

Sankar Mawli Dutt Vs. State

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Court : Kolkata

Decided On : Apr-10-1952

Reported in : AIR1952Cal588,(1952)56CALLT500(HC)

Judge : Harries, C.J., ; Das and ; S.R. Das Gupta, JJ.

Acts : Chandernagore (Application of Laws) Order, 1950; ; French Penal Code (IPC) - Schedule - Article 437(1); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 5, 5(2), 29 and 29(17);

Appeal No. : Criminal Revn. No. 1200 of 1951

Appellant : Sankar Mawli Dutt

Respondent : State

Advocate for Def. : S.M. Bose and ; N.K. Sen, Advs.

Advocate for Pet/Ap. : N.K. Basu, ; Ajoy Basu and ; Surathi Mohan Sanyal, Advs.

Judgement :

Das, J.

1. This rule was issued by this Court calling upon the Administrator and/or the District Magistrate of Chandernagore to shew cause why the proceedings pending in the Court of Sessions, Chandernagore against the petitioner should not be

quashed.

2. On 31-1-1951, a petition of complaint was filed before Sri K. P. Roy, learned Sub-divisional Magistrate, Chandernagore and Magistrate, 1st Class Chandernagore, by one Dabiran Bibi on the following allegations.

3. The complainant and her children were in occupation of a plot of land and of huts standing thereon, in Chandernagore as a tenant under the petitioner.

4. In Falgoon 1356 B. S. (February-March 1950) communal disturbances broke out in Chandernagore. The complainant and her children left for East Pakistan. After the disturbances had subsided, the complainant with her children returned to Chandernagore in Jaistha or Asarh 1357 B. S. (May-July 1950) and came to learn that the petitioner had caused her huts to be demolished and had taken possession of the plot of land, thus causing loss or damage to the extent of Rs. 4000/-.

5. In order to follow the course of proceedings it is necessary to state certain preliminary matters.

6. The city of Chandernagore where the disputed property was situated is French territory.

7. On 1-5-1950, the Central Government in exercise of the powers conferred by section 4 of the Foreign Jurisdiction Act 1947 (XLVII (47) of 1947) promulgated an order called the Chandernagore (Application of Laws) Order, 1950.

8. The order came into force on the 2nd May 1950.

9. Section 7 of the order runs as follows-

'Unless otherwise specially provided in the Schedule to the order, all laws in force in Chandernagore immediately before the commencement of this Order which correspond to the enactments specified in the Schedule shall cease to have effect, save as respects things done or omitted to be done before the commencement of this order.'

10. The schedule specifies without modifications and restrictions, the Indian Penal Code 1860 and the Code of Criminal Procedure 1898.

11. By notification no. 132-Eur 1 dated the 1st May 1950, the Central Government in exercise of the powers conferred by Sections 9, 10, 12 and 13 of the Code of Criminal Procedure of 1898, was pleased to appoint.

(a) the Sessions Judge of Hooghly, 'ex-offi-cio', to be the Sessions Judge of Chandernagore

(b) Sri K. P. Roy to be a Magistrate of the first class and Sub-divisional Magistrate of Chandernagore.

12. The learned Magistrate before whom the complaint was filed, examined the complainant and directed the Police to report.

13. Thereafter the learned Magistrate summoned the petitioner under section 427, Indian Penal Code.

14. On the 5th of July and 26th of July 1951, the prosecution witnesses were examined and on the 26-7-1951, the learned Magistrate framed a charge under section 427, Indian Penal Code, against the petitioner for having committed mischief, causing loss or damage to Dabiran Bibi to the extent of Rs. 4000/- between Falgoon 1356 B. S. (February-March 1950) and Jaistha 1357 B. S. (May-June 1950).

15. The accused (petitioner) pleaded not guilty.

16. On the 18-8-1951, the prosecution witnesses were cross-examined. The accused (petitioner) was examined under section 342, Criminal P. C.

17. On the 30-8-1951, the learned Magistrate framed a fresh charge in the alternative under paragraph (1) of Article 437 of the French Penal Code or section 427 of the Indian Penal Code.

18. The accused (petitioner) did not want to recall the prosecution witnesses.

19. The accused (petitioner) was again examined under section 342 of the Criminal P. C. The accused (petitioner) did not examine any witnesses for his defence.

20. The arguments were then heard and the case stood over for judgment.

21. The learned Magistrate in his order dated 31-8-1951 observed that no definite conclusion could be arrived at from the evidence of the prosecution witnesses as to whether the occurrence was prior to or after '2-5-50, and that as the charge under paragraph (1) of Article 437 of the French Penal Code was exclusively triable by the Court of Sessions under the French Criminal P. C, the learned Magistrate adopted the procedure contemplated in section 347 (1) of the Criminal P. C. and committed the accused (petitioner) to the Court of Sessions at Chandernagore on alternative charges under section 427, Indian Penal Code or under paragraph (1) of Article 437 of the French Penal Code.

22. On the 3-9-1951, the case was enlisted as Sessions Trial case No. 6 of 1951 in the Court of the Sessions Judge of Chandernagore.

23. Sri R. M. Chatterji the learned Sessions Judge directed the service of notice on the accused (petitioner). The accused (petitioner) appeared on the 3-11-1951 and prayed for summons on his witnesses. The learned Sessions Judge directed the issue of summonses and the case was adjourned to 13-11-1951. On the 13-11-1951, the learned Government Pleader prayed for amending the charge. No witness was examined by the learned Sessions Judge in the Sessions Court. The learned Sessions Judge however directed, the charge to be amended.

24. The amended charge runs as follows:

'That you, on or about the first week of Baisakh 1357 B. S. corresponding to sometimes between 14th and 20th April 1950 at Chandernagore voluntarily had, destroyed the whole or portion of building which you knew to have belonged to others, viz., Dabiran Bibi and her sons and thereby committed an offence punishable under paragraph (1) of the Article 437 of French Penal Code, and within the cognizance of the Court of Sessions.'

25. On the 13-11-1951, the accused (petitioner) filed a petition before the learned Sessions Judge Chandernagore for referring the matter to this Court on the ground that neither had the learned Magistrate jurisdiction to commit the case to the Court of Sessions nor had the sessions Court jurisdiction to try the case.

26. The learned Sessions Judge rejected the petition.

27. The accused (petitioner) then moved this Court and obtained the present rule.

28. The amended charge states that the occurrence took place between the 14th and 20th of April 1950 i.e., at a time when the French Penal Code was in force in Chandernagore. The offence, if any, which the accused (petitioner) might have committed was an offence under the French Penal Code viz., an offence under Article 437 (1) of the French Penal Code.

29. If the Central Government had not promulgated the Chandernagore (Adaptation of Laws) Order 1950, the proceedings against the accused (petitioner) would have been regulated by the French Procedure Code.

30. That material provisions of the French Law are as follows.

31. Article 437 of the French Penal Code provides that whoever voluntarily will destroy or batter down by any means the whole or part of structures, bulworks, embankments or other constructions or cause to explode a steam engine will be punished with solitary imprisonment and a fine which will not exceed one fourth of the restoration and indemnity and not below 100 francs.

32. Article 1 of the French Penal Code provides that the infringement for which the law gives rigorous imprisonment and degrading imprisonment is a crime.

33. Article 231 of the French Procedure Code provides that if it is qualified as crime by law and the Court finds the charges sufficient to bring to arraignment the Court will send the accused to the Court of Sessions.

34. Article 251 of the French Procedure Code provides that the Sessions Court will be held in each province to try persons whom the appellate court will have sent up there.

35. In the present case, the offence under which the accused (petitioner) was charged was one under Article 437 of the French Penal Code and was punishable with solitary imprisonment. It was accordingly a crime under Article 1 of the French Penal Code and under Article 231 of the French Procedure Code was exclusively triable by the Court of Sessions.

36. The Chandernagore (Adaptation of Laws) Order came into force on the 2nd of May 1950 i.e. after the date of the alleged occurrence. The question therefore, arises whether the said Order effected a change in the procedure to be followed thereafter and made the Criminal P. C. applicable to these proceedings which were initiated after that date.

37. It is true that Sri K. P. Roy, the Committing Magistrate could not come to a definite conclusion on the evidence as to when the alleged offence was committed viz., whether before or after the 2-5-1950; the date when the Chandernagore (Adaptation of Laws) Order, 1950, came into force. He accordingly framed a charge in the alternative.-

38. The learned Sessions Judge, however, has amended the charge and has confined it to a charge under Article 437 (1) of the French Penal Code, the occurrence being stated in the charge, to have happened between the 14th and 20th April 1950 i.e. before the 2-5-1950 when the Chandernagore (Adaptation of Laws) Order 1950 came into force.

39. For the purpose of this rule, we must proceed on the amended charge for which the accused (petitioner) was being tried.

40. In the above facts and circumstances two questions arise for decision;

1. Whether the commitment by Sri K. P. Roy, learned Magistrate, 1st Class, Chandernagore was valid,

2. Whether Sri R. M. Chatterji, learned Sessions Judge, Chandernagore, had jurisdiction to try the accused (petitioner) for an offence under Article 437 (1) of the French Penal Code.

41. The answer to both these questions depends on the effect of paragraph (7) of the Chandernagore (Adaptation of Laws) Order, 1950.

42. I have already quoted paragraph (7) of the order. It had 'inter alia' the effect of abrogating 'all laws in force in Chandernagore' before the 2nd of May 1950 which corresponded with the Indian Penal Code and the Criminal Procedure Code save as regards 'things done'.

43. As pointed out by Viscount Simon in 'WICKS v. DIRECTOR OF PUBLIC PROSECUTIONS', (1947) AC 362 at p. 367, the expression 'things done' includes offences previously committed.

44. Paragraph (7) of the Order therefore, preserved the right to prosecute the accused (petitioner) for his alleged complicity in the present occurrence which is alleged to have happened before the date of the commencement of the Order under the then existing law viz. Article 437 (1) of the French Penal Code.

45. The above conclusion is also supported by the decision in 'QUEEN v. CROSS SMITH' (1862) LJ Reports (NS) 105 to which reference was made by the learned Advocate General. In that case, it was held that the Bankruptcy Act, 1862 (24 and 25 Vict. C. 134) on its true interpretation, had the effect of preserving proceedings pending against a bankrupt under the repealed Bankruptcy Act, 12 and 13 Vict. C. 106, both as regards the offences under section 251 of the repealed Act as also the penalties.

46. It follows therefore, that the accused (petitioner) was still liable to be prosecuted under the amended charge.

47. A further question viz., what is the procedure to be followed, has to be considered.

48. It cannot be disputed that, apart from paragraph (7) of the Order, the procedure to be followed and the jurisdiction of the Court to try the offence would be determined by the French law. This follows from sections 5 and 29 of the Code of Criminal Procedure.

49. The learned Advocate General, how-ever, contended that the effect of paragraph (7) of the Order is that the trial of offences committed prior to the commencement of the Order would be regulated by the Criminal P. C.

50. In my opinion, the contention cannot be accepted.

51. Paragraph (7) of the Order states that all laws in force at the date of the commencement of the Order remained in force as regards prior offences. The reference to the enactments in the schedule which include both the Penal and the Criminal Procedure Code shows that both the substantive and the adjective penal laws were preserved in respect of such prior offences.

52. In other words, the procedure to be followed in respect of such prior offences, must be regulated by the French Criminal Procedure Code; that is to say, the commitment must be made by a tribunal empowered under the French Criminal Procedure and the Sessions Court must also be one constituted under the French Procedure Code.

53. In the present case, the order of commitment was made by Sri K. P. Roy, learned Magistrate, 1st Class, who was so empowered by the Central Government in exercise of the powers conferred by sections 12 and 13 of the Criminal P. C. The trial before the Court Sessions, Chandernagore is proceeding before Sri R. M. Chatterji, learned Sessions Judge who was so empowered by the Central Government in exercise of powers conferred by section 9 of the Code of Criminal Procedure, to sit over the Sessions Court, Chandernagore.

54. As such, neither had the Committing Magistrate jurisdiction to make appropriate order for commitment nor had the Sessions Judge jurisdiction to try offence under Article 437 (1) of the French Penal Code which is stated in the charge to have occurred before the commencement of the Chandernagore Adaptation of Laws) Order, 1950. (55) My conclusion' therefore, is that Shri P. Roy, the Committing Magistrate, had no jurisdiction to make the order of commitment and Sri R. M. Chatterji, the learned Sessions Judge, Chandernagore had no jurisdiction in the sessions case pending before him.

56. The result therefore is that this Rule must be made absolute, and the proceedings in the Court of sessions, Chandernagore inst the petitioner must be quashed.

57. The petitioner is discharged from his ...J bond.

Harries, C.J.

58. I agree

Das Gupta, J.

59. I agree

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