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Sudhir Kumar Vs. the State

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Court : Kolkata

Decided On : Nov-27-1952

Reported in : AIR1953Cal226

Judge : K.C. Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : Prevention of Corruption Act, 1947 - Section 3; ;Code of Criminal Procedure (CrPC) , 1898 - Section 156

Appeal No. : Criminal Revn. No. 471 of 1952

Appellant : Sudhir Kumar

Respondent : The State

Advocate for Def. : Jitendra Nath Banerjee, Adv.

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

Judgement :

K.C. Das Gupta, J.

1. This Rule was issued on the State of West Bengal to show cause why the proceedings now pending against the petitioner under Section 161, Penal Code should not be quashed. It is contended before us by Mr. Dutt on behalf of the petitioner that as in this case the investigation was by a Sub-Inspector of the

Railway Police in violation of the provisions of Section 3 of Act 2 of 1947, the proceedings have no legal basis. Section 3 of Act 2 of 1947 is in these words:

'An offence punishable under Section 161 or Section 165, Penal Code shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein:

Provided that a Police Officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the first class or make any arrest therefor without warrant'.

2. The effect of the proviso is that Section 156, Criminal P.C. is made inapplicable to investigation of an offence under Section 161, Penal Code. What Section 156, Criminal P.C. provides is that any officer in charge of a police station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chap. 15 relating to the place of inquiry or trial. Sub-section (2) of this Section provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

3. It was contended by Mr. Banerjee on behalf of the State on the authority of a decision of the Allahabad High Court in -- 'Promod Chandra v. Rex', 52 Crl. L.J. 197 (All) that this investigation by a Sub-Inspector in violation of the provisions in the proviso that a police officer below the rank of the Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the first class is merely an irregularity falling within Section 156 (2), Criminal P.C. Reason for the view taken by their Lordships of the Allahabad High Court is given in these words:

'The proviso to Section 3 in so far as it places a restriction on the powers of investigation of police officers below a certain rank, is in effect, therefore, a proviso to Sub-section (1) of Section 156 of the Code and is analogous to the provision in Sub-section (2) of Section 561 of the same Code that no police officer below the

rank of police inspector shall be employed or take part in the investigation of the offence specified in Sub-section (1) of the Section'.

It is difficult to see however how the fact that the proviso in Section 3 of Act 2 of 1947 operates as the limitation to the powers of investigation given to police officers in charge of police stations can attract the provision of Sub-section (2) of Section 156, Criminal P.C. Certainly that would have been the position if the proviso toSection 3 of Act 2 of 1947 bad in fact been incorporated by the Legislature in Section 156, Criminal P.C. That was not done and instead very clear words were used by the Legislature to ensure that such offence shall not be investigated by any police officer below the rank of the Deputy Superintendent of Police, without the order of a Magistrate 1st class. In my opinion, we are not treating the Legislature seriously if we are to ignore such words and take the view that even though command of this nature is disobeyed, it is a mere irregularity.

4. In my judgment, the failure to comply with the provisions of the proviso to Section 3, Prevention of Corruption Act is an illegality, the effect of which has been that the entire proceedings based on the charge-sheet reported by the officer who was not competent to investigate must fail and accordingly I direct the proceedings to be quashed.

Debabrata Mookerjee, J.

5. I agree.

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