

Bibhuti Ranjan Nandy Vs. the State

Bibhuti Ranjan Nandy Vs. the State

SooperKanoon Citation : sooperkanoon.com/875556

Court : Kolkata

Decided On : Nov-07-1967

Reported in : 1968CriLJ673

Judge : P.B. Mukharji and ;S.N. Bagchi, JJ.

Appellant : Bibhuti Ranjan Nandy

Respondent : The State

Judgement :

1. The appellant was charged before the Special Court appointed by the Governor under Section 4(2) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. The charge was that on or about the 27th March, 1957 at Haripal and Bandipur, P. 8. Haripal, the appellant who was a public servant being an Assistant Revenue Officer, Haripal, under the Government of West Bengal, was entrusted with certain properties namely, a sum of Rs. 811-6. which he had realised from different loanees towards the repayment of their agricultural loans, committed criminal breach of trust in respect of the said Bum of Rs. 811-6 and thereby committed an offence punishable under Section 409 Of the Penal Code.

The Special Court found the appellant guilty of the charge under Section 409 of the Penal Code and sentenced him to rigorous imprisonment for four months and to pay a fine of Rs. 100/- in default to rigorous imprisonment for one month. Against this order of conviction and sentence the appellant has appealed.

The defence is that the appellant is innocent. The further defence is that all the books in which the receipts were contained and which had been issued in his name till 29.8.57 were returned after the money was deposited on that date, i.e. 29th March, 1957, to the Loan Deputy Collector for his verification. These books were not re-issued to him again. The defence also is that he had deposited all the monies that he had collected. The whole dispute is about the deposit. The deposit, can be made within seven days from the date of collection under the rules of the Government. Therefore the essential period of time of which proof is required to establish the guilt of the accused is from 27th March till about 4th day of April, 1957.

1-24. After stating the facts and after discussing the evidence, it was found that the prosecution did not establish beyond reasonable doubt the guilt of the appellant in respect of his alleged failure to deposit the amount during the relevant period. The judgment then continues as under:

25. It may not be irrelevant to dispose of a small point at this stage arising out of a different case concerning the same appellant and in respect of a similar office for a different period in Criminal Appeal No. 618 of 1959 *Bibhuti Ranjan Nandi v. The State*. It must be said at the outset that the facts in that case and the judgment there are plainly distinguishable from the facts of this appeal. There the defence of the appellant was that he did not at all collect any amount of money. Here his case is that he collected the moneys in question. Secondly the Division Bench pointed out there 'That the amounts in question had not been deposited is also not in dispute'. Obviously not. Where the collection is not admitted, deposit could not be admitted. Therefore there the case was that the appellant neither made the collection nor made the deposit. Here the case is just the reverse. Here he both collected as well as deposited. The question in this appeal is whether he had failed to deposit the moneys he had collected. The only relevant point relates to the fact that the learned Judges of the Division Bench there concluded that this particular receipt book No. 320282 was retained by the appellant upto 27th March, 1957. In coming to that conclusion the learned Judges of the Division Bench observed in that appeal:

It must be observed that one of the three receipts in question bears dated 26.3.57 and two others 27.3.67. It, therefore, follows definitely that on 26th and 27th March 1957 the receipt Book was with the appellant.

Mr. Chatterjee appearing for the State at one stage tried to say that there the finding was that this particular Book No. 320282 was with the appellant, but he realised that this finding was not enough for his purpose in the present appeal before us. As we understand this case and the defence made not only in the statement under Section 842 of the Code of Criminal P.C. but also in suggestions in cross examination, the defence case is that he certainly had this book No. 320282 but he returned this on the 29th March, 1957 and not on the 27th March 1957 which was the finding of the Appeal Court here in Criminal Appeal No. 618 of 1959. Therefore there can be no question of any *res judicata* or estoppel on an issue of fact. The issue of fact here in this appeal is whether book No. 320282 was returned on the 29th March 1957 to the Loans Deputy Collector and not whether he had it on the 27th March, 1957.

26. Lastly, the most serious thing in this appeal for the prosecution is the manner in which the appellant's statement was taken by the Special Court under Section 342 of the Criminal P.C. The only questions asked by the Special Court were as follows:

Q. 1:-The charge against you is that on 27.3.57, you as the A.R.O., of Haripal and Bandipur, realised from various loanees, Rs. 811-6 as in respect of 'agricultural loan' and misappropriated that sum of money, Have you got anything to say?

A. - I am innocent.

Q. 2: - Have you got anything more to say?

A. - All the books which had been issued in my name till 29.3.57 were returned after the money was deposited on that day, to the 'Loans Deputy Collector' for his verification, These books were not re-issued to me again. At the time of deposit, the 'Loans Clerk' signed after perusing the books. Even after the money had been deposited, the 'Loans Clerk' verified that the entire amount had been deposited.

Q. 3 - Will you adduce evidence in defence?

A. - No.

27. Not a single question was asked under Section 342 of the Criminal P.C., by the learned Judge drawing the appellant's attention to the 'circumstances appearing in the evidence against him' and asking him to explain such circumstance. That is the very basic requirement of an examination under Section 342 of the Criminal P.C. To ask a question saying, that this is the charge, what have you to say, and then to ask, what more have you to say, is not the way to apply Section 342 of the Criminal P.C. It leads to gross miscarriage of justice. It works as a severe prejudice to the accused, is a case where forty- eight witnesses had been examined and a number of documents were exhibited. It was therefore incumbent upon the learned Judge of the Special Court to draw the attention of the accused to the circumstances appearing in the evidence against him and give him an opportunity to explain such circumstances. The Court never gave that opportunity to the accused. In fact even not a single question was put to the accused that the prosecution had suggested that this book No. 320282 was retained by him and not returned. He was never told that the circumstances in the evidence against him were these conflicts between him and Nazir, the Nazir alleging that the book was retained by the accused and the accused saying that the book was returned and that the belated production of exhibit 94 showed that only two and not this third book had been returned. This point is so serious that the Investigating Officer seized the register, Exhibit 94, which is now being put against the appellant and yet this was not proved at the appropriate stage and at the proper time as we have already indicated. There are similarly many other features to which the attention of the appellant was not drawn and he was not asked to explain any circumstances appearing against him in evidence.

28. It is this kind of question which has been held by the Courts to be no examination at all under Section 342 of the Criminal P.C. The leading case on the point is the Privy Council decision in Dwarkanath Varma v. Emperor , where Lord Atkin lays down the principle that when a point appears in the evidence against the accused which the Court considers vital, it is the duty of the Court, under Section

342 of the Criminal P.C. to call the accused's attention to the point and ask for an explanation and that omission so to ask is a departure from the statutory rule and basing a conviction on the accused's failure to explain what he was never asked to explain, is bad in law. The same principle was enunciated by the Supreme Court in *Tara Singh v. State* : [1951]2SCR729 . The Supreme Court lays down that Section 342 of the Criminal P.C. is an important and salutary provision and cannot be slurred over. If a point in evidence is considered important against the accused, it is right and proper that the accused should be given an opportunity of explaining it if he so desires. Whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of Section 342 of the Code should be fairly and faithfully recorded. The Supreme Court points out that every error or omission in observing the provisions of Section 342 of the Criminal P.C., would not necessarily vitiate a trial because these errors fall within the category of curable irregularities. But the question in each case depends upon the degree of error and whether prejudice has been occasioned or there has been miscarriage of justice. In that particular case the Supreme Court held that the disregard of the provisions of Section 342 Criminal P.C., was so gross that there was grave likelihood of prejudice. The questions asked in that case and which were held by the Supreme Court to be wholly insufficient to satisfy the requirements of Section 342 of the Criminal P.C., are to be found at p. 466 of the Report of (SCA) : at p. 444 of AIR, which seem to be almost similar in their perfunctoriness and inadequacy with the questions asked in this present appeal before us.

29. On these authorities and for these reasons, we allow the appeal. We are satisfied that the examination under Section 342 of the Criminal P.C., is bad and has vitiated the trial and has led to gross prejudice and miscarriage of justice. We therefore set aside the order of conviction and sentence and acquit the appellant. He is discharged from his bail bond.

Bagchi, J.

30. I agree.

