](#) -Section 2(7); ;[Constitution of India](#) - Article 258(1)

Appeal No. : Govt. Appeal No. 6 of 1963

Appellant : The State

Respondent : Golam Rasul

Advocate for Def. : J.C. Sinha and ;I.A. Qayum, Advs.

Advocate for Pet/Ap. : Dipak Kumar Sen Gupta, Adv.

Judgement :

Amaresh Roy, J.

1. This appeal fa from Andaman and Nicobar Islands and has been preferred by the State through the Public Prosecutor, Andaman and Nicobar Islands, against an order of acquittal passed by the Additional District Magistrate, Andaman and

Nicobar Islands on 27th December, 1962 in a trial held in Port Blair in Criminal Case No. 63/40 of 1962 in which the respondent Golam Rasool was charged for an offence under Section 408 of the Indian Penal Code alleged to have been committed by him on or about 16th December, 1959 at Long Islands as a servant in the employment of Forest Co-operative Chain Stores In respect of Rs. 977.08 nP. That amount was alleged to be the money recovered from the Forest Mazdoors against goods supplied to them on credit which the Range Officer Henry Lawrence sent through N. Kaniappa Mudaliar and alleged to have been received by Golam Rasool

2-5. Case started on the report of the President of the Forest Co-operative Chain Stores Ltd., Chatham to the Superintendent of Police, Port Blair, in which it was alleged that Ra. 2721.06 nP. was found short.

(His Lordship reviewed the evidence in the case and proceeded).

6. In that state of evidence the finding of the learned Magistrate at the trial court that prosecution has failed to prove that the money was entrusted to Golam Rasool is, in our view, the correct and proper finding. That being so, apart from other infirmities in the prosecution case and evidence referred to by the learned Magistrate in his judgment the order of acquittal is the only legal order that could be made in the case. We, therefore, dismiss the appeal.

7. Besides dismissing the appeal on merits, we also need mention a feature in prosecuting this appeal. As we have already mentioned the appeal was preferred under Section 417 (1) Cr. P. C. by the State Government through the Public Prosecutor at Andaman and Nicobar Islands. In the Memorandum of Appeal it has been stated in paragraph 23 that the appeal was so filed by the Public Prosecutor -- 'Being directed by the Chief Commissioner, Andaman and Nicobar Islands in exercise of the powers of the State Government under Section 417 of the Code of Criminal Procedure (vide Order No. 193 dated 27th January. 1963)' A copy of that Order was appended to the Memorandum of Appeal as Annexure 'B'. When the appeal was presented in the Islands it was admitted by the order of Sri Halve who was functioning as the Registrar in the Islands in the absence of the Chief Commissioner. Thereafter on 24th April, 1963, an order was made by a Division

Bench of this Court (D. Mukherjee and D. N. Das Gupta, JJ.) in these terms:--

'Consequent on the order of admission of the appeal we direct the respondent Golam Rasool to be re-arrested and released on bail to the satisfaction of the Chief Commissioner of the Andaman & Nicobar Islands. We also direct the issue of usual notices.'

Order for bail was modified by an Order dated 15th of July, 1964 passed by the Division Bench (D. N. Das Gupta and A. C. Gupta, JJ.). It remains doubtful if a proper order admitting the appeal for hearing was made according to the Rules of the Appellate Side on this Court.

8. At the hearing before us Mr. Dipak Sen Gupta appeared for the prosecution being so appointed by the Legal Remembrancer of West Bengal Mr. Sen Gupta stated before us that he has not been authorised either by the Public Prosecutor of Andaman and Nicobar Islands, nor has he been appointed as Public Prosecutor for the purpose of this case by the State Government of Andaman and Nicobar Islands which is a Central Territory. Mr. Sen Gupta frankly stated that he was in doubt whether he has proper authority and locus standi to represent the appellant in this appeal.

9. It also appears that upto a stage during the pendency of the appeal in this Court the accused-respondent Golam Rasool had not entered appearance through any lawyer appointed by him. At that stage the Legal Remembrancer of West Bengal Government appointed a learned Advocate of this Court Mr. Jogesh Chandra Sinha to represent and appear for the respondent in this appeal. Before the date of hearing, however, a learned Advocate Mr. Inamdar Abdul Quayum has filed a Vakalatnama executed by the respondent Golam Rasool. The said learned Advocate Mr. Abdul Quayum appeared before us at the hearing. The situation thereby created was one of doubt and confusion regarding the position of the learned Advocate Mr. Jogesh Chandra Sinha who was appointed to appear for defence by the Legal Remembrancer of West Bengal.

10. It is also noticeable that during the pendency of the appeal in this Court, for the State the learned Dy. L. R. of West Bengal. Mr. S. N. Banerjee appeared before

the Division Bench on 24th April, 1963 and on 25th of July, 1964 another learned Advocate Mr. Prasun Chandra Ghosh appeared before the Division Bench for the State.

11. The appeal was by the State Government under Section 417 (1) Cr. P. C. The territory of Andaman and Nicobar Islands is a Central Territory and the State Government in relation to that territory is the Central Government of India. The Chief Commissioner appointed by the Central Government exercises the functions of the State Government for that territory and the appeal was filed through the Public Prosecutor of Andaman and Nicobar Islands under the directions of the Chief Commissioner given under Section 417 (1) Cr. P. C.

12. This High Court under the Act of 1953 exercises jurisdiction as the High Court for the Andaman and Nicobar Islands. The State Government of West Bengal has not been authorised to perform the functions of the State Government of the Central Territory in Andaman and Nicobar Islands. That being so, the Legal Remembrancer of Government of West Bengal has no connection with the appeal, and therefore, has no authority to appoint any lawyer either for the appellant State or for the accused-respondent in this appeal. The learned Dy. L. R. Mr. S. N. Banerjee has referred to a provision in L. R.'s Manual under which there is an arrangement between Central Government and the State Government of West Bengal for appointing lawyers. That provision, however, does not enable the Government of West Bengal to appoint any Public Prosecutor in respect of the Central Territory under Section 492 Cr. P. C. In an appeal against an order of acquittal. It is the appellant-State, which is the Central Government in the present case, that has the right to prosecute the appeal by appointing a properly authorised lawyer. Mr. Dipak Sen Gupta was not so authorised.

13. For the accused-respondent in the appeal a lawyer appointed by him on a Vakalatnama appeared before us at the hearing. The learned Advocate Mr. Jogesh Chandra Sinha, who was appointed by the Legal Remembrancer of West Bengal, was rendered functus officio and had no proper authority to represent the accused-respondent.

14. Such state of confusion in the Important matter of proper representation at the Bar of the parties in the appeal is likely to hamper proper disposal of the appeals for doing justice between parties. Governments concerned should be alive to the necessity of proper appointment of lawyers and avoid such confusion. As, however, the learned Advocates, who were before us, had prepared the case, we availed their assistance at the hearing of the appeal. They made their submissions on the evidence in the case and the order we have made above was upon hearing of all the three learned Advocates above mentioned.

15. The appeal is dismissed. The Respondent Golam Rasool is discharged from the Bail bond.

Bagchi, J.

16. I agree with my Lord that the appeal be dismissed and the respondent, Golam Rasul, be discharged from the bail bond. But I like to add a few words of my own on some question of law.

17. In the matter of appointment of the Public Prosecutor and the defence Counsel in this appeal, there has been utter confusion and violation of law. My Lord has been pleased to deal with the matter regarding how they were appointed to represent this appellant, the Union Territory of Andaman and Nicobar Islands and the respondent, Golam Rasul.

18. Section 492 of the Code of Criminal Procedure reads as follows:--

'The Central Government or the State Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors (added by Section 3 -- Anti-Corruption Laws Amendment Act, Act XL of 1964 which came into force on and from 18-12-64).'

Section 4, Sub-section (1), clause (i) of the Code of Criminal Procedure says:--

' 'High Court', in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta, and, in relation to any other local area, means the highest court

of criminal appeal for that area '

19. The High Court of Calcutta has jurisdiction over the local area of the State of West Bengal as well as of the local area of the Andaman and Nicobar Islands. The Andaman and Nicobar Islands are a centrally administered territory. The executive power of the State Government under Article 154 of the Constitution vests in the Governor whereas the executive power of a centrally administered territory vests in the President under Article 73 of the Constitution.

20. Section 492 of the Code of Criminal Procedure, 1898 since the amendment in 1964 authorises the Central Government or the State Government, as the case may be, to appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors. The emphasis lies in the expression 'in any local area' as occurring in Section 492, subsection (1) of the Code of Criminal Procedure, 1898. Their Lordships of the Privy Council in the case of *Bhagwan Das v. The King*, reported in , had to interpret the executive authority of the province under Section 49 of the Government of India Act, 1935, to make appointments to the post of a Public Prosecutor under Section 492, Sub-section (1) of the Code of Criminal Procedure as it then stood, and in that context, their Lordships were pleased to observe that it was a part of the executive authority of the province to make appointments to the post of a Public Prosecutor and the executive authority of the province being vested by Section 49, Government of India Act, 1935, in the Governor, he only was entitled to appoint the Advocate General, a Public Prosecutor.

21. The local area of a State and the local area of an Union Territory are well denned. The Andaman and Nicobar Islands constitute an Union territory administered by the Central Government through the Chief Commissioner. The local area of an Union territory administered by the Chief Commssioner, as in the case of the Andaman and Nicobar Islands, is a centrally administered State and the executive power of a centrally administered State vests in the President of India under Article 73 of the Constitution. That is why in regard to appointments of Public Prosecutors in any local area in relation to a State or the Union, amendment had to be made insub-section (1) of Section 492 of the Code of

Criminal Procedure. 1898 in 1964 and the two groups of words in the alternative, the 'Central Government' or the 'State Government' had to be introduced in Sub-section (1) of Section 492 of the Code of Criminal procedure. The executive power of the Governor of a State in the matter of appointment of a Public Prosecutor by virtue of the authority of article 154 of the Constitution, read with Section 492, Sub-section (1) of the Code of Criminal Procedure, 1898, extends within the local area of a State, while the executive power of the President under Article 73 of the Constitution, read with Section 492, Sub-section (1) of the Code of Criminal Procedure extends within the local area of an Union territory, such as, in the case of Andaman and Nicobar Islands.

22. Article 258 of the Constitution Clause (1) reads as follows:--

'Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.'

23. The President may, with the consent of the Government of a State, such as that of West Bengal, entrust to such State Government or its officers functions in relation to the appointment of a Public Prosecutor in regard to cases arising within the local area of the Union territory, as in the case of Andaman and Nicobar Islands, within which the executive power of the Union, vested in the President, extends. In the present appeal, neither the learned Counsel, appointed by the learned Legal Remembrancer of the State of West Bengal, representing the Union territory of Andaman and Nicobar Islands, the appellant, before us at the hearing of this appeal, nor the learned Counsel, appointed by the learned Legal Remembrancer of the State of West Bengal, appearing for the respondent who had not been initially represented, but later on, represented by the lawyer of his own choice, could enlighten us as to whether or not the President with the consent of the Government of West Bengal entrusted either the Government of West Bengal or the learned Legal Remembrancer, West Bengal, the function in relation to the appointment of a Public Prosecutor for the appellant. Andaman and Nicobar Islands, to prosecute with this appeal before this High Court at Calcutta for and on

behalf of the said appellant, and to appoint a learned Counsel to represent the unrepresented respondent in this appeal before this Court. The Central Government could also appoint by virtue of the provisions of Sub-clause (1) of Article 258 of the Constitution, read with Sub-section (1) of Section 492 of the Code of Criminal Procedure, 1898, with the previous consent of the State Government, the Legal Remembrancer, West Bengal as Public Prosecutor for the Union territory of Andaman and Nicobar Islands for the purpose of this appeal under Section 417, Sub-section (1) of the Code of Criminal Procedure, and in that event, the learned Legal Remembrancer, West Bengal could well have nominated the learned Counsel appearing for the appellant, Union territory, to prosecute with the appeal for and on behalf of the Union territory, and could also appoint, upon this Court's approval, the learned defence Counsel to represent the respondent in this appeal before this Court. Neither of the learned Counsel appearing for either side, nor the learned D. L. R. of West Bengal could show us any notification under sub-art (1) of Art 258, read with Sub-section (1) of Section 492 of the Code of Criminal Procedure whereby the President with the consent of the Governor of the State of West Bengal entrusted, by appointing L. R., West Bengal, a Public Prosecutor for and on behalf of the centrally administered territories of Andaman and Nicobar Islands with the function of prosecuting with this appeal before this Court. If there was such a notification the learned D. L. R. West Bengal, could well represent as Public Prosecutor for the Union Territory of Andaman and Nicobar Islands, the appellant, in this appeal before this High Court at the hearing of this appeal and he could have also authorised the learned counsel appearing for the appellant in this case to represent the Union territory of Andaman and Nicobar Islands, the appellant, in this appeal. In that event also, the learned L. R.'s. nomination of the learned Defence Counsel representing the respondent in this appeal could have been approved by this Court at the hearing of this appeal.

24. In the case of *Supdt. and Remembrancer of Legal Affairs, Bengal v. Tularam Barodia*, reported in AIR 1919 Cal 203, their Lordships of the Division Bench of this Court had to consider Section 417 of the Code of Criminal Procedure, 1898, in a case there the Superintendent and Remembrancer of Legal Affairs, Bengal, appointed by the then Bengal Government to be the Public Prosecutor in the case heard by the High Court at Calcutta. That was a case of appeal against acquittal

filed by the Superintendent and Remembrancer of Legal Affairs, Bengal appointed by the Government of Bengal as it then was. Tracing the history of the office of the Legal Remembrancer, their Lordships at column '2' of the Report at p. 203 observed:--

'The appeal was presented by the Superintendent and Remembrancer of Legal Affairs, Bengal, who by notification of date 19th May, 1915, has been appointed by the Local Government to be by virtue of his office Public Prosecutor in all cases heard by this Court in the exercise of its appellate jurisdiction.'

In that observation, their Lordships were pleased to pin-point the question of appointment of Superintendent and Remembrancer of Legal Affairs, Bengal, that emanated from the notification of the Local Government of Bengal and to put emphasis on the words 'Local Government'. In Sub-section (1) of Section 492 of the Code of Criminal Procedure, the emphasis lies also on the words 'in any local area.'

25. In the case of the State v. Brinda-wan, reported in AIR 1952 Madh B. 13 (Dixit and Chaturvedi, JJ.), their Lordships observed at p. 14 of the report: 'The appointment may be in respect to particular case or in respect to a particular class of cases or in regard to cases generally. But it must in any event be with reference to a local area for exercising the powers of Public Prosecutor. The words 'in any local area' which occur in Section 492 qualify not only the words 'for any specified class of cases' but also the preceding words 'generally', or 'in any case'. It must be noted that the word 'generally' has been used to contra-distinguish all cases from a particular case or a particular class of cases. If the words 'in any local area,' which are preceded by a comma are taken to qualify only the words 'for any specified class of cases' and if the word 'generally' is to be read independently of the words following it, the result would be to create a conflict between the jurisdiction of officers appointed as public prosecutors in regard to cases generally. A Public Prosecutor has specific powers under the Code and he cannot exercise these powers in regard to cases generally or in regard to a particular case or a class of cases unless the local area within which he is to exercise the powers is specified. In my view, under Section 492 of the Code it is incumbent on the Govt.

to specify the local area within which the person appointed as Public Prosecutor is to exercise his powers.' In regard to Andaman and Nicobar Islands, the High Court of Calcutta is also the High Court for that Union territory, but the Local Government of that territory and the Local Government of the State of West Bengal are two different and distinct constitutional and juristic entities and the executive power of those two Local Governments under the Constitution vests in two different Constitutional heads, having their well-defined local areas, former in the State of West Bengal, latter in the Union territory of Andaman and Nicobar Islands.

26. In the case of Tushar Kanti Ghosh v. Governor of Bengal in Council, reported in : AIR1933 Cal118 , their Lordships of the Division Bench of this Court had to consider the legal position of Legal Remembrancer of Bengal. Interpreting Section 4, CL (t) and Section 493 of the Code of Criminal Procedure, their Lordships at page 120 of the Report expressed themselves as follows;

'The Legal Remembrancer is ex-officio Public Prosecutor on the appellate side of the Court and as such has the power to instruct counsel, his authority to act for the Local Government being in no way dependent on anything in the nature of a Vakalatnama or warrant of attorney.'

In this observation their Lordships also emphasised on the words 'His authority to act for the Local Government.'

27. I respectfully accept the principle laid down in the decisions I have just now reviewed.

28. In the present appeal, the 'Local Government' means the Union territory of Andaman and Nicobar Islands and the 'Local area' also relates to those Islands, a Centrally administered territory, administered by the Union of India, the executive power of which vests in the President under Article 73 of the Constitution (vide Constitution. Seventh Amendment Act, 1956, 1st Schedule -- II, Union territories, Clause 5). In view of the principles, enunciated in the decisions discussed above, for the local area of a Centrally administered territory and for the local area of a State, the Central Government and the State Government have their respective powers under subsection (1) of Section 492 of the Code of Criminal Procedure,

1898, as amended in 1964, to appoint a Public Prosecutor to represent the Union territory and the State, as the case may be, in any appeal or proceedings before this High Court. The High Court of Calcutta is undoubtedly the High Court for Andaman and Nicobar Islands -- a Union territory as well as the High Court for the State of West Bengal. But the local area of the State of West Bengal and the local area of the Andaman and Nicobar Islands are distinct and different from each other and the executive power in the case of the State of West Bengal vests in the Governor of the State of West Bengal, and in the case of Andaman and Nicobar Islands, vests in the President of India. Accordingly, the State of West Bengal has appointed only for the local area of the State of West Bengal, the learned Legal Remembrancer, West Bengal, to be a Public Prosecutor having authority to represent the State Government before the High Court of Calcutta in its appellate jurisdiction which extends over the local area of the State of West Bengal and the local area of the Union territory of Andaman and Nicobar Islands. But the learned Legal Remembrancer of West Bengal cannot, unless appointed by the Central Government by virtue of the provisions of Sub-article (1) of Article 258, read with Sub-section (1) of Section 492 of the Code of Criminal Procedure, 1898, represent the appellant-Andaman and Nicobar Islands -- a Centrally administered Union territory i. e. the Central Government in any appeal or proceedings before this High Court. I have observed earlier in this judgment that the learned Deputy Legal Remembrancer, West Bengal, could not show us any notification appointing him a Public Prosecutor by the Central Government to represent the appellant Union territory of Andaman and Nicobar Islands as the Public Prosecutor for that territory before this High Court in its appellate jurisdiction. The learned Legal Remembrancer of West Bengal, therefore, had no authority to appoint either the learned Counsel for the appellant or the learned Counsel for the respondent to represent either the appellant or the respondent respectively before us in this appeal since he himself had not been appointed by the Central Government to be a Public Prosecutor for the Union territory of Andaman and Nicobar Islands and to represent that territory in this appeal before the appellate jurisdiction of this Court. We hope that such illegality, as I have just now pointed out, would not recur in future. We have, however, with pleasure, acknowledged the assistance given to us in this appeal by the learned Counsel for the appellant and the learned Counsel for

the respondent appointed by the learned L. R. of West Bengal and the learned Counsel for the respondent appointed by the respondent at the time of hearing of this appeal.

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