

**The State Vs. Chittaranjan Das**

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**Court :** Kolkata

**Decided On :** Dec-05-1963

**Reported in :** 1965CriLJ274

**Judge :** Amaresh Roy, J.

**Appellant :** The State

**Respondent :** Chittaranjan Das

**Judgement :**

ORDER

**Amaresh Roy, J.**

1. This is a Reference made under section 438 of the (Code of Criminal Procedure by a learned Additional Sessions Judge of Alipore recommending that a proceeding by way of a committal proceeding as a preliminary to a criminal trial now pending in the court of a Magistrate in that district should be quashed because of the legal bar under Section 403 (1) of the Code of Criminal Procedure. The facts that gave rise to the criminal proceedings and the Reference made by the learned Additional Sessions Judge are that on 6th June, 1959 an information was lodged in the Khardah Police Station that a girl aged about 15 years named Sandhya Kant Das Gupta was missing from the house of her mother in the Ghola Government Colony for refugees. Upon that information being sent to the Enforcement Branch of Calcutta Police, by a search the police recovered the girl

from the house of Ganesh Dey in Tollygunge within 24-Par-ganas and her statement was recorded and was treated as an F. I. R. The case was investigated by an Inspector of Police of the Enforcement Branch, Calcutta. According to the conclusions reached by the said Inspector there was a conspiracy entered into between Moni Prava Majumdar alias Mom Bala of SS/A, Asutosh Mukherjee Road, Bhowanipore, Ganesh Dey of Tollygunge, Chittaranjan Das of 29/A Kailash Bose Street and another person named Anil Chatterjee in pursuance of which conspiracy the girl Sandhya Rani was Kidnapped from her mother's house at Uholia in 24-Parganas by false and deceitful representations to her that she would secure a Job for Sandhya Rani. Sandhya Rani was brought to Moni Bala's house at 88/A, Asutosh Mukherjee Road and was taken on several occasions by Ganesh Dey to the house of Chittaranjan Das 29/A, Kailash Bose Street, it was alleged that Chittaranjan Das committed rape on the said minor girl Sandhya Ram on several occasions at 29/A, Kailash Bose. Street holding out the hope of giving her a job and that Ganesh Dey aided and abetted Chittaranjan Das in committing that offence of rape. It may be mentioned that Ganesh, Dey was a peon employed at the office of the Relief and Rehabilitation Department at Tollygunge where Chittaranjan Das was an officer. On these allegations a charge-sheet was submitted on 1st September 1959 against Chittaranjan Das and the other persons in respect of charges under Ss. 370, 376/109, 366 and 120B/366 of the Indian Penal Code before the Additional Chief Presidency Magistrate, Calcutta. That learned Magistrate took cognizance of the offence under Sections 370 and 376/109 of the Indian Penal Code and issued process against Chittaranjan Das and Ganesh Dey but he refused to take cognizance of the other offences, namely, offences under Sections 366 and 120B/366 of the Indian Penal Code as he held that he had no Jurisdiction to take cognizance and try those latter offences. The learned Magistrate discharged Monibala and Anil Chaterjee. On 1st September, 1959 prosecution again prayed for process against the said, two discharged persons but that was rejected. Thereafter on 24th September, 1959) the police submitted a supplementary charge-sheet against Chittaranjan Das and the other accused persons alleging offence under Section 120B/366 of the Indian Penal Code. The learned Magistrate again refused to issue process. Against that order a Revisional order was made to this Court and giving rise to Criminal Revision No.

1415 of 1959. By an order dated 19th; January, 1960 passed by this Court the order of the Magistrate refusing to issue process in respect of the offences under Sections 366 and 120B/366 of the Indian Penal Code was upheld but an observation was made that the prosecution might very well file a chargesheet before the Alipore Magistrate having territorial jurisdiction regarding those offences. It may be mentioned! that the difficulty about territorial Jurisdiction in respect of offences under Sections 366 and 120B/366 of the Indian Penal Code was felt in view of the Full Bench decision of this Court in the case Jiban Banerjee v. State reported in : AIR1959 Cal500 (FB), which decision has since been overruled by the Supreme Court; but that was after the commencement of present proceedings in the court of the Magistrate at Alipore. Before the said Full Bench decision was overruled by the Supreme Court and in those circumstances inspector Bamdeb Das filed a complaint in the court of the police Magistrate at Alipore alleging offences under Sections 366 and 120B/366 of the Indian Penal Code, against the four persons Moni Prava Majumdar alias Moni Bala, Ganesh Chandra Dey, Chittaranjan Das and Anil Chatterjee and upon that complaint processes were issued by the learned Magistrate at Alipore on 29th February, 1960 giving rise to the proceedings for quashing of which, the present Reference has been made.

2. In the meantime the proceedings in the court of the Presidency Magistrate, Calcutta for offence under Sections 370 and 376/109 of the Indian Penal Code against Chittaranjan Das and Ganesh Dey had continued and order of commitment was made and those two persons were tried in the City Sessions Court and they had been convicted in that trial and were sentenced to rigorous imprisonment of 4 years each. from that conviction an appeal was taken to the Hon'ble Supreme Court of India which had remained pending when the present Reference was made by the learned Additional Sessions Judge on. 15th December, 1962, That appeal in the Supreme Court has since been disposed of, the appeal having been dismissed and the orders of conviction and sentences affirmed against Chittaranjan Das and Ganesh Dey.

3. In the proceeding in the court of the Alipore Police Magistrate the accused persons were apprehended and during the pendency of that proceeding a dispute

arose whether the procedure under Section 207A of the Code of Criminal Procedure would apply whereby the accused persons would be entitled to have copies of documents and statements being given to them free of cost. The learned Magistrate rejected that prayer for copies, whereupon this Court was moved by one of the accused Chittaranjan Das, giving rise to Criminal Revision No. 1434 of 1900. That Revision Case was disposed of by a Division Bench of this Court on 18th April 1962, it being directed that in the particular circumstances of this case it was proper to treat the petition submitted by the Police inspector as a police report and to follow the procedure laid down in Section 207A of the Code of Criminal Procedure and that the accused should be given copies of documents mentioned in Section 173 (4) of the Code of Criminal Procedure.

4. The records of the case were received back by the court of Magistrate at Alipore in June 1962. The learned Magistrate took steps for furnishing copies as directed by this Court and fixed 6th August, 1962 and succeeding days for evidence. It appears that on 6th of August, 1962 a prayer was made before the learned Magistrate for stay of the proceedings in view of the pendency of the appeal of the two accused persons in the Supreme Court but that prayer was refused and the learned Magistrate directed to proceed to take evidence on the next day. On the next day, however, the learned Magistrate was informed that the court of Sessions had been moved and the proceedings before the Magistrate had been stayed by an order of the learned Sessions Judge. It appears from the record that the Sessions Judge had been moved against the order refusing to stay the proceedings and notices had been issued and Interim stay had been granted by the Sessions Judge but at the hearing of that application the learned Additional Sessions Judge Shri B. Pal held that

The issues in evidence in the two cases are completely divergent... Having regard to all this I conclude that no case of stay of proceeding of the enquiry against the petitioner till disposal of the appeal from the order of conviction and sentence passed on the petitioner in the previous trial pending before the Hon'ble Supreme Court on appeal has been made out and there is no Impropriety or illegality in the order of rejection of the petition by the learned Magistrate for which a report may be made to the Hon'ble High Court.

That application for revision was, therefore, rejected.

5. When the records were received back by the learned Magistrate and after notices were issued to sureties to produce the accused persons, dates were fixed for evidence commencing from 22nd September, 1962. Before that date, however, on 18th September, 1962 accused Chittaranjan Das filed a petition challenging the maintainability of the case upon an objection based on Section 403 of the Code of Criminal Procedure. That matter was heard by the learned Magistrate on 22nd September 1962 and He held against the contention by his order dated 24th September 1962. Against that order the Sessions Judge was moved on 29th September 1962 for a Reference under Section 438 of the Code of Criminal Procedure which Reference the learned Sessions Judge made on 15th December, 1962 making recommendations which I have already mentioned; the case was made ready for hearing in July VMS, State entered appearance in September 1963. Long vacation intervened and It has been hoard on 28th November, 1963. The proceeding before the Magistrate has remained stayed In the meantime by the order of Sessions Judge.

6. On behalf of Chittaranjan Das the learned Advocate, Mr. Ajit Kumar Dutt has appeared to support the Reference. Mr. Dutt has pressed his arguments in two branches. He has first submitted that the present proceeding pending before the learned Magistrate which is a commitment enquiry is barred under Sub-section (1) of Section 403 of the Code of Criminal Procedure because this accused Chittaranjan Das has once been tried and convicted of the offence of rape under Section 376 of the Indian Penal Code on the same set of facts on which the charge under Sections 366 and 120B/366 of the Indian Penal Code might have been made and tried in the same trial. This branch of Mr. Dutt's argument is a plea of legal bar. The other branch of his argument is that even If the Sub-section (1) will not apply and in strict law Chittaranjan Das can again be tried for the offence under Section 120B/366 Indian Penal Code by dint of Sub-section (2) of Section 403 of the Code of Criminal Procedure the charge of conspiracy being considered to be distinct offence for which a charge might have been made against him on the former trial under Section 233 (1) of the Code of Criminal Procedure, then also, inasmuch as the offence of conspiracy is based on the same set of facts upon

which the previous charge of rape was levied against him and there having been a conviction and sentence upon that charge finally by the order of the Supreme Court, the present proceeding should be considered vexatious, improper and unjust and should not be allowed to proceed.

7. Mr. Dutt's first plea of legal bar under Sub-section (1) of Section 403 has been accepted by the learned Additional Sessions Judge because he thought that the alleged offence of conspiracy is based on 'the same inseparable facts on which he was tried and convicted under Section 376 I.P.C. by the City Sessions Court that had also competency and jurisdiction to try the instant charge under Section 120B/366 I. P. C.'. In this view the learned Additional Sessions Judge is clearly in error and Mr. Dutt's argument in support thereof cannot be given effect to, because the second trial on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 230 or for which he might have been convicted under Section 237 is only barred by sub-section (1) of Section 403, In relation to the offence under Section 376 of the Indian Penal Code for which Chittaranjan Das has been previously tried and convicted, the offence under Section 120B/ 376 of the Indian Penal Code is not a charge which might have been made in that previous trial either under Section 230, nor he might have been convicted under Section 237 of the Code of Criminal Procedure; the first of those two Sections (sec, 23G) deals with the cases where a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which may be proved will constitute and the other Section (section 237) is a corollary to Section 230, in that if in cases mentioned in Section 236 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that Section (section 230) although he was not charged with it. It is clear, therefore, that to come within the first sub-section of Section 403 of the Code of Criminal Procedure the case must come within Section 230 of the Code of Criminal Procedure, whether or not an alternative charge had been framed. The present case is not one where it could be said that it was doubtful whether the offence of conspiracy to kidnap or substantive offence of rape will be constituted by the facts proved and neither alternative charges for those two offences could be framed in the previous trial nor in the trial on the charge under Section 376 of

the Indian Penal Code. Chittaranjan Das could have been legally convicted for an offence under Section 120B/366 of the Indian Penal Code without that latter charge being framed. Neither Section 236 nor Section 237 of the Code of Criminal Procedure would be attracted on the facts alleged. The nature of the allegations is clear that there had been a conspiracy to kidnap between the four persons who are now accused in the pending proceeding and that when the girl had been procured in pursuance of that conspiracy there had been committed offence of rape. That nature of the allegations and the characteristic of the offences of conspiracy and rape themselves will show that the offence of rape could exist without there having been a previous conspiracy to kidnap and conversely, there might have been an offence of conspiracy to kidnap committed yet the offence of rape might not have taken place. It must be remembered also that the offence of conspiracy is complete as soon as the agreement is reached and no overt act is necessary as a constituent of the offence of the conspiracy itself, although overt acts may provide good evidence of previous agreement that would constitute conspiracy. The present case, therefore, in its nature was one where one series of acts was connected together as to form the same transaction by which the alleged offence of conspiracy and also the offence of rape was committed by Chittaranjan Das for which he might have been charged with and tried at one trial for both such offences. That is a case which is within Section 235 (1) of the Code of Criminal Procedure to which Sub-section (2) of Section 4.03 of the Code of Criminal Procedure in terms and directly apply. That sub-section is in these terms:

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 233, Sub-section (1).

I must, therefore, hold that not only there is no legal bar under Section 403 (1) of the Code of Criminal Procedure to the present proceeding but also it is expressly authorised by the clear terms of Section 403 (2) of the Code of Criminal Procedure. In one stage of his argument Mr. Dutt placed reliance on the Privy Council decision in *Sambasivam v. Public Prosecutor Federation of Malaya* reported in 54 Cal W N 695 and also on the Supreme court decision in *Pritam Singh v. State of Punjab* reported in (S) : 1956 CriLJ805 for drawing on the

proposition that the doctrine of res judicate applies as much to criminal cases as applies to civil cases and ended to contend that Section 403 of the Code of Criminal Procedure is not exhaustive just as Section 11 of the Civil Procedure Code is not exhaustive. Upon the two high authorities mention-ed by Mr. Dutt there cannot be any question that the maxim 'res judicata pro veritate accipitor' is no less applicable to criminal than a civil proceeding. But the other part of Mr. Dutt's contention that Section 403 is not exhaustive cannot be accepted. That section of the Criminal Procedure Code embodies the Common Law principle of 'autrefois acquit' and 'autrefois convict'. In that the section embodies the whole law in so far it expressly says where a second trial is barred and where a second trial is permissible. what that section does not embody is the finality of findings arrived at in a previous order of acquittal. That is what the Privy Council laid down when their Lordships of the Judicial Committee in Sambasivam's case 54 Cal W N 693 (PC) laid down:

The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim 'Res judicata pro veritate accipitor' is no less applicable to criminal than to civil proceedings.

The same law was laid down by the Supreme Court In Pritam Singh's case (B) AIR 1956 SC 415 toy quoting those observations of Lord Macdermott with approval and holding

The acquittal or Pritam Singh Lohara of that charge was tantamount to a finding that the prosecution had failed to establish the possession of the revolver Ex. P-56 toy him. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence with which he had been charged.

That fact was found against the prosecution and having regard to the observations of Lord Mac-Uermott quoted above, could not toe proved against Pritam Singh Lonara in any further proceedings between the Crown ana him.

In the present case the previous trial has ended not in acquittal but in conviction of the petitioner Chittaranjan Das of the offence under Section 376 of the Indian Penal Code. The dictum regarding the findings arrived at in the acquittal order will not, therefore, apply nor is it at all helpful to Mr. Dutt's client to invoke the doctrine of res judicata in the present case and that for obvious reasons.

8. There being no legal bar, therefore, to the present proceeding to be continued, the next question is whether it is vexatious and unjust so as to be improper to allow this proceeding to continue. Mr. Dutt has referred to the story of the prosecution that was the basis of the charge in the previous trial and has contended in this branch of his argument that the circumstances that led to the charge of conspiracy not being tried along with the charge of rape in the previous trial has no bearing on the question whether those could have been tried together in that very trial. That was not done despite several attempts for the prosecution to have the two charges tried at the same trial. Whatever the reason, Mr. Dutt argues, the fact is that in proper view of law the two charges against Chittaranjan Das, one under Section 370 and the other under Section 120B/366 could have been tried in one and the same trial. Therefore, it is argued, the proceedings commenced with a view to a second trial on the charge of conspiracy must be deemed to be vexatious and harassing and, therefore, unjust and improper. For this proposition Mr. Dutt referred to large number of decisions of this Court as also of several other High Courts in India and also of the Rangoon High Court. It is not necessary to refer to all those cases cited by Mr. Dutt, but I may mention that the latest decision of this High Court cited by Mr. Dutt illustrates the point that he wanted to make by relying on all those decisions and it emphasises his contention strongly and clearly. That is the decision in the case of *Bejay Dutta v. The King* reported in AIR 19D1 Cal 452. That was a case in which the accused persons were alleged to have entered into the house of the complainant and assaulted the complainant with blows and slaps. Upon a complaint being filed on those allegations the accused were summoned under Section 352 of the Indian Penal Code. On a date fixed for hearing the complainant was absent and the accused persons were acquitted in accordance with the provisions of Section 247 of the Code of Criminal Procedure. Then a second complaint was filed against the accused persons with respect to the same occurrence and making virtually the

same allegations against them. A point being taken by the plea in bar by pleading Section 403 of the Code of Criminal Procedure the learned Judge A. N. Ben J. who decided that case relied on the principle 'nemo debet bis vexari pro una et eadem causa' and held

It seems to me that it would be offending against the principle underlying Section 403, Cr. P. C. if the petitioners are tried again with respect to this incident by adopting the technical device of trying them for criminal trespass which was not specifically alleged against them in the first petition of complaint.

### **The learned Judge proceeded to say In that Judgment**

I would further point out that in Section 403, Sub-section (2) there is an important word used namely the word 'distinct'. It is said that a person may be subsequently tried for any distinct offence for which a separate charge might have been made against him at the former trial under Section 235 (t). It does not say that he may be afterwards tried for any other offence for which a separate charge might have been made against him at the former trial under Section 235 (1). The words 'distinct offence' are specifically used. Now, Section 235, Sub-section (1) says that if several offences are committed in the course of the same transaction, a person may be tried at one trial for all such offences. Now, these offences may be distinct offences or they may be offences which are interdependent. An example would make the position clear, A person may enter a house and commit theft, rape and assault therein. These would be distinct offences. The offence of rape would not be dependent in any way on the offence of theft, but in the present case the offences are not distinct. The offence charged against the petitioners could not have been committed if the petitioners had not committed criminal trespass. The case against them was that they assaulted the opposite party in her kitchen. This particular assault could not have been committed except by the petitioners trespassing into the kitchen of the opposite party. The offence of trespass is, therefore, not distinct from the offence of assault. Both offences are interdependent. Trespass was committed in order to assault on the opposite party. That being so, Section 403, Sub-section (2), Cr. P. C. can have no application. This was the view taken by the Rangoon M. C. in the case of Yeok Kuk v. Emperor

ILR 6 Hang, 386 at p. 389 : AIR 192g Rang 252 at p. 253 : 29 Cri LJ 930.

I respectfully agree with the keen analysis of the learned Judge by which his Lordship has brought out the distinction between 'distinct offences' and offences which are interdependent and I have no hesitation in agreeing that on the facts of that case the offence of assault of which the accused had been acquitted in the first trial and the offence of trespass for which the second trial was being held were very much interdependent. Indeed. But on the facts of the case before me not only the two offences, the offence of rape for which Chittaranjan Das has been tried and convicted in the previous trial and the alleged offence of conspiracy for which the second proceeding is pending, are distinct offences but also they are not at all interdependent on one another. Illustration (b) under Section 403 of the Code of Criminal Procedure gives clear indication that two offences committed in the course of same transaction based in one series of acts may be distinct offences without being interdependent.

9. Illustration (b) is in these terms:

A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with and tried for, robbery.

That clearly shows the true import of Sub-section (2) of Section 403 of the Code of Criminal Procedure and completely answers Mr. Dutt's contention.

10. Apart from that aspect, there is another formidable reason why the contention of Mr. Dutt cannot be accepted in this case on any ground of propriety even. In the present proceedings there are four accused persons all of whom are alleged to have participated in the conspiracy to kidnap. Two of them Chittaranjan Das and Ganesh Dey were tried in the previous trial, one on charge of rape and the other on charge of abetment of rape. The other two accused persons have not been tried at all in the previous trial. While Chittaranjan Das alone has raised the plea in bar and prayed the proceedings to be quashed, even Ganesh Dey who was previously tried for abetment of rape has not raised that plea. The other two accused persons Monimala and Anil Chatterjee can by no means raise such a

plea. There is no reason, therefore, why Monibala and Anil Chatterjee should not be proceeded against in the present proceedings, as also Ganesh Dey. It, therefore, comes to this that while the proceeding shall continue against those three accused persons or at least two that is, Monibala and Anil Chatterjee, should the proceedings in respect of Chittaranjan Das be quashed on the ground of propriety. The allegation being one of conspiracy I do not see any reason at all for stopping the proceedings against Chittaranjan Das alone while the proceedings against the other accused persons would continue. On the contrary, 'on considerations of fairness to each of the accused persons as also the prosecution it appears to me only proper that the proceeding in respect of alleged Offence of conspiracy to kidnap the girl (which is an offence quite distinct from the offence of rape that was subject matter of the previous trial) should continue against all the four persons. It is to be noticed that the learned Sessions Judge has recommended the whole proceeding to be quashed. How he could do so in respect of Moni Bala and Anil Chatterjee has not been explained either in the letter of reference or by anything that I have heard during arguments before me. The proceeding now pending in the Court of the Magistrate cannot be said to be vexatious or harassing to any of the accused.

11. In the result, I reject the Reference and direct that the proceeding pending before the Magistrate should continue and be disposed of according to law. There have been long delays in the carriage of this proceeding at various stages and for various reasons, including the present Reference by the learned Additional Sessions Judge. It is desirable that the proceeding shall be disposed of with utmost expedition in the interest of justice and to minimise the troubles of the accused persons themselves.

12. Let the records be sent down without delay.