

Sardar and ors. Vs. the State

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Court : Kolkata

Decided On : Feb-26-1959

Reported in : AIR1961Cal181,1961CriLJ374

Judge : Debabrata Mookerjee and ;B.K. Bhattacharya, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 156, 173 and 207A

Appeal No. : Criminal Revn. No. 1266 of 1958

Appellant : Sardar and ors.

Respondent : The State

Advocate for Def. : Amaresh Chandra Ray, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutta and ;Amal K. Basu, Adv.

Judgement :

Debabrata Mookerjee, J.

1. This Rule raises the question whether certain proceedings in commitment should be held under the provisions of Section 207-A of the Code of Criminal Procedure or under Section 208 and the succeeding sections of Chapter XVIII of the Code.

2. Consequent on an information lodged at the Burtolla Police Station that about five Sikhs had on the 16th of December, 1957, forcibly abducted a man named Gobinda Prosad Banerjee, since deceased, from his house and taken him away in a taxi, an investigation followed which resulted in a charge-sheet against these petitioners. The charge-sheet was submitted on the 24th of April, 1958 and it purported to be one under Section 173 of the Code.

3. Question arose before the learned Magistrate holding the enquiry under Chapter XVIII, whether the inquiry was to be held under the new provision contained in Section 207 A or under Section 208 and the sections that follow. The Question became pertinent by reason of the extension of Section 156 of the Code, during the progress of the investigation which had commenced at a time when the section did not apply to the police in the town of Calcutta.

4. Sub-section (2) of Section 1 of the Code provides that nothing contained in it shall apply to the Commissioner of Police or the police in the town of Calcutta; but a proviso attached to the sub-section says that the State Government may, if it thinks fit, extend any of the provisions of the Code to the persons excepted from its operation.

5. By notification No. 577-J, dated the 25th of January, 1956, Sections 154, 161, 162, 163, 172 and 173 of the Code were extended by the State Government to the police in the town of Calcutta; but Section 156 which gives power to the police to investigate into cognizable offences was not included in the notification. The result was an anomaly. This question came up for consideration in the case of Manik Chand v. The State, : AIR1958 Cal324 . It decided that the police in the town of Calcutta having been empowered under section 156 to make any investigation in respect of cognizable offences, could not make any investigation under Chapter XIV; consequently they could not make any report under Section 173, and that being so, in no case instituted on a report by the Calcutta police could Section 207-A apply since under the clear words of that section the condition precedent to its applicability was the receipt of a report under Section 173.

6. This defect was remedied by an amendment of the notification referred to above. The new notification bearing No. 1384-J dated the 24th February, 1958,

sought to amend the previous one by adding two sections, namely, Sections 155 and 158 to those already extended to the police in the town of Calcutta. The obvious purpose was to provide for power to the Calcutta police to investigate into cognizable and non-cognizable offences.

7. Turning to the facts of this case, it appears that although the Calcutta police did not have the power under Section 156 extended to them at the commencement of the investigation, they acquired it during its progress. Consequently a part of the investigation had been made not under the Code but under whatever other powers they possessed under other laws. But when the charge-sheet was submitted they had already been given the power by the amending notification and therefore, they claimed that the report was one under Section 173 which would attract the operation of Section 207-A of the Code.

8. On behalf of the petitioners Mr. Dutta has contended that a major part of the investigation not having been held under the Code, the amending notification cannot have the effect of making the investigation an investigation under Chapter XIV. The consequence was that the report would not be one under Section 173 and that being so, Section 207-A would not apply. It has then been contended that the amending notification could have no retrospective effect; and lastly where a right like the right to be discharged from the proceedings is affected, no question can arise of abridging that right by characterising the effect of the amending notification as merely procedural.

9. On behalf of the State the learned Deputy Legal Remembrancer has argued that the investigation having been conducted in part and completed under Chapter XIV, the report has to be regarded as one under Section 173, and that would in its turn attract application of Section 207 A. The amending notification affects procedure and no one has any vested right in it. Even if the amendment has the effect of depriving the accused of an advantageous procedure, that cannot be said to affect or curtail rights. These contentions require to be examined.

10. It appears to us that the investigation having commenced at a time when Section 156 did not apply to the police in the town of Calcutta, the investigation could not be held to be one under Chapter XIV. Could the supervision of the

amending notification have the effect of changing the character of the investigation? When the Code did not apply to the police in the town of Calcutta, the investigation into cognizable offences would be carried on under the provisions of the Calcutta Police Act. We do not think the amending notification had the effect of changing the whole character of the investigation at a time when the police in Calcutta did not possess the power to investigate under Section 156. In our view the amending notification could not achieve the miracle of converting the entire investigation into one under chapter XIV. Section 173 is imperative in its terms. It contemplates a report of investigation under Chapter XIV. That would ordinarily mean and imply that the materials collected which are the foundation of the report, were obtained in pursuance of power exercised under Chapter XIV. We cannot view the investigation piecemeal. It is normally a continuous process which begins with the collection of evidence obtained in exercise of power under Section 156 and ends with the submission of a report under Section 173. Indeed, the investigation in this case cannot possibly shed its hybrid character since a part of it was conducted under other laws and a part under the Code as a result of the extension of Section 156 to the police in the town of Calcutta. Quite obviously a report under Section 173 cannot embody the result of investigation held under other laws; and if the report is not one under Section 173, Section 207-A cannot possibly apply.

11. It has then to be considered if the amending notification has retrospective effect. Statutes are ordinarily prospective in their operation. It is an accepted rule of construction that no statute is to be construed as having retrospective operation unless such a construction appears to be clearly indicated by the terms of the statute itself or unless such interpretation is suggested by necessary implication. We are not concerned in this case with the question of retrospective operation of a statute; we are concerned with the question of retrospective operation of a notification issued in pursuance of power given by a statute. The notification itself does not, by its own terms, make its operation retrospective; and it would, in our judgment, be extravagant to claim that by necessary implication it has retroactive operation.

12. It is true, however, that no one has a vested right in procedure : Says Maxwell:

' The presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the courts, even where the alteration which the statute makes has been disadvantageous to one of the parties,

* * * *No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode.'

(Interpretation of Statutes, Tenth Edition, p. 225).

13. The question then arises. Is it all procedure? Could it be said that no rights are curtailed if the inquiry is held under the new provision contained in Section 207-A? Indeed, the inquiry has to be held under that section if the report is to be taken as one under Section 173. While it is true that Sub-section (6) of Section 207-A permits a discharge if the evidence discloses no grounds for committing the accused person for trial; but the procedure prescribed in the alternative by Section 208 and the succeeding sections, gives the accused the right to a discharge from the proceedings at least twice. Section 209 provides that when the evidence referred to in Section 208, Sub-sections (1) and (3) has been taken and the accused examined, if necessary, the Magistrate shall discharge the accused if he thinks that there are no sufficient grounds for committing the accused for trial. Again, under Section 212, the Magistrate may, in his discretion, summon and examine defence witnesses and discharge the accused and cancel the charge if after hearing the witnesses for the defence the Magistrate is satisfied that sufficient grounds do not exist for committing the accused for trial. Thus even a limited right to call defence evidence is given to the accused by the alternative procedure which carries with it the assurance of a more extended right of discharge. The right to discharge is indeed a valued right and cannot be taken away by the plea of procedural amendment. This is very much more than mere procedure; it affects rights also,

'Where rights and procedure are dealt with together' says the same learned author Maxwell --(Interpretation of Statutes, Tenth Edition, p. 228) 'the intention of the

legislature may well be that the old rights are to be determined by the old procedure, and that only the new rights under the substituted section are to be dealt with by the new procedure.'

14. We, therefore, hold that the entire investigation not having been held after the extension of Section 156 of the Code to the police in the town of Calcutta, the report in the case cannot properly be called a report within the meaning of Section 173, with the consequence that Section 207-A cannot apply to these proceedings. The Magistrate is accordingly directed to proceed in accordance with the provisions contained in Section 208 and the succeeding sections of Chapter XVIII of the Code.

15. The Rule is made absolute.

Bhattacharya, J.

16. I agree.

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