

Malay Banerjee Vs. State and ors.

Malay Banerjee Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/861985

Court : Kolkata

Decided On : Jul-20-1966

Reported in : AIR1967Cal352

Judge : T.P. Mukherji, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 173, 190(1), 251A and 252; [Essential Commodities Act, 1955](#) - Sections 7(1) and 11

Appeal No. : Criminal Revn. No. 534 of 1966

Appellant : Malay Banerjee

Respondent : State and ors.

Advocate for Def. : Subhash Chandra Bhattacharjee, Adv. for Opposite Party (Nos. 2 and 3) and ;Arun Kumar Mukherjee, Adv.

Advocate for Pet/Ap. : Nikhil Chandra Talukdar and ;S.L. Sharma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

T.P. Mukherji, J.

1. The petitioner who was one of the five accused in a case started against them under Section 7(1)/10 of the Essential Commodities Act, has obtained the present Rule against the order of the trying Magistrate directing trial in accordance with the procedure laid down in Section 251A of the Criminal Procedure Code. The learned Magistrate relied upon two decisions of this Court, Nanakraj Pandit v. The State, 1961 (1) Cri LJ 644 (Cal) and an unreported decision in the case Ramprosad Gupta v. State of West Bengal, decided by S.K. Sen and Amaresh Roy, JJ. on May 31 1962 (Cal) as authorities for his decision on the point.

2. The five accused in the case were arrested by the police in course of the investigation of the offence concerned and on 21-12-1985 a prosecution report was submitted against them. On February 14, 1968, copies of documents as contemplated in Section 178 (4) of the Code were furnished. Thereafter the question arose as to whether the procedure under Section 251-A or that under Section 252 of the Code should be followed. After hearing both parties the learned Magistrate came to the finding which is the subject matter of the present Rule.

3. Mr. Talukdar appearing in support of the Rule contended that cognizance of the offence having been taken on the report in writing of a police officer under Section 11 of the Essential Commodities Act and not on a police report under Section 173 of the Code, the learned Magistrate should have come to the finding that the procedure under Section 252 of the Code was the proper procedure to follow for the purpose of the trial. He argues that although the two decisions of this Court referred to by the learned Magistrate do support the order passed by him, those decisions require reconsideration in view of the decision of the Supreme Court in the case Bhagwati Saran v. State of U. P., : [1961]3SCR563 . So far as this Supreme Court decision is concerned Mr, Talukdar refers particularly to the observation in paragraph 17 of the Judgment as reported, to the effect that:

'It is to be noticed that the report is required to contain only a statement of facts constituting the offence and its function is not to serve as a charge sheet against the accused person'

and further that-

'..... its function being merely to afford a basis for enabling the Magistrate to take cognizance of the case'.

The argument was that if the report under Section 11 of the Essential Commodities Act is not a charge sheet, it is not a police report under Section 173 of the Code and if so again the procedure under Section 251A of the Code which prescribes the procedure for trial of cases instituted on a police report cannot apply in the cases of prosecutions under the Essential Commodities Act.

4. The argument of Mr. Talukdar that the Division Bench decision of this Court in Ramprosad Gupta's case, unreported decision D/-31-5-1962 (Cal.) (supra) requires reconsideration in view of the Supreme Court decision above, overlooks the fact that that decision was considered by the Division Bench and was not considered to have any hearing on the question at issue inasmuch as the question as to the procedure for the trial of the case did not arise therein as the trial in that case had commenced before the Criminal Procedure Amendment Act of 1955 had come into force. The question that was mooted before the Supreme Court in that case was whether the report of the police officer under Section 11 of the Essential Commodities Act 1946 was in conformity with the requirements of that section. The contention of Mr. Talukdar that the decision in Ramprasad Gupta's unreported decision D/-31-5-1962 (Cal) (Supra) requires reconsideration must therefore be rejected.

5. The next argument of Mr. Talukdar that the report of the police officer under Section 11 not being a police report under Section 173 of the Code the procedure prescribed in Section 251-A of the Code would not be applicable to trials for offences taken cognizance of under that Section finds support in the case *Manikchand Choudhury v. The State*, : AIR1958 Cal324 wherein it was held that the 'police report' in Section 207-A of the Code means a report of an offence submitted by the Officer-in-charge of a police station as a result of investigation under Chapter XIV of the Criminal Procedure Code which means a report under Section 173 of the Code. The case further held that if the police report is not one submitted after an investigation carried on under Chapter XIV of the Code, the trial of an offence taken cognizance of on that report could not be held in accordance

with the procedure of Section 207-A of the Code. The same arguments which might be directed in favour or against the procedure under Section 207-A would apply with equal force to the procedure laid down in Section 251-A of the Code.

6. The decision of this Court in Manick-chand's case, 92 Cal WN 94 : (AIR 1958 Cal 824) was cited with approval in the case Chittaranjan Das v. State of West Bengal, : AIR1963 Cal191 . In Chittaranjan Das's case, : AIR1963 Cal191 the police submitted before the Magistrate an application purporting to be a petition of complaint in respect of charges under Sections 866, 120-B/866, I. P. C. The Magistrate took cognizance on that application and directed issue of warrants. The accused after entering appearance asked for copies of the statements and documents on which the prosecution wanted to rely contending that the complaint was in the circumstances of that case virtually a report after investigation under Section 173 of the Code. That prayer having been refused by the Magistrate the matter came upto this Court and it was held that the report of a police officer cannot be treated as a complaint though it be submitted in the form of a petition of complaint, and that it must be treated as a report falling under Section 190 (1) (b) of the Code. In that case the offence having been investigated by the police, the complaint of the police officer was treated as a police report under Section 173 of the Code and it was held that the accused would be entitled to copies as prayed for.

7. There is no question thus that in the case of cognizable offences where there is a police report or report of the police officer submitted as a result of an investigation held under Chapter XIV of the Code that report is a 'police report' as contemplated in Section 173 of the Code and for the purpose of trial of the offence it is the procedure laid down in Section 251-A or in Section 207A of the Code that will have to be followed. If, however, the offence be a non-cognizable one but still there has been an investigation into the same without the order of a Magistrate under Section 155(2) of the Code, the report that is ultimately submitted to the Magistrate would not be the result of an investigation under Chapter XIV of the Code and the question might very well arise as to which of the procedures prescribed in Sections 251A and 252 of the Code respectively will apply for the trial of the offence concerned. An offence under Section 7 of the Essential

Commodities Act is not a cognizable offence according to Mr. Talukdar and for the purpose of an investigation into this case there was also no direction of the Magistrate under Section 155 of the Code as the record shows. The report that was submitted thus could not according to him be a report under Section 173 of the Code and although being a report in writing of a police officer the Magistrate could take cognizance thereof under Section 190 (1) (b), trial for that offence could not proceed in accordance with procedure prescribed in Section 251-A of the Code. As authority for the proposition that an offence under Section 7 of the Essential Commodities Act is a non-cognizable one reliance is placed on the Supreme Court decision in the case *Pravin Chandra Modi v. State of Andhra Pradesh*, : 1965 CriLJ250 .

8. Under the second schedule of the Code of Criminal Procedure relating to 'offences against other laws' offences punishable with imprisonment for three years and upwards, but less than seven years, are cognizable offences. Under Section 7(1)(a)(ii) of the Essential Commodities Act contravention of any order excepting those made under Clause (h) or (i) of Sub-section (2) of Section 8 are punishable with imprisonment for a term of three years and also with fine. The present case was started for an offence constituted by contravention of Clauses (4) and (5) of the Iron & Steel Control Order 1956 and the offences thus are covered by Section 7(1)(a)(ii) of the Essential Commodities Act and would attract imprisonment for a term which may extend to 3 years, thereby making them cognizable offences. If so, they would be liable to be investigated under Chapter XIV of the Criminal Procedure Code and the report that is submitted as result of that investigation would be a 'police report' within the meaning of Section 173 of the Code and there would be no difficulty in holding that the procedure prescribed in Section 251-A of the Code would apply for the trial of the offences concerned.

9. Even if it can be conceded that the offences were non-cognizable there is in this case the report of a police officer in respect of an offence of which cognizance was taken under Section 190(1)(b) of the Code. It was held by the Supreme Court in *Pravin Chandra Modi's case*, : 1965 CriLJ250 (Supra) as follows :

'In our opinion the position is clear that such reports (Report of an Excise or a Customs Officer) if they are regarded as made under Section 190(1)(b), must attract the provisions of Section 251-A of the Code.'

This observation of the Supreme Court is a complete answer to Mr. Talukdar's argument that trial of offences cognizance whereof are taken not on the basis of a police report under Section 173, but on the basis of the report of a police officer submitted in a non-cognizable case cannot be held in accordance with the procedure prescribed in Section 251-A of the Code. Section 251-A prescribes the procedure for the trial of cases instituted on a police report. Section 252 prescribes the procedure for trial of cases instituted otherwise than on a police report. Under Section 190 of the Code, cognizance of an offence may be taken either on a complaint or on a report in writing by any police officer or upon information received from any person other than a police officer or upon the Magistrate's own knowledge or suspicion. Section 251-A prescribes the procedure for trial of offences whereof cognizance is taken upon the report in writing of a police officer while Section 252 prescribes the procedure for trial of offences of which cognizance has been taken in any of the other manners stated above. The report of a police officer made otherwise than under Section 173 of the Code cannot be a 'complaint' as defined in Section 4(1)(h) of the Code. It is also not an information received from any person other than a police officer so as to attract Section 252 of the Code for the purpose of the trial of the offence mentioned therein. If Section 252 be excluded the procedure prescribed in Section 251-A of the Code must be attracted and the term 'police report' in that Section must be held to have been used by the Legislature in a generic sense including both the police report under Section 173 of the Code as also the report of a police officer. In any event, Pravin Chandra Modi's case, : 1965 CriLJ250 (Supra) will serve as the authority for a finding that the procedure prescribed in Section 251-A of the Code will be attracted to the trial of cases cognizance whereof is taken under Section 190 (1)(b) of the Code on the report of a police officer submitted under Section 11 of the Essential Commodities Act.

10. In view of the above I must hold that the learned Magistrate was perfectly justified in directing trial of the case in accordance with the procedure laid down in

Section 251-A of the Code. The Rule accordingly stands discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com