

Ranjit Chandra Mitra Vs. M. Tilak and Co.

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Court : Kolkata

Decided On : Apr-06-1971

Reported in : 1971CriLJ1238

Judge : N.C. Talukdar, J.

Appellant : Ranjit Chandra Mitra

Respondent : M. Tilak and Co.

Judgement :

ORDER

N.C. Talukdar, J.

1. This Rule is at the instance of the accused-petitioner, Ranjit Chandra Mitra, for setting aside an order dated the 19th January, 1971, passed by Sri S. B. Dutta, Magistrate, 1st Class, Howrah, framing charges against him Under Sections 408/109 and 420, IPC and for quashing the proceedings so far as he is concerned, in case No. G. Rule 2206 of 1968.

2. The facts leading on to the Rule can be put in a short compass. On 16-8-68 one Amilal Goolabchand Sheth, for and on behalf of M/s M. Tilak and Co.. clearing and forwarding agents, sent a letter to the Officer-in-charge, Sibpore P. S., Howrah, alleging inter alia that the company has a rented godown at 103/7. Fore Shore Road, Howrah; that the accused Bidhan Dutta is the storekeeper of the godown

and the co-accused Jogeswar Mistry, since discharged, is the durwan; that on 16-8-1968 at about 10 a.m. the above mentioned durwan reported that the locks of the godown were found open whereupon the informant sent his store-keeper Bidhan Dutta to look into the matter personally; that the said store-keeper also supported the version of the durwan; that the informant thereupon proceeded to the spot along with other employees and on physical verification found that more than four thousand bags of cement had been stolen; that more than five thousand bags of cement belonging to the Peoples Consumers Co-operative Society Ltd., Calcutta were kept in the godown; that the durwan and the store-keeper being fully responsible for looking after the godown, it was presumed that the theft was committed with their connivance; and that on being questioned, neither of them could give any satisfactory explanation. The said information was treated as the first information report and therein the store-keeper and the durwan were mentioned as the two accused and the offence was stated to be one Under Section 408, IPC An investigation started and a charge-sheet was submitted on 15-7-1969 Under Sections 408/406/201, IPC against the three accused persons, Bidhan Dutta, the store-keeper, Gurudas Biswas, an employee of the Peoples Consumers Co-operative Society Ltd., Calcutta, and Ranjit Chandra Mitra, Secretary of the said Institution. The durwan Jogeswar Mistry was discharged. The accused thereafter were furnished with the copies of the documents and other papers Under Section 173(4), Criminal P.C. and the learned trying magistrate proceeded to hear the parties on 22-12-1969 for a consideration of the charge. Orders were reserved till 19-1-1970 and the learned trying magistrate directed as follows: 'to 19-1-1970 for charge'. On 19-1-1970 the learned trying magistrate framed charges Under Sections 408 and 420. IPC against the accused Bidhan Dutta and Under Sections 408/109 and 420, IPC against the accused-petitioner Ranjit Chandra Mitra and the co-accused Gurudas Biswas. The accused pleaded not guilty to the charges and claimed to be tried. 25-5-70 was fixed for evidence of witnesses Nos. 1, 2 and 3 as mentioned in the charge-sheet. On 24-1-1970, the court inspector filed an application praying for an amendment of the charges viz.. all the three accused Under Sections 408/420/120-B, IPC and the accused Bidhan Dutta on a further charge Under Section 408. IPC The learned trying magistrate thereafter issued notices on the accused persons for appearance in court in order

to consider the said application for amendment. On the 28th January. 1970, an application was filed on behalf of the accused-petitioner Ranjit Chandra Mitra stating inter alia that no sanction was obtained by the prosecution for framing a charge Under Section 120-B, I. P, C. that the' accused will be highly prejudiced if the charge was altered at this stage; and that no charge Under Section 120-B, IPC is maintainable in the facts and circumstances of the case. It was accordingly prayed that the learned trying magis- trate may be pleased to take notice of the above facts and pass necessary orders. The application was directed to be put up on the date fixed viz., 14-2-1970. In the meanwhile the accused-petitioner Ranjit Chandra Mitra came up to this Court on 2-2-1970 and obtained the present Rule.

3. Mr. Nalin Chandra Banerjee, Advocate (with Mr. Arun Kumar Mukherjee, Advocate) appearing in support of the Rule on behalf of the accused-petitioner submitted that on merits the charges are not maintainable and the proceedings so far as he is concerned should be quashed as an abuse of the process of the court, Mr. Ajit Kumar Dutt, Advocate, appearing on behalf of the State, besides opposing the Rule on merits, took a preliminary objection that the Rule is not maintainable on the ground of a material suppression of facts, and so the accused petitioner should not be heard on merits. Mr. Prasun Chandra Ghosh, Advocate (with Mr. Bharat Kumar Chatterjee, Advocate) appearing on behalf of the de facto complainant also opposed the Rule and adopted the preliminary objection raised by Mr. Dutt.

4. The preliminary objection goes to the root of the matter and as such is taken up for determination in the first instance. In support of his preliminary objection Mr. Dutt contended inter alia that the petitioner has deliberately suppressed material facts, practising thereby a fraud on the court; that the ultimate charges were still being considered by the learned magistrate and as such the accused-petitioner had no right to come to this Court for striking down the earlier order dated the 19th January, 1970 framing the charges; and that the question being not only one of legality but also of propriety, there should be no hearing on merits and the Rule should be discharged. Mr. Dutt made it clear that this preliminary objection is independent of his contention on merits. Mr. Prasun Chandra Ghosh, adopted the submissions of Mr. Dutt in this behalf and further contended that the procedure

adopted by the accused-petitioner has not been proper and as such he had no right to be heard.

5. Mr. Nalin Chandra Banerjee. Advocate, appearing on behalf of the accused-petitioner submitted that the preliminary objection is more technical than real and is not maintainable on ultimate analysis. Mr. Banerjee contended that the prayer in the Rule is not only for setting aside the order dated the 19th January, 1970 framing the charges complained of but also for quashing the proceedings so far as the accused-petitioner is concerned, on the ground of maintainability and in this context he referred to the application¹ filed on behalf of the accused on the 18th November, 1969 wherein it was clearly averred that there is no material in the case diary to frame a charge against him. Accordingly there is no question of any suppression of fact and a consequent illegality or impropriety.

6. There cannot be any difference of opinion on the point that a deliberate or a dishonest suppression of material fact constitutes serious laches on the part of the delinquent and places of clog on the wheels of justice. Having heard the learned Advocates appearing on behalf of the respective parties and on going through the materials on the record, I hold, however, that there has been no deliberate or dishonest suppression of fact on the part of the accused petitioner. He apparently proceeded on the footing that as he was challenging the maintainability of the entire proceedings since inception he need not refer to the subsequent orders after the charges were framed. This may not be a correct view but does not constitute a deliberate or dishonest suppression of fact. The question that still remains is one of propriety because of the failure to mention material orders. Against that background. I hold that there is a considerable force behind the objection of Mr. Dutt to the maintainability of the Rule. A reference to the order sheet would make it abundantly clear that the parties were heard on the 22nd December, 1969 for considering the charges which were ultimately framed on the 19th January, 1970. The accused pleaded not guilty thereto and claimed to be tried. No application was filed on behalf of the accused petitioner or on behalf of any other accused for quashing the charges and proceedings as not maintainable at this stage. The date fixed for evidence was on the 25th May, 1970. It was the Court Inspector who at this stage filed an application for amendment of the

charges on the 24th January, 1970 and the accused appeared on receipt of notice. The accused petitioner Ranjit Chandra Mitra filed an application on the 28th January, 1970 wherein he pinpointed the non-maintainability of the charge Under Section 120-B, I, P.C. proposed to be framed by way of amendment but there was no submission relating to the maintainability of the proceedings. Mr. Banerjee's contention that the genesis of the prayer for quashing the proceedings is in the application dated the 18th November, 1969, is not ultimately maintainable. In the first instance the prayer made therein is not specific or pointed and the objection at its highest is to the framing of any charge because of insufficient materials. In the petition filed in this Court, whereupon the present Rule was issued, there is no reference to the subsequent orders dated 24-1-1970 and 28-1-1970 which makes it abundantly clear that the prayer made for quashing the charges already framed, at this stage, is premature because of the subsequent prayer made for altering the charges and the pending consideration thereof by the court. The petitioner should have awaited the decision of the court on the question of amendment before impugning the same or the charges framed earlier, if not amended by any subsequent order. It cannot however be held that this omission was deliberate or dishonest. The application in the High Court was filed obviously on the footing that the proceedings against the petitioner are not maintainable and as such the same should not be allowed to proceed any further. The abiding consideration nonetheless is of propriety and the jurisdiction conferred on this Court Under Section 439 of the Code of Criminal Procedure being a discretionary one. I am reluctant to exercise the same in this case. Having given my anxious consideration to the matter I hold that there has been no deliberate or dishonest suppression of facts, but I agree however with the contention of Mr. Dutt that the Rule is not maintainable at this stage because of the subsequent orders passed, changing the complexion of the case. The petitioner should have referred to the subsequent orders, fixing the date for a consideration of the amendment of the charge, inasmuch as the same has a bearing on the point at issue. The application by the petitioner is therefore premature.

7. Mr. Dutt made an ancillary submission by referring to a line of cases under the Contempt of Courts Act, He submitted that a suppression of fact meant a feigned action, resulting in a contempt of court. In this context he referred to the case of

Rex v. Weisz and Hector Macdonald Ltd. (1951) 2 KB 611 and relied on the observations of Chief Justice Goddard that 'attempt to deceive the court by discussing the true nature of the claim is a contempt of court'. It is difficult to agree with the contention of Mr. Dutt in this respect and the point cannot be stretched to the extent urged by Mr. Dutt on a twofold reason. Firstly, the position of a lawyer in India is far different from that of a solicitor in England and there is no practice here of the lawyer making endorsement of the claims as the solicitor does in England. The verified plaint in India is signed by the party and the verifications therein are sworn by him, and as such 'any false pleading therein cannot be 1971 Cri. L. J.tacked to the counsel. Secondly there is no false endorsement in this case excepting that certain facts which should have been mentioned have not been so done. One possible reason for the same is a bona fide misconception as already urged on behalf of the accused-petitioner and considered by me in the foregoing paragraphs. I therefore hold that the principle of contempt by solicitor for false endorsement on writ does not apply to the facts of the present case and the import of the said concept will be stretching the point too far. This ancillary submission of Mr. Dutt therefore fails. A reference however may be made to the case of Sundar-das Loghani v. Fardun Rustom Irani A.I.R. 1-939 Cal 329 where a Division Bench of this High Court viz., Mr. Justice Bartley and Mr. Justice Henderson, while holding that the magistrate has jurisdiction to order a discharge Under Section 253(2) of the Code of Criminal Procedure at any stage of the proceedings even without taking the evidence of the complainant or any of his witnesses, ultimately upheld the order of discharge passed by the said magistrate who reached the conclusion that 'the petitioner had deliberately suppressed several facts in his petition of complaint and that the complaint was a thoroughly dishonest one' and in that view had discharged the accused. I agree with the aforesaid principles and applying the same to the facts of the present case, I hold that the orders passed by the learned magistrate subsequent to 19-1-1970, have a material bearing on the case and as such should have been referred to for a proper determination of the matter and in any event, in view of the said subsequent orders relating to the amendment of the charges framed, the present revisional application is premature at this stage and the Rule is not maintainable. The Revisional Jurisdiction of this Court is a discretionary one and should not be exercised in the facts of the present

case. The preliminary objection of Mr. Dutt accordingly succeeds and I hold that the application is premature and the Rule is not maintainable.

8. In view of the ultimate order I am passing, I make no observations as to the merits of the case. The petitioner will have liberty to come up at the proper stage, if he so chooses, for a determination of the points that may be raised.

9. In the result, the Rule is discharged; and the case is sent back to the court below for being disposed of in accordance with law from the stage reached on the 28th January, 1970.

10. The records are to go down as early as possible.

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