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Kartick Chandra Saha Vs. the State

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Court : Kolkata

Decided On : Sep-15-1966

Reported in : AIR1968Cal127,1968CriLJ311

Judge : T.P. Mukherji, J.

Acts : Essential Commodities Act, 1955 - Sections 3 and 12A; ;Essential Commodities (Amendment) Act, 1964; ;Code of Criminal Procedure (CrPC) - Section 173

Appeal No. : Criminal Revn. Case No. 540 of 1965

Appellant : Kartick Chandra Saha

Respondent : The State

Advocate for Def. : Deba Prosad Chowdhury, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutta and ;Bimal Chandra Chatterjee, Advs.

Judgement :
ORDER

T.P. Mukherji, J.

1. The petitioner who is an accused in a case under Section 7 of the Essential Commodities Act of 1955 obtained this Rule against the order of the Magistrate

forwarding the records of the case under the provisions of Section 12A(4) of the Act to the Sub-Divisional Magistrate for transferring the same to a competent court. The offence alleged in the case is stated to have been committed on July 26 1964. A charge sheet was submitted against the petitioner on September 7. 1964.

2. The Essential Commodities Act 10 of 1955 was amended on November 5, 1964 by Act 47 of the year by insertion of Section 12A which authorises the Central Government by notification to specify an order under Section 3 of the Act in relation to any essential commodity and directing violation of such an order to be tried summarily. In accordance with this provision the Central Government issued a notification dated December 4, 1964 which was published in the official gazette on December 24. 1964. According to this notification violation of all orders made under Section 3 of the Essential Commodities Act in relation to food stuffs including edible oilseeds and oils was directed to be tried summarily under Section 12A of the Act.

3. As stated above, the charge-sheet in the case had been filed on September 7, 1864. The notification came in December following. The learned Magistrate took up the case for trial in accordance with the procedure prescribed in Section 251A of the Criminal Procedure Code and framed a charge against the petitioner under Section 7 of the Essential Commodities Act on February 20, 1965 and fixed a date for examination of prosecution witnesses.

4. On April 5, 1965 the Court Sub-Inspector filed a petition before the Magistrate stating that the offence is triable by a specially empowered Magistrate in accordance with the provisions of Section 12A of the Essential Commodities Act and praying that the case record may be forwarded to the Sub-Divisional Magistrate for transferring the case to a competent Magistrate. The learned Magistrate Shri A. K. Roy Chowdhury allowed this prayer and it is the legality of the order passed by him that is the subject matter of the present Rule.

5. Mr Ajit Kumar Dutta, the learned advocate appearing in support of the Rule contends that Section 12A of the Essential Commodities Act is not attracted to the procedure prescribed in Section 251A of the Criminal Procedure Code and secondly, that even if it be so attracted, the learned Magistrate had jurisdiction

under Section 12A(4) of the Essential Commodities Act to proceed with the trial according to the ordinary procedure in view of the fad that he should be deemed to have examined the witnesses in the case when the documents contemplated by Section 173 of the Criminal Procedure Code were served on his client. His contention is that the service of the documents on the accused under Section 173(4) of the Code is tantamount to examination of witnesses under Section 12A(4) of the Essential Commodities Act.

6. The order sheet of the case shows that the case was transferred to the Magistrate Shri A. K. Roy Chowdhury on October 8. 1964 evidently for trial according to the procedure prescribed in Section 251A of the Criminal Procedure Code Copies of the documents under Section 173 of the Code were supplied to the petitioner sometime before January 15 1966. Charge in the case was framed as already stated on February 20, 1965 when the learned Magistrate Sri Roy Chowdhury by virtue of the notification dated December 4, 1964 had no jurisdiction to try the offence.

7. Sub-section (1) of Section 12A of the Essential Commodities Act, as has been stated above, empowers the Central Government to issue a notification specifying violation of certain orders passed under Section 3 of the Act which shall be tried summarily. Subsection (2) of the Act provides that offence entailing violation of the orders above would be tried in a summary way and by a Magistrate of the first class specially empowered in this behalf by the State Government or by a Presidency Magistrate. Sub-section (3) of the section provides that certain punishments inflicted by such Magistrates will not be subject to appeal. Sub-section (4) of the section relates to pending cases on the date of the notification mentioned in Sub-section (1) and provides that if no witnesses have been examined before the date of such notification the offences concerned will be tried in a summary way under this section (Section 12A) and further that if any such case is pending on that date before a Magistrate who is not competent to try the same in a summary way under this section, the case shall be forwarded for trial to a Magistrate competent to try the same. It follows therefore that if any witness in the case has been examined before the date of the notification by a Magistrate who thereafter becomes incompetent to try it, the Magistrate concerned will

continue his jurisdiction and the case will be liable to be proceeded with under the ordinary procedure.

8. With the publication of the notification in the present case, the Magistrate Shri Roy Chowdhury became incompetent to try the offence The question is whether the service of the documents under Section 173 of the Criminal Procedure Code prior to the date of the notification is tantamount to examination of witnesses by the Magistrate with the result that under Sub-section (4) of Section 12A of the Essential Commodities Act Shri Roy Chowdhury should be deemed to have been competent to proceed with the trial of the case The argument of Mr. Dutta is that this Sub-section (4) refers only to cases instituted on complaint where, under Section 252 of the Criminal Procedure Code witnesses are required to be examined before a charge is framed and that this sub-section is not attracted to cases instituted on a police report which are triable in accordance with the procedure in Section 251A of the Code, where a charge precedes examination of witnesses. If, according to Mr. Dutta, Sub-section (4) Is attracted to cases where a procedure prescribed in Section 251A of the Code applies and the case after the charge has been framed is transferred to a competent court, the position would be that the case would be triable by the transferee magistrate but that the charge framed by the magistrate who was incompetent to try the case would remain on record and that is a position which is not contemplated by the Code.

9. To accept the argument of Mr. Dutta is to hold that the service of documents under Section 173 of the Code is equivalent to examination of witnesses by the court as contemplated by Sub-section (4) of Section 12A of the Essential Commodities Act. This, in my view, would be stretching the language of the sub-section to a degree which would equate the service of certain documents on a party by the police with the examination of witnesses by the Court. That is a position which I do not think that the Code of Criminal Procedure will recognise or accept. When Sub-section (4) of Section 12A says 'no witnesses have been examined' it postulates an action on the part of the magistrate in relation to the witnesses which cannot be ignored in interpreting the section. In my view the provision is capable of its natural and literal interpretation to give it full and due effect. I hold that when Sub-section (4) says 'no witnesses have been examined' it

means what it says and nothing more or less than that.

10. Cognizance of an offence under Section 7 of the Essential Commodities Act can be taken by a Magistrate both under Section 19(1)(a) as well as under Section 19(1)(b) of the Code according as the report concerned is by a police officer or any other public servant, with the result that such cases may be tried both in accordance with the procedure in Section 251A as well as in accordance with the procedure in Section 252 and the following relevant sections of the Code. In the former case there may be a charge on record before, under Sub-section (4) of Section 12A of the Essential Commodities Act, the case is transferred to a competent court while in the latter case there will be no such charge on record, there may be this difference in the two procedures if Sub-section (4) is interpreted literally. But then that difference, in my view, may not make much of a distinction considering the provisions of Section 346 of Criminal Procedure Code, whereunder a Magistrate is authorised to stay proceedings and submit the case to a Magistrate to whom he is subordinate or to such other Magistrate having jurisdiction if the offence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate. A little permissible stretching of the provision of Section 346 of the Code will in my view also justify transfer of a case where a charge has been framed under Section 251A(3) of the Code to a competent Magistrate as required by Section 12A of the Essential Commodities Act. As no witnesses will have been examined and the magistrate who has framed the charge becomes incompetent to try the case, the transfer will be in order and the magistrate being competent to try the case when the charge was framed that charge will remain. I find no force in Mr. Dutt's argument that Section 12A is not attracted to trials according to the procedure in Section 251A of the Code.

11. So far as this case however is concerned, we are not faced with any difficulty in the matter. Here the learned Magistrate Shri Roy Chowdhury had no jurisdiction to try the case on the publication of the notification in December, 1964 and he had no jurisdiction to frame any charge in the case. The charge framed by him must accordingly be quashed as being framed by a Magistrate having no jurisdiction to try the offence. As Mr. Roy Chowdhury is in any event not competent to try the

case, the order forwarding the records of the case to the Sub-Divisional Magistrate for transferring the case to a competent Magistrate must however stand.

12. The Rule accordingly stands discharged. The charge framed in the case is quashed. The competent Magistrate to whom the case may be transferred by the Sub Divisional Magistrate will take up the trial of the offence from the stage of Section 251A of the Criminal Procedure Code.

13. The records be sent down as expeditiously as possible.

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