

The State Vs. Sadananda Darji and ors.

The State Vs. Sadananda Darji and ors.

SooperKanoon Citation : sooperkanoon.com/873880

Court : Kolkata

Decided On : Dec-06-1951

Reported in : AIR1952Cal563

Judge : P.B. Mukharji and ; P.N. Mookerji, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 185 and 185(1)

Appeal No. : Misc. Case Nos. 247 and 248 of 1951 (G.R. Case Nos. 52 and 56 of 1951)

Appellant : The State

Respondent : Sadananda Darji and ors.

Advocate for Def. : Nirmal Kumar Sen, Deputy Legal Remembrancer

Advocate for Pet/Ap. : Nirmal Chandra Chakravarti, Adv. for Nos. 1 and 3

Judgement :

P.B. Mukharji, J.

1. This is a reference to us from the District Magistrate of Midnapur under Section 185(1), Criminal P. C. That section provides that

'Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that

High Court.'

2. The question here before us on this Letter of Reference relates to two 'chars', Gurudaha 'char' and Gurgurahti 'char', in the bed of river Rupnarayan which runs between the two districts of Midnapur and Howrah. The question is in which district, Midnapur or Howrah are these two 'chars' situate. The question arises out of certain proceedings under Section 147/324, Penal Code in which the place of occurrence is said to be these two 'chars'. We have to determine which of the two Courts of Midnapur and Howrah has the jurisdiction to try these proceedings.

3. In the letter of reference of the District Magistrate he makes no statement or comment. He has only forwarded the records of the two cases, but has not enumerated the different contentions on the point of jurisdiction nor supplied any proof in support of either contention. The records of these two cases are silent on the point of jurisdiction that we have to determine on this Reference. Having regard to the form of the letter of reference which we find to be very unhelpful for the purpose of this Court we directed an enquiry in the department to find out if there were any prescribed rules for making reference under Section 185(1), Criminal P. C. It appears that there are definite instructions in the 'Criminal Rules and Orders', Vol. I as to how references under Sections 307, 374 and 438, Criminal P. C. should be submitted to the High Court but the 'Criminal Rules and Orders' do not contain any instructions as to how cases should be submitted to the High Court under Section 185(1), Criminal P. C. That is a lacuna which we consider should be filled up as soon as possible. The jurisdiction which this Court exercises under Section 185(1), Criminal P. C. is a jurisdiction of very great responsibility where this Court has to decide which of the two or more Subordinate Courts will be competent to enquire into and try offences and unless proper steps are taken to supply this Court with official records and materials in coming to a right decision on the point, we apprehend that there may be good deal of confusion. Immediate steps should therefore be taken by this Court to frame suitable rules for making references to this Court under section 185(1), Criminal P. C. so that it is ensured that before this Court decides the question of jurisdiction, at least all the available official records and authentic materials bearing on the point are duly placed before the Court. We direct the Registrar of the Appellate Side of

this Court to move in the matter.

4. Having regard to this situation it was thought desirable that notice should be issued to the Legal Remembrancer in this case. Mr. Sen for the Legal Remembrancer has appeared before us but he has stated that he received no instructions from the Government on the matter. That is regrettable. This Court would have expected that the Government, on so important a question where this Court has to decide between the competing claims of jurisdiction of different Subordinate Courts should give this Court the benefit of the Government's own records.

5. In these circumstances we find that the only materials that are available to us are those that have been placed before us by the accused in these cases. In the two affidavits filed by Jitendra Nath Mitra and affirmed on 19th November 1951 reference is made to certain materials. As they are official records we have taken them into consideration in coming to a decision in this case.

6. The first document is a communication between the two Collectors of the districts of Midnapur and Howrah. On 31st March 1949, the Khas Mehal Department of the Howrah Collectorate was making a reference to the Collector of Midnapur enquiring if there was any objection to the settlement of these sandy 'chars' within the bed of the river Rupnarayan stating that according to the settlement demarcation they fell within the Howrah District. Thereafter on 5th May 1949 reminder was sent to the Collector of Midnapur as well as the Sub-Divisional Officer, Tamluk. In the reminder it was also stated that 'it appears from the report that the entire river from Kolaghat upwards falls outside the district boundary line of Midnapur District'. It was pointed out that there was no 'char' within the district of Midnapur from Kolaghat upwards but there were some sandy 'chars' in some places within the district boundary line of Midnapur from Kolaghat to Goalkhali which appear and disappear during the rise and fall on lunar dates. We have also considered the Settlement Maps and the situation of these two 'chars' which certainly come within an area which is upward of Kolaghat.

7. The next document is the report of the Settlement Officer, Mr. D. C Gupta. In this report after making reference to certain memorandum and the

correspondence on the subject it is said that

'the said 'chars' near Kaijuri on the bed of the river Rupnarayan which according to the last district settlement records and maps fall entirely within the district of Howrah were surveyed on the annexed map. It is evidenced from the annexed map that the said 'chars' A and B locally known as Guru-daha have been formed on the bed of the said river Rupnarayan. This 'char' during the rains remains submerged under the river Rupnarayan.'

From this report as well as from a reference to a map mentioned there, it is quite clear that the Gurudaha 'char' is within the district of Howrah.

8. Certified copies of this report of the Settlement Officer, Mr. Gupta, made on 18th April 1951 as well as the certified copies of the correspondence between the Midnapur and the Howrah Collectors have been placed before us.

9. We have also been shown the settlement map and we have no doubt, on a reference to this map, that the two 'chars' in question would come within the district of Howrah and that the Howrah Court would be the Court of proper jurisdiction in these matters.

10. As these are official records on which we rely and as Mr. Sen appearing for the Legal Remembrancer states that he has no instructions we take it that these reports are records which are reliable. If they were not we have no doubt in our mind that the Government would have thought fit to give instructions to its own lawyer.

11. We, therefore, answer this reference by stating that the places of occurrence in these two cases being those two 'chars' are within the jurisdiction of the Howrah Court for the purposes of their trial.

12. We direct that the certified copies of the communication between the two Collectors and the reports of the Settlement Officer as well as the maps which Mr. Chakravarti on behalf of the accused produced before us be kept as part of the records of this Court.

13. Our decision should be communicated to both the District Magistrates of Howrah and Midnapur.

P.N. Mookerji, J.

14. I agree.

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