

**Debendra Nath Ray Vs. the State**

**Debendra Nath Ray Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/858191](http://sooperkanoon.com/858191)

**Court :** Kolkata

**Decided On :** Mar-20-1967

**Reported in :** AIR1969Cal340,1969CriLJ879,73CWN97

**Judge :** T.P. Mukherji, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 83, 84, 99 and 101

**Appeal No. :** Criminal Revn. No. 186 of 1967

**Appellant :** Debendra Nath Ray

**Respondent :** The State

**Advocate for Def. :** D.P. Choudhury, Adv.

**Advocate for Pet/Ap. :** A.K. Dutta and ;Tarak Nath Banerjee, Adv.

**Judgement :**

ORDER

**T.P. Mukherji, J.**

1. This Rule is directed against an order of the Chief Presidency Magistrate, Calcutta, whereby he has ordered that certain properties seized under a search warrant forwarded to him by the Presidency Magistrate, 21st Court of Bombay be sent to the Court wherefrom the warrant had emanated.

2. In connection with a complaint under Sections 494, 495 and 420 Indian Penal Code filed in the Court of Presidency Magistrate at Bombay by one Smt. Raksha alias Rekha Rathindra Naty Roy against her husband Dr. R.N. Roy, a search warrant was prayed for, for recovery of movables comprising gold and silver ornaments, utensils and clothes etc., from the house of Dr. R.N. Roy's father at Calcutta. In pursuance of the prayer the learned Presidency Magistrate of Bombay issued a warrant and forwarded the same to the Chief Presidency Magistrate, Calcutta, for execution. The learned Chief Presidency Magistrate, Calcutta, on receipt of the warrant endorsed it in favour of the officcr-in-charge of the local police station and Unit officer accompanied by the brother of the complainant went to the house of Sri D.N. Roy, father of Dr. R.N. Roy and on the identification, the identifier seized a number of ornaments, utensils and clothes on preparing a search list and produced them before the Court of the learned Chief Presidency Magistrate, Calcutta.

3. Before the learned Chief Presidency Magistrate Shri D.N. Roy filed an application stating that the goods seized belonged to his wife and daughters and as such were not liable to be seized under the search warrant issued by the Bombay Court. The learned Chief Presidency Magistrate appears to have been of the view that he was not competent to decide on the question as to whether the movables have been rightly seized. As the warrant issued showed that the goods seized were to be forwarded to the issuing Court, the learned 'Chief Presidency Magistrate thought that he was not in a position even to accede to the request of the petitioner before him that he be permitted to retain the goods on condition of bis producing the same to the issuing Court. It is against this order that the petitioner moved this Court and obtained the present Rule.

4. Mr. Dutta, appearing in support of the Rule, contended first that the search warrant is nut a legal warrant in view of the fact that the issuing Court could not have issued the same on the allegation made in the petition of complaint; secondly, that the search warrant was not properly forwarded to the Chief Presidency Magistrate, Calcutta, as required by the law; thirdly, that the search warrant that was received by the Chief Presidency Magistrate was not a proper one in view of the fact that items mentioned therein lack specific descriptions

which might be considered sufficient for the purpose of their identification; and lastly, that the Chief Presidency Magistrate fell into an error in coming to his finding that he was not competent to adjudicate on the question of identification of the seized articles with reference to the articles mentioned in the search warrant.

5. So far as the petition of complaint that was filed in the Bombay Court is concerned, it cannot be said that there are no averments whatsoever therein in support of a charge under Section 420, Indian Penal Code. There are allegations therein of deception having been practised on the complainant and on her parents and the accused in the case having had fleeced them all of valuable belongings. In the application for search warrant there were allegations that some property had been carried away to Calcutta by accused No. 2. Whether these allegations were sufficient for the purpose of issuing a search warrant is a different matter. The Court receiving a search warrant in accordance with the provisions of Criminal Procedure Code has no materials before it for the purpose of adjudicating as to whether the warrant is legal or not and it is not required to enter into the question on the responsibility for the warrant is that of the issuing Court. In my view, the Court receiving the warrant for the purpose of execution is not required to enter into this question of legality of the warrant that is received.

6. On the question as to whether the warrant in this case was forwarded to the Chief Presidency Magistrate, Calcutta, in accordance with the requirements of the law, Mr. Dutta refers to the provisions of Sections 83 and 84 of the Code of Criminal Procedure which by virtue of Section 101., are attracted to search warrant. The former section provides that a Court issuing a warrant for execution outside its local limits may direct the same to a police officer or forward the same by post or otherwise to any Magistrate within the local limits of whose jurisdiction it is to be executed and that it is for the Magistrate receiving the warrant to endorse: his name thereon and cause it to be executed in accordance with law. Section 84 provides that if a warrant is directed to a police officer for execution beyond the local limits of the jurisdiction of the Court issuing the same, it is the duty of the police officer to take it to a Magistrate or to a police officer within the local limits of whose jurisdiction the warrant is to be executed and the Magistrate or the police officer concerned shall endorse his name on the warrant and such endorsement

shall be the authority for its execution.

7. The warrant in this case was forwarded to the Chief Presidency Magistrate, Calcutta, with a forwarding letter but the warrant also was addressed to the Chief Presidency Magistrate. The printed form of the warrant that was used shows that it is a form meant for a direction to 'All constables and other His Majesty's officers of the peace for the town of Bombay'. This part of the printed form in the circumstances of the case was meant to be penned through but was apparently not penned through by mistake. The warrant was addressed to the Chief Presidency Magistrate as stated above and the Chief Presidency Magistrate endorsed his name thereon and forwarded it to the police station concerned for execution. Strictly under Section 83 of the Code the warrant that was sent should not have been directed to anybody for execution by the issuing Court. The name of the authority for actual execution of the warrant should have been left to the Court to which the warrant was sent for execution. This, however, is a technical matter which, in my view, did not affect the validity of the warrant that was received by the Chief Presidency Magistrate.

8. The list of articles that accompanied the warrant contained description of the things concerned in some cases and no description in others. As a matter of fact, even in respect of some of the items which did contain some description, the description was so vague as to make the same useless. But the description of some of the items was sufficient in the nature of the thing concerned and there need have been no difficulty in identification of those particular items. Mr. Dutta refers in this connection to the case. In re, Sagarmal Khemraj, reported in AIR 1940 Bom 397. That case arose out of a warrant of arrest sent from Calcutta to Bombay and the question that arose was whether the warrant was legal or valid. It was addressed to the O./C. concerned and was forwarded to Third Presidency Magistrate. The two persons to be arrested were only named and no further particulars of them were mentioned. It was held that the warrant was not properly directed to the police officer concerned and that it was not also properly forwarded to the Court. The description of the persons to be arrested not being given that also detracted from the validity of the warrant.

9. In the present case, there was no question of addressing the warrant or directing it to any police officer. It was a warrant forwarded under Section 83 of the Code to the Chief Presidency Magistrate, Calcutta. Particulars of some of items of the properties to be seized are sufficient in the circumstances of the case and in the Case of others the particulars are wholly in-sufficient. The warrant thus in respect of particulars was valid in part and invalid in respect of the rest. The learned Magistrate receiving the warrant would in the circumstances of the case not have been justified in refusing to execute the same. There was ample jurisdiction of his to execute the warrant in respect of the identifiable properties and to refuse to execute it in respect of the properties which were not capable of identification. This brings us to a discussion of Section 99 of the Code of Criminal Procedure.

10. This section deals with disposal of things found on search beyond the jurisdiction of the Magistrate issuing the warrant. When the things sought to be seized on the strength of the warrant are found, these together with the seizure list are required to be forwarded immediately either to the issuing Court or to the Court within whose jurisdiction the seizure is made if the place searched is nearer to that Court. It is for the Magistrate receiving the things that were seized on the basis of the warrant endorsed by him who has to authorise their removal to the Court issuing the warrant unless there be good cause to the contrary. This provision empowers the Magistrate endorsing the warrant for execution, to exercise his discretion in the matter of authorising the removal of the goods concerned to the issuing Court. If he has a discretion to exercise in the matter, he can very well refuse to execute the search warrant in respect of the properties which are not properly described and certainly when goods seized are produced before him, he is to be satisfied as to their identity with reference to the description in the search warrant before he authorises their transfer to the Court issuing the warrant. The learned Chief Presidency Magistrate in this case was not correct in his view that as the warrant shows that the goods seized are to be forwarded to the issuing Court forthwith he had no discretion in the matter of refusing to forward the goods seized or any of them.

11. In view of the above, the Rule must be made absolute. The order passed by the learned Chief Presidency Magistrate directing that the goods seized in the case be sent to the Court issuing the search warrant is set aside and he is directed to hold an enquiry on the objection filed by the petitioner in this case and come to his finding as to whether first, good cause is shown by the petitioner that the goods or any of them should not be forwarded to the Bombay Court and secondly, whether the goods seized are identifiable with reference to the description thereof in the seizure list itself.

The records be sent down as expeditiously as possible.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**