Prasanta Kumar Mukerjee Vs. the State

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Court : Kolkata

Decided On : Mar-14-1951

Reported in : AIR1952Cal91,55CWN619

Judge : Das Gupta and ; P.N. Mookerjee, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 12, 12(2), 256, 352 and 537

Appeal No. : Criminal Revn. No. 39 of 1951

Appellant : Prasanta Kumar Mukerjee

Respondent : The State

Advocate for Def. : Ajit Kumar Dutt, Adv.

Advocate for Pet/Ap. : Sadhan Gupta and ; Rabin Mitra, Advs.

Judgement :
ORDER

1. The petitioner was tried along with several other persons on a charge under Section 147, I. P. C. The trial took place inside the Hooghly Jail, and was by a Magistrate who was posted at Serampore. On the 23rd of August, 1950, after examining 5 prosecution witnesses inside the jail, the learned Magistrate framed a charge under Section 147, I. P. C. The Magistrate without fixing a fresh date for

the cross-examination of the witnesses called upon the accused to cross-examine the witnesses then and there and accordingly when the witnesses had been cross-examined, the accused was examined under Section 342, Cr. P. C. No defence was adduced and after hearing the argument, 6-9-50 was fixed for judgment, and was delivered on that date convicting the accused and sentencing him to rigorous imprisonment for 6 months. An appeal against this order was dismissed by the Sessions Judge of Hooghly but the sentence was reduced to rigorous imprisonment for three months.

2. The first contention raised on behalf of the petitioner is that the accused has been prejudiced in the trial by the illegal act of the learned Magistrate in not proceeding in the manner as laid down in Section 256, Cr. P. C. for e cross examination of the prosecution witnesses. This section lays down the mode in which the Magistrate has to proceed after charge has been framed and the accused asked to plead to the charge. It lays down that

'if the accused refuses to plead, or does not plead, claims to be tried, he shall be required to state, at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken.'

The important words here are 'at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith'. These words were inserted by the amending Act of 1923. They are intended to secure to the accused the benefit of some time to decide which witnesses to examine and to make preparations for cross-examination including, where necessary, the engagement of a lawyer for this purpose. The Legislature took care to provide that in suitable cases the Magistrate might refuse to give time which it is ordinarily intended that he would give, but in such cases he must record his reasons in writing. Clearly therefore, where the Magistrate without any reasons asks the accused forthwith whether he wishes to cross-examine any of the witnesses, he is contravening the provisions of law. If there are good reasons on the face of the record, the mere omission on the part of the Magistrate to record

the reasons, may be an irregularity curable under Section 537, Cr. P. C. But when the Magistrate without any apparent reason refuses to give time as contemplated in the Code to be the ordinary rule, this is a contravention of the provisions in law which amounts to an illegality and which is not cured by the provisions of Section 537, 'Cr. P. C. It is easy to see in any case, that the accused in most cases would be prejudiced by this refusal of the Magistrate to give time as contemplated by this section so that Section 537 would be of no assistance. In view of this, we have come to the conclusion that the order of the Magistrate convicting the accused should be set aside and a retrial should be ordered.

3. It was contended next by Mr. Gupta on behalf of the petitioner that the trial has also been vitiated by the fact that a Magistrate of Serampore held a trial at Hooghly. In view however of the provisions of Section 12, Cr. P. C., which deals with the appointment of Magistrates of the first, second or third class in any district outside the Presidency towns and also lays down that the Provincial Government may from time to time define local areas within which such persons may exercise such powers we are unable to accept this contention. Subsection (2) of Section 12 provides that 'Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district'. We have examined the order appointing the trying Magistrate in the District of Hooghly and posting him to Serampore. We have not been shown anything to indicate that there was any specified local area within the district within which the Magistrate was to exercise his powers. The conse- which is not cured by the provisions of Section 537. therefore is that the jurisdiction and powers of this Magistrate extended throughout the District of Hooghly.

4. Lastly, it was contended by the learned Advocate that the trial inside the Hooghly jail was improper and prejudiced the accused in his defence. The ordinary rule is that the trials are to be held in open Court. While there is nothing in law to prevent a Magistrate from holding open Court inside a jail wide discretion being given to the Magistrate by Section 352, Criminal P. C, the very nature of a jail building and the restrictions which are necessarily imposed on any one visiting jail, would make it ordinarily impossible for a Magistrate to hold open Court in jail. There may be circumstances in which for reasons of security for the accused or for

the witnesses or for the Magistrate himself or for other valid reason the Magistrate may think it proper to hold Court inside a jail building or some other building and restrict the free access of the public. There is however nothing in the record of this case to show that there was any such reason which made the Magistrate decide in favour of holding the trial in a jail. All we can find on the record is that after the case was transferred to this Magistrate, he passed an order that the trial would be held in jail. There is nothing in the order sheet nor anywhere else on the record from which we can find the slightest indication as to what weighed with the Magistrate in ordering trial in the Jail at Hooghly instead of the usual place for trial viz., the Court building at Serampore. Mr. Dutt appearing for the State has informed us of the existence of a circular issued by the Secretary to the Government of West Bengal directing District Officers that all criminal cases in which detenus and political prisoners are involved should so far as possible be held inside the jails and asking that Magistrates should be informed accordingly. Mr. Dutt could not show us any provision in law which authorised the Secretary to the Government to issue such instructions' to Magistrates in the matter of holding trials. In our judgment the issue of such a circular is illegal and unwarranted interference with the administration of justice and has no validity in law. We can therefore take no notice of such a circular. We therefore, set aside the order of conviction and sentence passed by the learned Magistrate and order that the case be' retried in accordance with law after the accused has been given proper opportunity of cross-examining the witnesses. The trial should be resumed at the stage reached just after charge was framed. The Magistrate should hold the trial in open Court in the Court building at Serampore, unless he, on exercise of his judgment uninfluenced by any circular of the Government, secret or otherwise, is of the opinion that the trial should be held elsewhere. His attention is drawn in this connection to the provisions of the Code of Criminal Procedure as contained in Section 352.

5. The rule is accordingly made absolute. Pending trial the petitioner should be released on bail to the satisfaction of the District Magistrate.