

R.N. Ghosh Vs. the State

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Court : Kolkata

Decided On : May-05-1955

Reported in : AIR1956Cal247,1956CriLJ732

Judge : Debabrata Mookerjee, J.

Acts : [Calcutta Police Act, 1866](#) - Section 62A and 62A(1); ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 190(1), 242, 249 and 537

Appeal No. : Criminal Revn. No. 2 of 1955

Appellant : R.N. Ghosh

Respondent : The State

Advocate for Def. : Panchu Gopal Ganguly, Advs.

Advocate for Pet/Ap. : Bankim Chandra Dutt and ;Sisir K. Basu, Advs.

Judgement :

ORDER

Debarbrata Mookerjee, J.

1. This Rule is directed against an order made by a Presidency Magistrate dated,14-12-1954 by which certain proceedings under the Cal-cutta Police Act against the petitioner were revived and the petitioner was summoned to tafca his

trial.

2. It appears that on 18-10-1954 a police challan was submitted in the Court of the learned Magistrate against the petitioner and another under Section 62A, Calcutta Police Act (Act 4 of 1866). The charge set out in the challan was in these words;

'All the accused persons are charged with not keeping order in and put by shouting at the top of their voice over share business and also causing obstruction to the general traffic at Royal Exchange Place on the 18th of October at about 5/15 P. M.'

On the next day the petitioner appeared in Court and his plea was taken under Section 242, Criminal P. C.; but the complainant, that is to say, the police officer concerned who had submitted the challan was found absent whereupon the learned Magistrate made an order under Section 249, Criminal P. C. by which the proceedings were stopped.

3. It is quite clear that the proceedings against the petitioner and another having been instituted otherwise than upon complaint the learned Magistrate stopped the proceedings without pronouncing any judgment either of acquittal or conviction and released the petitioner.

4. The offence which the petitioner was alleged to have committed was one under Section 62A, Calcutta Police Act. That section empowers a Police Officer not inferior to the rank of Sub-Inspector to give such directions as he thinks necessary either orally or in writing to any person with a view to securing public safety-or convenience to 'keep order on and in all streets, quays, wharves and landing-places, and all other public places or places of public resorts'.

The officers named in the section have also other power to exercise in other contingencies with which we are not concerned at the moment. Subsection (6) of that section provides that contraven- tion of any direction, order or prohibition lawfully given or made under the section is liable to be punished and the extent and nature of punishment varies from case to case.

The penalty that can be Imposed in the case of contravention of a direction given under Clause (d) of Sub-section (1) of Section 62A of the Act which is the case here, is a fine which may extend to Rs. 100/-.

5. It is therefore clear that what the section requires is that there must be a direction given by the Police Officer concerned with a view to securing public safety or convenience the violation of which is made punishable under Sub-section (6) of Section 62A Calcutta Police Act. The ingredients of the offence are therefore a direction or order lawfully given or made and the violation of it.

6. Turning to the present case it is quite clear that the challan does not indicate that the petitioner was being prosecuted for violation or contravention of an order or direction given by the Police Officer. All that is stated in the challan is that the petitioner and another were not keeping order and shouted at the top of their voices and causing obstruction to traffic.

Shouting at public places and causing obstruction to traffic are certainly not commendable activities on the part of members of the public but such shouting or causing of obstruction in order to be punished under the provisions of Section 62A has to be shown to have been indulged in in violation of an order made or direction given in that behalf by the Police Officer concerned.

The challan contains no indication whatever that any such direction or order Was given and that the petitioner had contravened or violated it. As I have already indicated, obstruction to traffic or creating disturbances by shouts at a public place is not per se sought to be punished by Section 62A, Calcutta Police Act.

It is the violation or infringement of an order made orally or in writing by the officer concerned which is the gist of the offence and which brings a person guilty of such violation or infringement within the mischief of the section. There is no indication whatsoever in the present, case that any direction or order was violated by the petitioner.

7. It appears to me that the prosecution in this case was misconceived. What the challan should have indicated was that a direction or order had been given to the

petitioner who had contravened it; in other words he shouted or caused obstruction to traffic despite the order or direction to the contrary.

8. The order stopping the proceedings was made by the learned Magistrate on 19-10-1954 and the learned Magistrate was moved the next day to revive the proceedings against the petitioner, and another. The petition which is on the record upon which the revival order is purported to have been passed appears to have been addressed by the Police Officer concerned to the Public Prosecutor who in his turn submitted it to the Magistrate with a prayer to revive the case. Thereupon the Magistrate made an order directing issue of notice to the petitioner to show cause why the proceedings against him should not be restored to file.

On 30-11-1954 the petitioner showed cause against the proposed revival of the proceedings; but the learned Magistrate by an order dated 14-12-1954 revived the proceedings against the petitioner and process was directed to issue. It is against this order of revival resulting in the issue of process that the present Rule is directed.

9. Mr. Dutt has, in the first place urged that the learned Magistrate erred in law in dealing with the proceedings in the manner in which he did. His argument has been that the proceedings against the petitioner had not been initiated upon a police report but upon a complaint made by the Police Officer concerned. That being so, Mr. Dutt submits, the proceedings could not possibly have been dealt with under Section 249, Criminal P. C. Section 249 in terms deals with proceedings in a summons case which have been initiated other-wise than upon a complaint. If Mr. Dutt's contention is correct, then of course, Section 249 of the Code would have no application. But there can be no manner of doubt whatever that the proceedings did originate with a police report and a police challan was in fact submitted against the petitioner and another on which the Magistrate took cognizance.

It is indeed difficult to appreciate Mr. Dutt's contention that it was not really upon a ' police report but upon the complaint of a Police Officer that the proceedings had started. This contention is repelled by the definition of complaint itself contained in Section 4(h) of the Code which expressly excludes the report of a police officer

and secondly by the distinctive procedural rule embodied in Section 200 which cognizance of offence upon a complaint brings into play.

No materials whatever were placed before this Court from which it could reasonably be expected to come to the conclusion that the proposition contended for by Mr. Dutt was correct. On the other hand, the materials on the record make it abundantly clear that it was upon the police report that the proceedings had originated and upon such report the Magistrate had taken cognizance of the offence under Section 190(1)(b), Criminal P. C.

10. If the proceedings had their origin in a police report and if cognizance had been taken on such report there can be no manner of doubt that Section 249, Criminal P. C. would be attracted. That section occurs in the chapter dealing with the trial of summons cases. There can be no doubt that the offence which was alleged against the petitioner was a summons case offence and therefore the procedure for the trial of such offence is prescribed in Chap. 20 of the Code. If that Chapter applies then it must be held that the Magistrate had jurisdiction to stop the proceedings at any stage without pronouncing a judgment either of acquittal or of conviction and release the accused.

11. Mr. Dutt has also contended that in any event the revival of these proceedings against the petitioner is neither legal nor - proper. So far as the question of legality of the revival of the proceedings is concerned I am bound to say that if the proceedings did originate in a police report then there was nothing Wrong in law in the Magistrate having dealt with them under Section 249, Criminal P. C.

The legal consequence of an order made under Section 249 of the Code would merely be to stop the proceedings without the learned Magistrate having had to proceed to judgment either acquitting the accused or convicting him. The legal effect of an order made under Section 249 is merely stoppage of proceedings and 'release' of the accused.

It is not even discharge. There is nothing in Chap. 20 of the Code to indicate that a person proceeded against for committing what may be described a summons case offence could ever be discharged. By Section 247 which occurs in that Chapter the

Magistrate is directed to 'acquit' the accused upon the happening of a certain contingency mentioned in that section.

Therefore it might be either an order of acquittal made under Section 247 of the Code or an order stopping the proceedings under Section 249 of the Code. Chapter 20 knows nothing of discharge whereas the Chapter dealing with the trial of warrant cases does contain appropriate provisions for the discharge of an accused person.

These considerations apart even on general principles, I cannot agree with the contention raised by Mr. Dutt that the Magistrate purporting to act under Section 249 of the Code has no power to revive the proceedings. The Magistrate who makes an order staying proceedings under Section 249 of the Code does, I think, possess sufficient powers to remove the order of stay and proceed further.

The order made by him could very well be lifted by himself and the proceedings which had once become moribund may be touched into life. It cannot be argued either that an order stopping proceedings under Section 249 of the Code can ever operate as an acquittal. As a matter of fact the explanation to Section 403, Criminal P. C. takes the case contemplated in Section 249 of the Code out of the ambit where previous 'acquittal' might be pleaded in bar.

The explanation attached to Section 403 of the Code makes the position perfectly plain that the stopping of proceedings directed under Section 249 can never be taken as an order of acquittal for purposes mentioned in Section 403 of the Code. I therefore cannot possibly agree with the contention of Mr. Dutt questioning the legality of the order made under Section 249 of the Code.

The objection on the score of alleged impropriety in reviving the proceedings is clearly met by the reasons given by the learned Magistrate himself.

12. Returning to the substantial question as to the requirement of Section 62A, Calcutta Police Act, I feel bound to reiterate that it is impossible for the accused person proceeded against under that section to offer any explanation of his conduct if the real gravamen of the offence is not indicated in the challan or the

charge-sheet. The offence dealt with under Section 62A, Calcutta Police Act being a summons case offence the provisions of Section 242 of the Code will be automatically attracted as soon as the trial commences.

That section requires that when the accused appears or is brought before the Magistrate the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show as to why he should not be convicted. Therefore a person who is being prosecuted under Section 62A, Calcutta Police Act has a right to know with precision what exactly is the offence which he has committed in order that he might make an effective answer to the allegations made against him.

In this view it is not merely a question of technical informality which has occurred in the present case. I consider this defect goes to the root of the matter. It is necessary that the accused should be told what exactly is the offence which he has committed and in the present case the challan being the only document before the Magistrate, the first duty which the latter had to discharge was to put questions to the accused and take his plea under Section 242 of the Code.

It would be extremely unfair to the Magistrate to expect that he would succeed by a process of clairvoyance, so to say, to get into the mind of the prosecuting Officer and obtain the gist of the real offence which does not find mention in the challan or the charge-sheet. It would be equally unfair to the accused to expect him to plead to a shapeless accusation which is inept on the face of it.

That being the position, I think in the present case the challan does not set out the necessary facts which constitute the offence alleged against the petitioner. As I have already pointed out the statement of facts contained in the challan does not amount to an offence at all under Section 62A, Calcutta Police Act.

13. In these circumstances, the proceedings pending against the petitioner must be quashed.

14. The Rule is accordingly made absolute, Proceedings quashed.

