

N.R. Ghosh Vs. the State

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Court : Kolkata

Decided On : Feb-10-1955

Reported in : AIR1955Cal540,1955CriLJ1353,59CWN509

Judge : Guha Ray and ;Sen, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 403

Appeal No. : Criminal Revn. No. 930 of 1954

Appellant : N.R. Ghosh

Respondent : The State

Advocate for Def. : J.M. Banerjee, Adv.

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

Judgement :

Guha Ray, J.

1. This is a Rule for quashing the proceedings pending against the petitioner N. R. Ghosh in the court of a Magistrate at Darjeeling. It appears that the present petitioner along with another, namely, one S.K. Bose had been put on trial in the court of the Special Judge at Alipore under Section 120B read with Section 409, I. F. C. and Section 5(2) Prevention of Corruption Act (Act 2 of 1947) and also under

Section 409, Indian Penal Code.

2. The prosecution' case is that between September and November, 1948, 'S.K. Bose who was the S. D. O., M. E. S., Darjeeling and the petitioner who was a clerk in charge of the M. E, S. office there misappropriated a large amount of money about Rs. 15,000/- which represented the sale proceeds of bamboos and thatches from the air-field at Hashimara. At the trial S.K. Bose was convicted but the petitioner was acquitted.

On appeal by S.K. Bose from his conviction a Bench of this Court held that Section 4(1), West Bengal Criminal Law Amendment (Special Courts) Act, 1949 was 'ultra vires' and therefore the trial was without jurisdiction. The appeal was accordingly allowed and the conviction and the sentence of S.K. Bose were set aside and it was directed that the appellant that is, S.K. Bose must be regarded as an undertrial prisoner awaiting retrial if Government so decided.

Thereafter fresh proceedings were started before Mr. J.C. Lodh, Special Judge at Alipore and the petitioner along with S.K. Bose were summoned to stand their trial in the same case. The petitioner at once made an application before the Special Judge that the proceedings against him were not maintainable and the same should be quashed. That application was, however, rejected. Against the same the petitioner moved the High Court in revision and that was registered as Criminal Revision Case No. 965 of 1952.

During the pendency of that revisional application the Government by another notification withdrew the case from Shri J.C. Lodh and transferred it to another Special Court at Darjeeling and a fresh petition of complaint was filed in that court and thereupon the learned Judge presiding over the Special Court ordered issue of summonses on the petitioner as well as S.K. Bose. S.K. Bose once again moved the High Court for quashing the proceedings.

On that petition it was held by a Bench of this Court that the Special Court at Darjeeling had no jurisdiction to try the case instituted before him and so the proceedings were quashed. The proceedings in that court were quashed and the proceedings pending against S.K. Bose in the court of the Sub Divisional

Magistrate at Darjeeling were directed to be disposed of according to law. After the disposal of this case in this court the Supreme Court decided in -- 'Kedarnath Bajoria v. State of West Bengal', : 1953 CriLJ1621 (A), that Section 4(1), West Bengal Criminal Law Amendment (Special Courts) Act, 1949 was 'intra vires' the Constitution.

3. It is now contended on behalf of the petitioner that the Supreme Court having found Section 4(1), West Bengal Criminal Law Amendment (Special Courts) Act 1949, to be 'intra vires' the petitioner must be held to have been tried and acquitted by a court of competent jurisdiction. The statement of the law as enunciated by the Supreme Court must be held to be a correct statement of the law at all times and as the petitioner has been tried by a court of competent jurisdiction and acquitted that acquitted under Section 403, Criminal P. C., is a bar to a fresh trial.

This proposition is undoubtedly correct but then the decision in the criminal Revision Case No. 965 of 1952 discharging the Rule obtained by the present petitioner for quashing the proceedings pending against him before Shri J.C. Lodh seems to us to stand in the way. The present proceedings are really a continuation of the proceedings pending before Shri J.C. Lodh although the case before the revisional application was disposed of was transferred from him to another court at Darjeeling.

At the time when this revisional application was disposed of the High Court had not decided the case already referred to and the revisional application was disposed of on what now appears to be an incorrect statement of the law. Even so, as the petitioner is bound by that decision, so are we, for it is not open to us to review the decision of this Court. In this view although we are of opinion that where a person has been acquitted in a previous trial on merits he should not be put on his trial again, we are really helpless in the matter. It will be now for the State Government to consider whether in the circumstances the proceedings against this petitioner, should not be withdrawn.

4. With these observations we discharge the Rule.

Sen, J.

5. I agree, but in view of the importance of the point raised I would like to add a few words. Section 403, Criminal P. C., provides that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence. The present petitioner was tried originally along with S.K. Bose by the Special Judge at Alipore and acquitted while the co-accused S.K. Bose was convicted.

In the appeal preferred to the High Court by S.K. Bose, this Court, set aside his conviction observing that the Special Court at Alipore had no jurisdiction to try the case, as Section 4(1), West. Bengal Criminal Law Amendment (Special Courts) Act, 1949 under which the allotment was made by Government was 'ultra vires' of the Constitution. Though the conviction of the co-accused Was only set aside, in view of the decision that the Court was without jurisdiction, it is clear that the acquittal was also not by a court of competent jurisdiction and therefore the Government regarded the acquittal as set aside and allotted the case of the present petitioner along with S.K. Bose to the Special Court of Shri J.C. Lodh.

When the present petitioner objected to this Court that he could not be tried again and prayed for the quashing of the proceedings against him. This Court 'held in the order already referred to by my learned Brother that since the acquittal was by a court without jurisdiction the petitioner could not get the benefit of Section 403, Criminal P.C. It must be held that the acquittal by the court of Sri S.C. Dutta Gupta Special Judge at Alipore no longer remained in force when Chunder J., passed his order on 19-3-1953.

Accordingly the petitioner could no longer get the benefit thereof under Section 403, Criminal P. C., on a subsequent change in the law introduced by the Supreme Court decision in ' : 1953 CriLJ1621 (A)'. There cannot, therefore, be any ground for holding that the petitioner is now entitled to the benefit of Section 403, Criminal P. C. Accordingly I agree with my learned brother that there cannot be any quashing of the proceeding.' It will be for the Government to consider whether the petitioner who was once acquitted should again be placed on trial.

