

**Rita Sengupta Vs. the State**

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**Court :** Kolkata

**Decided On :** Mar-02-1993

**Reported in :** (1993)1CALLT217(HC)

**Judge :** Rabin Bhattacharyya, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 244, 245, 245(3) and 249; ;West Bengal Code of Criminal Procedure (CrPC) (Amendment) Act; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 247, 253, 254 and 258; ;[Constitution of India](#) - Article 21; ;Indian Penal Code (IPC) - Sections 120B and 420

**Appeal No. :** Crl. Rev. No. 233 of 1989

**Appellant :** Rita Sengupta

**Respondent :** The State

**Advocate for Def. :** Amit Talukdar, Adv.

**Advocate for Pet/Ap. :** Kukti Prasanna Mukherjee and ;S.P. Talukdar, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Rabin Bhattacharyya, J.**

1. This Criminal Revision is directed against the order passed by the learned 2nd Special Court, Calcutta dated 15.7.88 in case No. 4 of 1982.
2. The story briefly : The profile of the prosecution case is that one Dilip Kr. Ghosh is hauled up for committing offences under Section 420 read with Section 120B of the Indian Penal Code, 1860.
3. While the petitioner was working as an employee of Anthropological Survey of India, he availed himself of the leave travel concession facilities provided by the Govt. which included both railway and bus fare. He also claimed such concessional fare for the to and fro journey for self and also for his dependants who actually were not his dependants. He put up a final bill, dated 26.6.79, for a sum of Rs. 3,189.10, on the basis of a money receipt issued by her who was one of the partners of the travelling agency conducting the tour.
4. Ultimately, it came to the surface during an inquiry that the journey was never undertaken in the 1st class and the money receipt pivoting the claim submitted on 26.6.79 sprang up from conspiracy. The money receipt even if granted, as highlighted in the revisional application, will not constitute any offence as neither she was the recipient of the money nor she created any false or forged document. The learned trial court on analysis of the 17 witnesses examined for the prosecution framed charge not only against Dilip Kr. Ghosh but also against the instant revisionist under Section 120B read with Section 420 of the I.P.C.
5. The charges were read over and explained to the accused persons who pleaded not guilty to the charges.
6. One of the accused, Rita Sen Gupta has come up before me in revision for a quashing of the charge and for other incidental reliefs.
7. The point for decision in the revision is, if the court of revision could and should interfere with the order complained of.
8. The learned Advocate, Mr. Mukherjee, appearing for the revisionist, has put forward an argument that framing of charge contrary to the materials on record has occasioned glaring miscarriage of justice. The element of instigation, intention,

wilul misrepresentation and criminal conspiracy is manifestly absent. There is no strength giving factor dominant in the case which could afford circumstances for the court to frame charge against the revisionist. More so, it has been emphatically contended that the dominant element of criminal culpability is the mens rea, since conspicuously absent, the framing of charge is unwarranted demanding a clear discharge or acquittal of the accused in; the perspective of amended Section 245 of the Code of Criminal Procedure, 1973.

9. The revisionist has vindicated her grievance about the absence of element aforementioned liabing her to no penal action. But, we should not ignore that conspiracy is secret in its origin which requires excavation of facts to substantiate the offence.

10. In my view, these are details which are to be gone into during the time of trial and a detailed inquiry cannot be embarked upon at this stage.

11. I refrain myself from making any inflated or deflated remark about the disputed money receipt, the fate of which could only be decided in the trial. It will be too early to conclude that the money receipt, Exhibit 6 is patently devoid of substance and spurious.

12. There is another important legal feature which could hardly be ignored by a court of law. It is admitted on all hands that it is a warrant case instituted on complaint controlled and/or regulated by the provisions of Sections 244, 245 and 249 of the Code of Criminal Procedure. They correspond to Sections 253, 254 & 258 of the old Code of 1898. The words and expressions employed in the sections referred to above of the old Code did not in truth and substance undergo any change in the new Code or there was no major shake up of those provisions. Incidentally, it may foe pointed that in the instant case the charge has been framed which has been read over and explained to the accused. She pleaded not guilty to the charge and claimed to be tried. It is the fundamental principle of law that could be safely called out from aforenoted sections that once a charge is framed, the Magistrate has no power to cancel under the Code the charge and reverse the proceedings to the stage of Section 247 which is analogous to Section 253 of the old Code and discharge the accused. It is undisputed that trial in a warrant case

starts with the framing of charge ; prior to it; the proceedings are only an inquiry. After the framing of charge, if the accused pleads not guilty, as in the instant case, the Magistrate is required to proceed with the trial in the manner provided in sections 244, 245 and 249 of the Code to a logical end.

13. Yet another important point has been given wide publicity by Mr. Mukherjee during his argument to reap the benefit of State amendment of Section 245 of the Cr. P.C., 1973. Section 245 of the Cr. P.C., 1973 has suffered an amendment made by the State. The pre-amended and post-amended section is catalogued below for appreciation:

#### Pre-amended

'245. When accused shall be discharged.-If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.'

#### Post-amended (State Amendment) West Bengal

After Sub-section (2), insert Sub-section (3) as follows :'(3) If all the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfied the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused.'- W.B. Act 24 of 1988. Section 5.

14. According to Mr. Mukherjee, that introduction of sub-section (3) to Section 245 of the Cr. P. C, an accused is, therefore, entitled to discharge or acquittal, as the case may be, by the reason of failure of the prosecution to produce all its evidence within 4 years from the date of appearance (underlined by me)\*. It evidences,

therefore, that non production of all evidence within the stipulated or prescribed period by the prosecution from the date of appearance of the accused has advanced the discharge or acquittal which the accused by law is entitled to avail of.

15. The amended legislation, therefore, shows, according to Mr. Mukherjee is retroactive in operation where benefit stems from it, could not be denied to the accused. It could be made applicable even to pending proceedings, as argued. According to him, the object of the legislation in the perspective of its retroactivity and appropriately applicable to pending proceedings by amending the said section is to ensure the speedy trial as it flows from the very broad sweep of Article 21 of the [Constitution of India](#).

16. The element of Article 21 of the [Constitution of India](#) and Section 245(3) of the Cr. P. C, 1973 does not afford unfettered liberty to the prosecution to prolong the proceeding by adopting dilatory tactics.

17. In the instant case, as argued, the accused appeared on 22.1.83, and the evidence before charge was complete on 15.7.88. It is, therefore, inescapable, according to him, that the case verges on sub-section (3) to Section 245 of the Cr. P. C, 1973. To streamline the case of the accused, the right flowing from Section 243(3) of the Cr. P. C, 1973 could never be jettisoned.

18. The learned court below, since overlooked the magnitude of the amendment, in the backdrop of Article 21 of the [Constitution of India](#), the consequence is disastrous as the accused is to go through the ordeal of trial.

19. This is the sumumbonum of his argument against the order complained of.

20. The claim has been disputed by the learned Advocate Mr. Hazra, appearing for the State. The solitary argument advanced by him is that, that the accused is not clothed with right to seek the discharge under the canopy of Section 245(3) of the Cr. P.C., 1973.

21. To evaluate the argument of the accused, if the amendment is examined in its proper perspective, it is admitted on all hands that the amendment never came

into operation with its publication in the gazette. It appears that assent of the President was first published in the Calcutta Gazette, extraordinary, Part-III, No. 548-L dated 14th of March, 1989. It is notorious from the short title and the commencement that 'This Act may be called the Code of Criminal Procedure (West Bengal Amendment Act) 1988 which shall come into force on such date as the State Govt. may, by notification by the official gazette, appoint'.

22. The word 'appoint' (underscored by me) Here printed in italics, has got a special significance. It is needless to say that the amendment became operative on 2nd of May, 1989 by a notification. Here a question has been raised about the date of coming into force the amendment.

23. It is the elementary principle of interpretation of statute that interpretation of a section should be made of the whole of it but not the part for the whole or vice versa. The title and general scope of the Act, it is needless to say, constitute the background of the context. 'The key to the opening of every law' is the reason and the spirit of the law-it is the animus imponentis, the intention of the law maker, expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of a particular phrase in a statute, that particular phrase is not to be viewed detached from the context meaning by this as well as the title and the preamble as the purview or enacting part of the statute. In the case of Poppatlal Shah v. State of Madras : 1953 CriLJ1105 , his lordship B. K. Mukherjee speaking for the court stated : 'It is settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and such word, phrase or sentence to be considered in the light of the general purpose of the Act itself. The principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso, The Supreme Court again in the case of Gurmej Singh v. Sardar Pratap Singh Kairon, : [1960]1SCR909 held, 'It is an elementary rule that construction of a section is to be made of all the parts together and that it is not permissible to omit any part of it : the whole section should be read together'.

24. In the background of the ratio decidendi held by the apex court in India and followed by other High Courts, the State amendment with reference to Section 245(3) cannot be read in isolation. It must be read as a whole. The amendment contains expressions of vital importance. The obligation has been cast upon the prosecution to produce all evidence within 4 years from the date of appearance of the accused only in respect of the cases arising out of Section 244 of the Cr. P. C, 1973. Such evidence of the prosecution must be produced within 4 years from the date of appearance of the accused failing which the accused would be entitled to discharge or acquittal unless the prosecution could satisfy the court that the Magistrate upon the evidence already produced and for a special reason there is a ground for presuming that it shall not be in the interest of justice to discharge the accused. The State amendment, as it appears from the notification, was made effective from 2nd of May, 1989 but not from 14th of March, 1989 when assent of the President was published in the Calcutta Gazette, Extraordinary, Part-III, No. 548-L.

25. In the background of the above, the 2nd of May is the appointed date when the amendment was brought into force as the expression, 'on such date' as the State Govt. may appoint by notification has got a wide significance. The dominant intention of the legislature can be gathered from the language used, the object indicated, the nature of rights affected, and the circumstances' under which the statute is passed.

26. The amendment, if made retrospective, there will be overwhelming confusion as neither the prosecution nor the accused would be in a position to secure the benefit available to each of them as both of them are entitled to natural justice. They are not exclusive of each other but inclusive of each other. If the accused is discharged or acquitted since 4 years have elapsed when the statute was not in force, the prosecution would be launched into great disadvantage. It will open the floodgate for the accused to flee from justice which is not the object of the legislation. We should not be oblivious that expression 'appearance' has got nexus with the adduction of 'all the evidence by the prosecution within 4 years'. The object for which the amendment was brought into existence is aimed at to strike a balance between the right of the accused and the right of the prosecution agency.

It is made effective from the date it declares. The discharge or acquittal of the accused by a court, formula of four years, regardless of the date of appearance of the accused will not strike any balance which will ultimately become an imbalance. Fixation of a date is, therefore, not an empty formality as the dominant intention of the legislature is reflected through it. No artificial meanings could, therefore, be attached to the 'date appointed', 'appearance of the accused' and 'conclusion of evidence within 4 years from the date of appearance'.

27. In the background of the amendment, according to me, following classes of cases may be contemplated :

(a) cases which are instituted otherwise than on police report pending' long before the amendment came into force and, therefore, the time specified therein ran out;

(b) cases which are pending where prescribed period is yet to expire, and

(c) cases relating to future complaints.

28. The circumstances listed above must come within the fold of Section 244 of the Cr. P. C, 1973.

29. In analysing the above, the cases coming within the pale of (a) pave no way for the prosecution to produce all its evidence within the time' prescribed as there is no scope to further appearance of the accused in the case. Criminal jurisprudence does not for a moment conceive of reappearance of the accused. Therefore, appearance of the accused and production of all evidence within 4 years of such appearance cannot be read in isolation or' piecemeal as the law does not encourage such manner or way of interpretation of the section or the statute. The acquittal of the accused straightaway for the expiry of the time, after the appearance of the accused, therefore, in my view, is not permissible. Such mechanical interpretation, I believe, offends the object of the amendment and the legislation, thus, frustrated.

30. The case coming within (b) may cover such cases where time is yet to expire. If one puts on such interpretation, it does not seem to be unreasonable and illogical.



31. The cases coming within (c) has no disturbing feature as it means that the amendment will apply to future litigation. About the third category of cases there could be little dispute about the application of the amendment.

32. In the premise, it will not be illogical to hold in the background of the date appointed for coming into force the amendment that it will apply to such cases where time still survives. The appointed date conveys a significant meaning. The court cannot arbitrarily interpret the statute and dispose of the issue which may push the adversary to impossible. To attribute retrospectivity to the amendment regardless of the date of appearance of the accused by overlooking the bearing of such date is not reasonable as we should not forget that the court cannot take the role of the legislature. It is not a case where judicial activism and judicial heroism could be brought into play. It is a case where interpretation should be made for dispensation of justice..

33. One may raise the vires of the-legislation as it makes an unreasonable classification for the category of the cases aforementioned of which I have taken note of anxiously. To that I could only say that the accused persons for the classification made above could not be equated with each other. They are neither similarly situated nor similarly circumstances. On the other hand, they represent each distinct class.

34. I have gone through the case of State of West Bengal, represented by the Public Prosecutor, High Court, Calcutta v. Suryamoni Mondal, 1991 C Cr Lr 194, where amended Section 245 was held to be retrospective without considering the far-reaching consequences of such amendment. It appears that the Hon'ble Court was not addressed on this aspect of the matter. Their lordships in the case of Satya Charan Das v. The State, 96 CWN 407 held that the state amendment with reference to Section 245 is retrospective inasmuch as the adjective law always operates retrospectively. But, when there are expression in the statute which adequately reflect the intention of the legislature about the date of coming into force the amendment, it is very difficult to conclude in the background of the appointed date that the adjective law verges on retrospectivity. The Hon'ble Court perhaps was not addressed by the parties about the import, meaning and

implication of the amendment which may likely to arise from the premises of different cases. The law laid down by their lordships in the case of Syed Mohammed Hasan v. K.C. Das, Dy. Chief Controller of Import & Export, 1991 C Cr Lr held in paragraph 10 that the procedural enactment enacted for the benefit of the accused would apply to all warrant cases instituted otherwise than on police report on the date when the above provision came into force i.e. on 2.5.89. The adjective law, therefore, cannot displace the appointed date fixed by the legislation. Thus, after considering the case of the rival parties in the background of the powers enjoyed by a court of revision under Sections 401 and 482 of the Cr. P. C, this is not a fit case where the court of revision could aid the claim of the revisionist.

35. In my view, the learned trial court after consideration of the materials on record framed charge against the revisionist which was not bristled with illegalities.

36. Accordingly, I am extremely slow to interfere with the order complained of as it does not remotely show that there is any abuse of the process of the court.

In the result, the revision fails.

Since the order has been passed in a Criminal Revision this day, the L.C.Rs., called for be transmitted to the concerned Court at once along with a copy of the order.

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