

Bhuban Mohan Bose Vs. the State

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Court : Kolkata

Decided On : Nov-29-1957

Reported in : AIR1958Cal202,1958CriLJ502

Judge : S.K. Sen, J.

Acts : Ciriminal Procedure Code , 1898 - Sections 403 and 494

Appeal No. : Criminal Revn. No. 1473 of 1956

Appellant : Bhuban Mohan Bose

Respondent : The State

Advocate for Def. : Rabindra Nath Chakravarty, Adv.

Advocate for Pet/Ap. : Ajit Kumar, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S.K. Sen, J.

1. This revisional application is directed against the conviction of the petitioner Bhuban Mohan Bose under Section 33(A) of the Calcutta Suburban Police Act 1866 and the sentence of fine of Rs. 100/- in default rigorous imprisonment for

three weeks only.

2. The petitioner is a shed-clerk of No. 11 Kidderpore Dock. On 26-12-1952 when he was going out of gate No. 3 of the said dock he was challenged by the guard on duty as he had his pockets bulging. He refused to stop but another guard came running up and got hold of his cycle and so compelled him to stop. On search of his person 75 packets of Streptomycin were found in his two pockets and another 25 packets were found tied in a piece of cloth under his shirt. He was thereupon handed over to the sub-inspector of port police. The police after investigation submitted a challan in the Court of the Chief Presidency Magistrate under Section 54A of the Calcutta Police Act against the petitioner on 27-1-1953. On behalf of the petitioner objection to the applicability of the Calcutta Police Act was taken. The learned Presidency Magistrate Sri T. K. Roy, to whom this case had been transferred, on the 8-12-1964 stopped the case under Section 249 of the Code of Criminal Procedure without either convicting or acquitting the accused and released the accused because in his view the Calcutta Police Act could not apply, as the offences were committed at a place outside the local limits of the original jurisdiction of the Calcutta High Court. On 10-5-1955 a fresh challan under Section 33A of the Suburban Police Act was filed before the Chief Presidency Magistrate and the case was transferred to another Presidency Magistrate on B. M. Ghosh. Sri B. M. Ghosh held that as another Presidency Magistrate Sri T. K. Roy had merely stopped the case against the accused petitioner on the same facts and released him without pronouncing him guilty or not guilty, he still had jurisdiction in the case and in the circumstances a second Magistrate viz., himself, could not have jurisdiction. In that view the learned Magistrate acquitted the accused under Section 245 of the Code of Criminal Procedure on 10-6-1955. The Public Prosecutor then filed a petition for revival before Sri T. K. Roy who previously had seisin of the case. Sri T. K. Roy recorded an opinion that he was not competent to try the case under the Suburban Police Act and he directed the Public Prosecutor to file a formal petition for withdrawal of the case. This was apparently done so that it could no longer be said that the learned Magistrate Sri T. K. Roy continued to have seisin in the case. Accordingly, a petition for withdrawal was filed by the Public Prosecutor and the learned Magistrate Sri T. K. Roy passed an order acquitting the accused under Section 494 of the Code of Criminal Procedure.

Thereafter before the Police Magistrate Alipore, a fresh Challan under Section 33A of the Suburban Police Act was filed on 28-9-1955. Before the learned Magistrate an objection to the bar of the trial under Section 403 of the Code was taken, but the learned Magistrate overruled the objection. He held that he had jurisdiction in the case and that the previous acquittals could not stand in the way as the previous Magistrates had themselves held that they had no jurisdiction to try the case. The learned Magistrate tried the case 011 merits and found the accused guilty and convicted the accused. There was a revisionai application before the learned Sessions Judge 24 Parganas, for reference to the High Court, but the learned Sessions Judge also was of the opinion that the previous acquittals having been made by Magistrates without jurisdiction did not bar a fresh trial before the Police Magistrate Alipore and so he refused to make a reference to High Court. Thereafter the petitioner has made this revisionai application to the High Court direct.

3. The main point urged by Mr. Dutt appearing for the petitioner is that actually the place of occurrence was within the port area of Calcutta and therefore the Presidency Magistrate, both Sri T. K. Roy and Sri B. M. Ghosh, had jurisdiction to try the case and therefore the acquittals by them were acquittals by Magistrates having jurisdiction and therefore the ultimate trial before the Police Magistrate Alipore was barred under Section 403 of the Code. In this connection Mr. Dutt referred to Section 20 of the Code which recites that every presidency Magistrate has jurisdiction not only within the presidency town but also within the limits of the port area of the town. In order to show that the place of occurrence was within the port area of the town the defence examined a witness Jogendra Nath Bose. Chief Estimator of the Chief Engineer's Drawing Office, Calcutta Port Commissioners, who produced a map of Kidderpore port area and sought to prove that the place of occurrence was within the area of Kidderpore port attached to Calcutta. According to the prosecution, the seizure of the accused petitioner had taken place just in front of gate No. 3 on the public road. This witness stated that in the map the area within the Jurisdiction of the Port Commissioners was shaded black and he said that the road in front of gate No. 3 was also within the jurisdiction of the Port Commissioners. But he admitted in cross-examination that in the map the road in front of gate No. 3 was not shaded in black although the areas on both sides of the

same were so shaded. From the statement in cross-examination the learned Magistrate came to the inference that the public road in front of gate No. 3 where the seizure had in fact taken place was not within the jurisdiction of the Port Commissioners but was maintained by the Calcutta Corporation and was therefore within the suburbs of Calcutta outside the Port area and therefore the jurisdiction to try the case would be in the Police Magistrate of Alipore and not in the Presidency Magistrate of Calcutta. The learned Magistrate gave sufficient reasons for his opinion and on the basis of the evidence of D. w. 1 which was the only material before the Court it is not possible to say that the learned Magistrate was necessarily wrong. In fact, when the case was put up for the second time before the Presidency Magistrate Sri T. K. Roy he also was of the opinion that the place was outside the Jurisdiction of the Calcutta Port, otherwise the Presidency Magistrate would have considered himself as having jurisdiction and would not have said that he had no jurisdiction to try the case. Thus both the Presidency Magistrate and the Police Magistrate of Alipore who actually tried the case came to a concurrent finding of fact on the location of the place of occurrence, and on the materials before the Court it is not possible to hold that they were wrong. Accordingly, it must be held that both the Presidency Magistrates had no jurisdiction to try the case, as was indeed held by them, and therefore the acquittals by them would be no bar to the trial of the case before the Police Magistrate because Section 403 of the Code of Criminal Procedure provides that there shall be such bar only when the accused has been tried before by a competent Court having jurisdiction. This disposes of the main point urged in this revisional application.

4. On the merits also Mr. Dutt argued before me that on the evidence the case was not satisfactorily proved. (His Lordship considered the evidence and proceeded). In the circumstances, it cannot be said that the Courts below were wrong in holding that the accused had failed to account satisfactorily for the phials of streptomycin which were found in his possession in that suspicious circumstances.

5. Thus, in my opinion, the charge under Section 33A of the Calcutta Suburban Police Act was satisfactorily proved and there is no reason to interfere in this case.

6. This revisional application therefore fails and the Rule is discharged.

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