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Suchandra Kumar Samanta Vs. the King and ors.

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Court : Kolkata

Decided On : Sep-12-1949

Reported in : AIR1950Cal138

Judge : Das Gupta and ;Guha, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 190, 190(1) and 351; ;Indian Penal Code (IPC) - Sections 109, 120B, 204, 417, 420 and 465

Appeal No. : Criminal Msic. Case No. 145 of 1949

Appellant : Suchandra Kumar Samanta

Respondent : The King and ors.

Advocate for Def. : Debabrata Mukherji, Adv.

Advocate for Pet/Ap. : S.S. Mukherji, Adv.

Judgement :

Das Gupta, J.

1. This Rule was issued on the District Magistrate of Howrah to show cause why proceedings under Sections 465/109, Penal Code pending in the Court of Mr. Ghatak should not be transferred to some other Court. Two persons, Pramatha Harabab and Haradhan Banerjee were summoned under Section 417, Penal Code

on a complaint of one Amulya Charan Harabab, filed on 26th July 1948. After the case was transferred to Mr. Ghatak for trial, several witnesses were examined and the present petitioner Suchandra Kumar Samanta was actually examined as a witness on 28th April 1949. On 6th June, an application appears to have been filed on behalf of the complainant that Suchandra and another person should be summoned to take their trial. The order passed by the Magistrate on 6th June does not indicate that the learned Magistrate did read this petition carefully for he appears to have read it only as a petition for examination of the lawyer Bejoy Krishna Roy Choudhury. On 29th June, he discussed the question 'whether P. W. 9, Suchandra Kumar Samanta should stand his trial after what has transpired in evidence' and said,

'I am now satisfied that he should be brought to trial, for his complicity with the forged document is beyond question, without of course entering into the merit of it, that is, whether his act was of a bona fide nature. Since he is attached to the Civil Court as a Moharir he should be summoned under Sections 465/109 Penal Code for to-morrow.'

Suchandra appeared on the following date and was released on bail. An application for transfer of the case filed before the District Magistrate failed.

2. The first question for consideration is whether the Magistrate before issuing summons against the present petitioner under Sections 465/109, Penal Code had taken cognisance of the case under Section 190(1)(a), Criminal P. C. or under Section 190(1)(c), as contended by Mr. Sudhansu Sekhar Mukherji, on behalf of the petitioner, or was merely acting under Section 351, Criminal P. C. without having taken cognisance of the case at all under Section 190(1), Criminal P. C.

3. There has been some divergence of judicial opinion on this question whether when a person is summoned by the Magistrate on the basis of the evidence he has already heard in the case, he is to be considered as to have taken cognizance under Section 190(1)(a) or under Section 190(1)(c), Criminal P. C. In the case of Khudiram Mookerjea v. The Empress, 1 C. W. N. 105, the view was taken that the Magistrate in such a case was proceeding under Section 191(c), Criminal P. C. which is the same as 190 (1) (c) of the present Code. In a later case reported

Dedar Bux v. Syamapada Malakar, 18 C. W. N. 921: A. I. R. (1) 1914 Cal. 801: (15 Cr. L. J. 546) Sharfuddin and Teunon JJ. appeared to have taken a different view. In this case a complaint had been filed against several persons under Sections 842 and 363, Penal Code. The Magistrate ordered the complainant to prove his case but before the date fixed the complainant filed a petition for withdrawal of the complaint. The Magistrate thereafter examined witnesses on the date fixed and found that there was no satisfactory evidence against the persons complained against, but summoned two other persons under Sections 342, 368 and 853, Penal Code. The Court held that cognisance had been taken under Section 190(1)(a) of the Code.

4. It is not necessary for us in this case to decide the question whether one of these two cases, namely, Khudiram Mookerjea v. The Empress, 1 C. W. N. 105 or Dedar Bux v. Syamapada Malakar, 18 C. W. N. 921: (A. I. R. (1) 1914 Cal. 801), was wrongly decided. It seems quite clear that the decision in the case of Dedar Bux v. Syamapada Malakar, 18 C. W. N. 921: (A. I. R. (1) 1914 Cal. 801), proceeded on the consideration that under Section 190(1)(a), Criminal P. C. cognisance is taken of an 'offence' and once cognisance has been taken of an offence, the fact that processes may be issued against certain persons not named in the original complaint does not amount to a fresh taking of cognisance. In that case cognisance had already been taken of an offence under Sections 342 and 363, Penal Code and two persons who were summoned later on though not named in the petition were summoned to take their trial under these sections, though an additional section was also added. In the present case, the petition of complaint was as regards as offence under Sections 417/420 read with Section 120B, Penal Code. If the present petitioner had been summoned under any of these sections, there would be scope for the conclusion that cognizance having already been taken of the offence, it was open to the Magistrate to proceed against him without taking any fresh cognisance. Process, however was not issued against this person either under Section 417 or under Section 420 but under Section 465 read with Section 109, Penal Code. It cannot, therefore, be said that cognisance had already been taken of the offence for which the accused was being summoned.

5. Consequently, unless it could be held that the accused was being proceeded under Section 351, Criminal P. C. the only possible conclusion would be that cognisance bad been taken against him under Section 190(1)(c), Criminal P. C.

6. Under Section 351, Criminal P. C. 'any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognisance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.'

7. Two decisions of the Judicial Commissioner's Court, Sind, were cited in support of the view that a Magistrate proceeding under Section 351, Criminal P. C. need not at all take cognisance of the offence. As at present advised, I am not inclined to agree with this view. It seems to me that the only effect of Section 351, Criminal P. C. is that the preliminary procedure of issuing processes under Section 204, Criminal P. C. is dispensed with. Section 351 in terms says that the offence must be one of which the Court can take cognisance. I do not see any justification for reading into this clause the meaning that it is sufficient merely that it should be such that the Court can take cognisance of and that it is not necessary for the Court to take cognisance.

8. In any case, it. seems to me clear that in the present case at least, the learned Magistrate did not proceed under Section 851, Criminal P. C. He does not himself purport to act under that section and there is no reason why we should ascribe to him the intention of proceeding under the special procedure of Section 351, Criminal P. C., unless there are clear indications that he did so. Nor did he take any notice of the complaint in the petition filed by the complainant, on 6th June 1949.

9. My conclusion, therefore, is that the learned Magistrate before issuing process against the present petitioner under Sections 465/109, Penal Code, had taken cognisance of this offence under Section 190(1)(c), Criminal P. C. consequently, since the accused objects to be tried by this learned Magistrate, it is necessary in law that the case should be tried by some other Magistrate. I would accordingly order that the case be transferred by the learned District Magistrate to the file of

some other Magistrate and make the rule absolute.

Guha, J.

I agree.

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