

The State Vs. Ananta Singh and ors.

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Court : Kolkata

Decided On : May-11-1972

Reported in : 1972CriLJ1327

Judge : Anil kumar Sen and ;N.C. Mukherji, JJ.

Appellant : The State

Respondent : Ananta Singh and ors.

Judgement :

Anil kumar Sen, J.

1. This Rule was issued suo motu by this Court on perusal of a letter of the nature of a reference dated March 20. 1972 from the learned Judge, Fourth Tribunal. Alipore. It arises out of case No. 1 of 1970 now pending trial by the said Tribunal. The said letter was written .by the learned Judge seeking for appropriate orders or directions from this court under Section 561-A of the Code of Criminal Procedure (hereinafter referred to as the said Code) to meet an unprecedented situation created by the disruptive behaviour adopted by some of the accused on trial,

2. The aforesaid tribunal was constituted by the State Government under Section 3(1) of the Tribunals of Criminal Jurisdiction Act. 1952 (hereinafter referred to as the said Tribunals Act) and the aforesaid case No. 1 of 1970 against Ananta Singh and others was distributed to the said Tribunal for trial under Section 4 (2) of the

said Tribunals Act. In the case the prosecution has laid charges under Section 120B, 395, 396 and 397 of the Indian Penal Code and under the Arms Act and the conspiracy involved is of very wide range. It is also not in dispute that the trial is likely to be a protracted one and witnesses more than 400 in number are likely to be examined. On the provisions of the said Tribunals Act procedure to be followed at the trial is that of a warrant case started otherwise than on a police report under Chapter 21 of the Code. The trial started on February 15, 1972 and after two of the accused persons viz. Anil Kumar Dutta and Rupindra Singh Sodhi were granted pardon under Section 5 (2) of the said Tribunals Act, 1952 thirtyfour persons are on trial. Of these thirty-four persons, twenty-four persons having consented to State defence are being defended by Mr. Amitaya Guha, a learned Advocate of this Court. The rest ten persons have refused to avail of the State defence nor are they being defended by any lawyer of their own choice. They have preferred to remain undefended at the trial.

3. Right from the beginning some of the accused conducted themselves in such a manner that it has become impossible for the tribunal to conduct any smooth proceeding. On the first day, tribunal was greeted with songs in chorus from the prisoners' dock. On the intervention of the learned Judge the trouble subsided for some time but on February 19, 1972 when the two approvers were brought in for granting pardon some of the prisoners from the dock started shouting and abusing and even threatening them with death. Such was the position again on 23-2-72 when prosecution witness No. 13 Nihar Ranjan Dutta, an Inspector of Police, was being examined. When the tribunal intervened the learned Judge was abused and threatened, The case adjourned to the next date but due to constant slogan shouting no business could be conducted by the tribunal even on the next date. Some of the prisoners at the dock started misbehaving in various other manner impairing a fair proceeding at the trial. On 3-3-1972 by order No. 154 the learned Judge adjourned the trial till 15-3-1972 and called upon the accused persons to give an undertaking that they are prepared to face the trial observing the conditions necessary for a fair trial as laid down by the tribunal in its earlier order dated 2-3-1972 either through their lawyer or through the jail authorities. In answer to this requisition, Mr. Amitava Guha filed a petition on 15-3-72 informing the Court that the accused whom he represents would whole heartedly submit themselves to

the trial and would observe all the decorum expected from them. The other ten undefended accused persons, however, failed to give any undertaking whatsoever. But when the trial started there was again shouting of slogans from the prisoners' dock and the tribunal was faced with a situation where no fair trial was possible due to the misbehaviour of some of the prisoners at the dock.

4. Under these circumstances, the tribunal is of the opinion that no fair trial is possible except by splitting up the trial itself as against the ten undefended accused persons. According to the Tribunal such splitting up can be done under the provisions of Section 561 A of the Code but as according to it there is some doubt as to whether the tribunal itself can direct such splitting in law it preferred to refer the matter to this Court with a recommendation that this Court may pass appropriate orders for splitting up the case of the ten undefended accused persons from that of the remaining twenty-four. As this Court entertained some doubt as to the competency of the reference so made it issued the rule suo motu both on the State as also on each of the accused persons on trial. Mr. Burman has appeared on behalf of the State and Mr. Guha on behalf of the 24 undertrial prisoners. The rest have not appeared to contest this Rule. while Mr, Guha supports the recommendation and the view taken by the tribunal. Mr. Burman is strongly opposing splitting up of the case. An affidavit has been filed on behalf of the State indicating the serious difficulties and prejudices which the prosecution may face on the splitting up of the trial. The tribunal has also sought for, in the alternative, any other order suitable for the purpose of smooth progress of the trial in case the step proposed by it be not approved. In this Rule I am, therefore, called upon to decide whether I should direct splitting up of the trial as proposed by the tribunal and if not to decide what appropriate steps should be taken to prevent frustration of the trial itself.

5. It appears to me that on the facts of the present case splitting up of the trial would furnish no solution to the problem raised nor would it be fair to the prosecution. It is a case of wide ranging conspiracy involving a number of persons. Prosecution has to examine more than 400 witnesses and also to bring in evidence any number of documents. Four of the accused persons have made confessional statements which the prosecution would naturally rely on at the trial

and use them not only against the maker thereof but also against others. Admittedly some of these confessing accused persons are in the group of the ten undefended accused persons while others are in the other group so that if the trial is split up as against the undefended group of accused, then the confessional statements made by accused persons in either of the two groups would not be available to the prosecution respectively in the trial of the other group. Section 30 of the Indian Evidence Act would stand in the way of the prosecution using such confession unless the trial is joint. Then again two of the accused persons have been granted pardon under Section 5 (2) of said Tribunals Act and it has been rightly pointed out by Mr. Burman appearing for the State that if the trial is split up the evidence of these two approvers would be totally lost so far as future trials are concerned inasmuch as the compulsion in law on these approvers to make a true and complete disclosure of facts would be lost after the first trial. It is but well known that in cases like the present one on a charge of conspiracy such evidence like that of the approvers and the confession of co-accused is not only material but also constitutes the substantial part thereof. To deprive the prosecution of the use of such evidence may very well lead to frustration of the trial itself. It is also to be noted that it would nearly be an impossible task for the prosecution to conduct such protracted trials and produce so many witnesses on more occasions than one which would necessarily follow any order for splitting up. That apart I am of the opinion that any direction to split up the trial would not furnish any solution to the problem that has now arisen. It is clear that accused persons or some of them are out to frustrate the trial by their own misbehaviour. If I direct splitting up today in respect of ten of them, there is no guarantee that one or other of the remaining 24 would not bring about the same situation which may require further splitting up. Upon the tribunal's own assessment and finding it is not established that all the undefended accused persons have taken to this obstructive attitude. According to the tribunal there is no definite allegation of misbehaviour against one of the undefended accused viz. Basudey Ghosal. On the application of the Public Prosecutor dated 14-3-1972 again some of the accused persons represented by Mr. Guha were also misbehaving while three of the undefended prisoners were not so doing. In these circumstances I do not consider it to be proper that all the undefended accused persons should be treated on the same footing as proposed

by the tribunal simply because they have not furnished any undertaking as called for by the tribunal. If the trial is to be split up on the ground of misbehaviour there is no reason why persons not at all misbehaving should also be excluded from the trial. Next by splitting up the trial the tribunal can only expedite and complete the trial so far as such of the accused as are willing to co-operate in the matter of conducting a fair trial, but others have also got to be tried and an order of splitting up would furnish no solution for trial of such accused persons. Considering all these aspects I am of the opinion that any order for splitting up of the trial as proposed by the tribunal would neither furnish any solution to the Problem which has arisen before the tribunal nor would it be fair and proper to the prosecution on the facts of the present case. But I agree with the tribunal that some solution has got to be found Just to bring the tribunal out of the impasse.

6. In my opinion, true solution would be to conduct the trial by expelling from the court room the accused person or persons concerned who would be found to be interfering with the carriage of a fair proceeding at the trial. The tribunal is of the view that such a step may not be permissible in the law as it now stands. It observed that:

But the present law is inadequate for the purpose. On the contrary Section 353, Criminal P.C. requires that the trial of the undefended prisoners must be held in their presence and no order is possible in conflict with this mandatory provision of law : 1967 CriLJ287 the only way which can be thought of is to split up the case of the ten undefended accused persons and proceed with the trial of the rest who cannot be made to suffer on account of the conduct of the former. A step as proposed would be justified by the observation of the Hon'ble Supreme Court in the case reported in : 1958 CriLJ701 .

7. The decision of the Supreme Court in the case of Pampapathy v. State of Mysore : 1967 CriLJ287 lays down no principle which would be inconsistent with any direction to expel a disorderly accused from the Court room and exclude him from his own trial if that is a situation brought about by an accused himself. It is true that in this case the Supreme Court pointed out that inherent power under Section 561A of the Code can be exercised only for either of the three purposes

specified in the section itself and the Supreme Court further observed that such power cannot be invoked in respect of any matter covered by the specific provision of the Code or where its exercise would be inconsistent with any specific provision of the Code. In my view, a direction to expel such an obstreperous accused from the court room to prevent frustration of a trial would, without any doubt, come within the sanction of Section 561A of the Code and for reasons given hereinafter such a direction would not be inconsistent with any specific provision thereof including Section 353. Similarly, the decision of the Supreme Court in the case of *T. H. Hossain v. M. P. Mondkar*, : 1958 CriLJ701, is no authority for a proposition that in a situation like the one in the present case splitting up trial is the only solution. On the other hand, in both these decisions dealing with a question as to whether a High Court can under Section 561-A of the Code direct cancellation of any bail even in cases where there is no specific provision for such cancellation, the Supreme Court held that to further the interest of justice such an order of cancellation can always be made by the High Court. It is in this context that the Supreme Court made the observations quoted by the tribunal that, 'If a fair trial is the main objective of the criminal procedure any threat to the continuance of a fair trial must be immediately arrested and the smooth progress of a fair trial must be ensured; and this can be done, if necessary, by the exercise of inherent power if an accused person, by his conduct, puts the fair trial into jeopardy. it would be primary and paramount duty of criminal courts to ensure that the risk to the fair trial is removed and criminal Courts are allowed to proceed with the trials smoothly and without any interruption or obstruction.' This decision, therefore, would clearly sanction an order proposed by me directing expulsion from the court room of such of the accused persons as by their own disruptive behaviour make it impossible for the tribunal to carry on a fair trial in their presence. In the case of *Naresh v. State of Maharashtra* 0044/1966 : [1966]3SCR744, Supreme Court refused to consider the principle that all trials before the courts must be held in public to be so inflexible that it admits of no exception even where following the principle may lead to justice being defeated. Supreme Court sanctioned an exception to this rule by courts in exercise of their inherent powers.

8. Next, I shall consider whether such a direction would militate against any specific provision of the Code of Criminal Procedure. It is no doubt true that the

framers of the Code or those amending the same did not anticipate a situation like the present one nor did they make any specific provision to meet the same. The situation though unprecedented from this aspect is not wholly without any precedent. Such a situation was anticipated at the trial of Lahore Conspiracy Case in 1930 and therefore in promulgating the Lahore Conspiracy Case Ordinance (III of 1930) special powers were provided for in Section 9 (1) which was on following terms 'The tribunal shall have powers to take such measures as it may think necessary to secure the orderly conduct of the trial; and where any accused by his voluntary act has rendered himself incapable of appearing before the tribunal or resists his production before it or behaves before it in a persistently disorderly manner or in any other way wilfully conducts himself to the serious prejudice of the trial. the tribunal may, at any stage of the trial, dispense with the attendance of such accused for such period as it may think fit and proceed with the trial in his absence.' Unfortunately the Tribunals of Criminal Jurisdiction Act 1952 in the present case also failed to anticipate such a situation or make any parallel provision. But with the changing social environment and on the prevailing conditions of the day such a situation is likely to recur and Courts are bound to face similar situations more frequently. Therefore to find a solution to such a problem is eminently necessary.

9. Trial proceeds in the present case under Chapter 21 of the Code and under Section 252 and onward. The tribunal is therefore to take all such evidence as may be produced in support of the prosecution. On evidence being so taken if no case is made out then the accused persons are to be discharged; on the contrary if the evidence makes out a case the tribunal shall frame charges. On the framing of charges the tribunal is to record the plea of the accused and unless the accused pleads guilty they should be afforded the opportunity for their defence and the tribunal is then to proceed under Section 256 of the Code and conclude the trial after fulfilling the necessary other formalities under the law. Section 353 of the Code which. in the view of the tribunal, stands in the way of expelling an accused from the court room and exclude him from his own trial is in following terms:

Except as otherwise expressly provided, all evidence taken under Chapters 18. 20. 21, 22 and 23 shall be taken in the presence of the accused, or when his

personal attendance is dispensed with, in the presence of his pleader.

There is some difference of judicial opinion whether Section 353 of Code by itself confers any power on the Court to dispense with personal attendance of the accused. But in any view in a situation like the present one where the accused persons obstructing the trial are themselves undefended. any order for dispensing their presence may not come squarely within four corners of the provision. However for reasons given hereinafter in my view that is merely an omission but there is no prohibition in Section 353 to such a step being taken to meet an appropriate situation. I would next consider whether there is any prohibition in this respect in any other provision of the Code. Section 540A (1), even after its amendment. of course, would not sanction expulsion of such an accused or dispense with his presence. It only provides for dispensing personal attendance of an accused who is represented by a pleader if his presence is not necessary in the interest of justice. Section 540A (1) does not contemplate dispensing personal attendance of an undefended accused. Sub-section 2 an the other hand provides that if the accused is not represented by a pleader or if the Judge considers his personal attendance to be necessary he may either adjourn the trial or the case of such accused be taken up and tried separately. The other provision of Section 205 obviously would have no application in the present case. There are the relevant provisions of the Code providing for recording of evidence in the presence of the accused and dispensing with their presence. In my reading Section 540A like Section 353 lays down no specific prohibition against excluding an obstreperous accused from his own trial; at the utmost there is no specific sanction in Section 540A for such exclusion. Such an omission can appropriately be supplemented by exercise of powers under Section 561-A of the Code.

10. Now I proceed to give my reasons why I do not consider Section 353 as laying down any prohibition against such exclusion. This section no doubt provides that all evidence shall be taken in the presence of the accused. By insisting the positive it naturally prohibits the negative; but the question is what is the real extent of such prohibition. Is it so absolute in character that it contemplates no exception so that an accused who himself would not allow the evidence to be recorded in his presene by his own disruptive behaviour would nonetheless be entitled in law to

insist upon his presence at the recording of the evidence under Section 353. To interpret it as such would be extending it to an apparent absurdity. I am, therefore, unable to concede such a construction of Section 353 of the Code. This section no doubt provides that the evidence should be taken in the presence of the accused and thus confers a right on the accused to be present in course of the trial. But it presupposes that the person in whose favour such a right is given accepts it and does not render its fulfilment an impossibility. This obligation or the right in my view is not so absolute in character that its requirement cannot be dispensed with even in a case where the accused by his own conduct renders it impossible to comply with its requirements. To expect a Judge to record the evidence in the presence of an accused who himself would not allow it to be so done is 'to expect an impossibility from him and the law does not contemplate an impossibility' *Raj Narain v. Supdt. Central Jail New Delhi* : 1971 CriLJ244

11. In construing the provisions of the Code it should be remembered that the primary object of Criminal Procedure, as observed by the Supreme Court, is to ensure a fair trial. But a trial has naturally two objects in view; it must be fair to the accused and consonant with the presumption of innocence in his favour and at the same time it must also be fair to the prosecution. There can be no sanction in the Code to a situation that would frustrate the trial itself. To interpret Section 353 of the Code to cast an obligation as would require the evidence to be taken in the presence of the accused even where the accused by his own conduct makes recording of evidence in his presence an impossibility. is to sanction a right in favour of the accused to frustrate the trial at his own option. This would not only mean negation of a fair trial but would mean end of all trial at the choice of the accused. Such a position can never be considered to be consonant with basic principles underlying the Code.

12. I shall now presently show that such is the principle accepted both in England and in the United States of America where the accused's right to confront the witnesses against him is a right recognised by the Sixth Amendment to the United States Constitution. In *Lord Morley's case* 6 Howell St. Tr. 770 as early in the year 1666 the House of Lords was considering whether the examination of a witness recorded by the Coroner can validly be read at the trial that follows even if the

witness be not produced at the trial where the witness is detained by means or the procurement of the prisoners. The House of Lords observed:

that in case oath should be made that any witness who had been examined by the Coroner, and was then absent, was detained by the means or procurement of the prisoner, and the opinion of the Judges asked whether such examination might be read; we should answer, that if Lordships were satisfied by the evidence they had heard, that the witness was detained by means or procurement of the prisoner, then the examination might be read.'The principle so laid down appears to have been followed consistently. In the case of *Queen v. Scaife* 17 Ad and Ell. (N. S.) 242 : 117 English Kings Bench 1271 all the Judges accepted the principle that if there is sufficient evidence that a prisoner had procured the witness's absence that might let in the deposition earlier given by that witness as evidence against the prisoner who had procured the witness's absence though on the facts of that case such an evidence having been used against his co-accused the rule was made absolute. It would be worthwhile to refer to Taylor's Evidence 11th Edn. Section 472 and note the observations of the learned author at foot-note (d) to the following effect 'The proposition that, if a witness be kept out of the way by the adversary his former statements on oath will be admissible, rests, partly on the authority of several decisions both in Civil and Criminal Courts ... partly, on the analogies furnished by one or two statutes ... but chiefly on the broad principle of justice which will not permit a party to take advantage of his own wrong.

13. This principle finds recognition in Section 33 of the Indian Evidence Act. Although by this principle what is recognised is admissibility of earlier statements of a witness not called to the box and not expulsion of the defendant, yet there is no difference in the basic principle, because in both the cases the defendant is denied his right to confront the witness at the trial. He loses it in either way because of his own wrong.

14. Now when I refer to American decisions I should first refer to the case of *Reynolds v. United States*. (1879) 98 U. Section 145 : 25 Law. Ed. 244. It could be worthwhile to quote the following observations made in the judgment 'The Constitution gives the accused the right to a trial, at which he should be confronted

with the witnesses against him; but if a witness is absent by his own wrongful procurement. he cannot complain if competent evidence is admitted to supply the place of that which he has kept away. The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement. their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.'

15. In the case of *Falk v. United States*. (1899) 15 App. D. C. 446 Court of Appeals for Columbia while upholding as legal a trial which was completed in the absence of the accused who fled the jurisdiction in course of the trial observed:

It does not seem to us to be consonant with the dictates of commonsense that an accused person ...should be at liberty, whenever he pleased... to break up a trial already commenced. The practical result of such a proposition. if allowed to be law, would be to prevent any trial whatever until the accused person himself should be pleased to permit it....This would be a travesty of justice which could not be tolerated....We do not think that any rule of law or constitutional principle leads us to any conclusion that would be so disastrous as well to the administration of justice as to the true interests of civil liberty.

16. This principle was approved by the U. S. Supreme Court in a recent case of *Illinois v. Allen* (1970) 397 U. S. 337 notwithstanding the confrontation clause of the Sixth Amendment to the United States Constitution which provides that 'In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.' Notwithstanding the constitutional guarantee of a right same as in Section 353 of our Code, U. S. Supreme Court upheld the validity of a trial completed in the absence of the accused who was expelled from the proceeding in circumstances similar to those now faced by the tribunal. The U. S. Supreme Court set aside the decision of the Court of Appeals which had held such a trial of the accused Allen to be violative of confrontation clause of the Sixth Amendment. In so doing it observed:

The Court of Appeals felt that the defendant's Sixth Amendment right to be present at his own trial was so absolute that, no matter how unruly or disruptive the defendant's conduct might be, he could never be held to have lost that right so long he continued to insist upon it, as Allen clearly did. Therefore, the Court of Appeals concluded that a trial Judge could never expel a defendant from his own trial and that the Judge's ultimate remedy when faced with an obstreperous defendant like Allen who determines to make his trial impossible is to bind and gag him. We cannot agree that the Sixth Amendment, the cases upon which the Court of Appeals relied, or any other cases of this court so handicapped a trial Judge in conducting a criminal trial.

Proceeding on it was further observed in the judgment.

Although mindful that the courts must indulge every reasonable presumption against the loss of constitutional rights, *Johnson v. Zerbst* (1938) 304 US 458, 464, we explicitly hold today that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behaviour, he nevertheless insists on conducting himself in a manner so disorderly, disruptive and disrespectful of the court that his trial cannot be carried on with him in the court room.

17. In the case of *Herman Snyder v. Commonwealth of Massachusetts* (1934) 291 U. S. 97 the U. S.

Supreme Court had held that an accused may very well lose such a right by his own misconduct. It was there observed:

We assume in aid of the petitioner that in a prosecution for a felony the defendant has the privilege under the Fourteenth Amendment to be present in his own person whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge. Thus the privilege to confront one's accusers and cross-examine them face to face is assured to a defendant by the Sixth Amendment in prosecutions in the Federal Courts, and in prosecutions in the State Courts is assured very often by the Constitutions of the States. For present purposes we assume that the privilege is reinforced by the

Fourteenth Amendment. though this has not been squarely held.... Again. defence may be made easier if the accused is permitted to be present at the examination of jurors or the summing up of Counsel, for it will be in his power. if present, to give advice or suggestion or even to supersede his lawyers altogether and conduct the trial himself...In such circumstances also we make a like assumption as to the scope of the privilege created by the Federal Constitution.... No doubt the privilege may be lost by consent or at times even by misconduct... Nowherein the decisions of this Court is there a dictum. and still less a ruling that the Fourteenth Amendment assures the privilege of presence when presence would be useless, or the benefit but a shadow.

18. In the case of *Diaz v. United States*. (1912) 223 U. S. 442 the U. S. Supreme Court was considering the scope of the right of an accused under Section 5 of the Philippine Civil Government Act which confers a right on the accused to meet the witnesses face to face.' In holding that this right is not so absolute that it can never be waived the Supreme Court observed.

It is to be observed that the right of confrontation secured by the Philippine Civil Government Act is in the nature of a privilege extended to the accused, rather than a restriction upon him. and that he is free to assert it or to waive it as to him may seem advantageous.

19. If such is the nature and scope of a provision like the one under Section 353 of the Code even where it is incorporated as a constitutional guarantee like the Sixth Amendment to the U. S. Constitution, there is no reason why the same view should not be taken in finding out the true nature of the obligation cast by Section 353 of the Code, In my view therefore Section 353 no doubt casts a mandatory obligation on a court that the evidence must be recorded in the presence of the accused or his representative lawyer where his presence has been dispensed with under Section 540-A of the Code, this obligation should not be extended so far as to make it incumbent for the court to fulfil this obligation even where the court has been disabled by the accused himself from fulfilling it. Though mandatory in character I must hold that the obligation imposed is subject to an inherent proviso which would exclude its operation where its application is an impossibility because

of the accused himself and not for any other extraneous reason. Such an exception should be read into the section as it invariably arises because of the principles underlying the Code viz.. that the provisions are intended to provide a fair trial fair both to the accused and to the prosecution and not to frustrate a trial. In my view such a construction would only further the object of the Code. Thus in my view there being no statutory bar to the expulsion of an obstreperous accused or to the recording of evidence against him in his absence. an order to this effect would come squarely within the sanction of Section 561-A of the Code and I direct the tribunal to do so.

20. In the conclusion therefore I would direct the tribunal to first ascertain which of the accused persons under trial are actually obstructing smooth conduct of the trial and then to expel after appropriate warning such of the accused person or persons as are so obstructing. from the court room but it would proceed with the trial even against such accused person or persons so expelled by recording evidence in their absence. Such exclusion. however. would be without prejudice to the rights of such accused person or persons to reclaim his or their right to be present at the trial if and when he or they express bona fide willingness to conduct himself in such a manner as to allow the tribunal to proceed with the trial smoothly in his or their presence. Notwithstanding such expulsion whenever the presence of such accused person or persons would be considered necessary by the tribunal either for the purpose of identification. examination of the accused or any other purpose in accordance with law, such accused person or persons should be brought back in a manner appropriate Do holding of a fair trial. In case of such expulsion the tribunal should also direct forfeiture of all privileges granted to such accused person or persons under the orders of the tribunal.1972 V, G. B. Verma v. Allahabad

21. The Rule is disposed of accordingly with the aforesaid direction on the tribunal.

N.C. Mukherji, J.

22. I agree.

