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Court : Kolkata

Decided On : Feb-14-1962

Reported in : 1962CriLJ656

Judge : Bijayesh Mukherji, J.

Appellant : The State

Respondent : Baleswar Mulla and ors.

Judgement :

ORDER

Bijayesh Mukherji, J.

1. On the foot of a commitment made by a Presidency Magistrate, Calcutta, Under Section 207A of the Procedure Code, seven accused men are arraigned Before this Court in the exercise of its ordinary original criminal jurisdiction all Under Section 395 of the Penal Code and four of them Under Section 397 ibid.

2. The place of crime is the Ganga, a river which is referred to in the books as the Hooghiy. On July 25, 1961 the accused men invaded, so it is said, a steam-launch 'Canmore' by name when she was at anchor in the Ganga near Messrs. Hooghiy Docking and Engineering Co. Ltd. within the limits of the port of Calcutta and committed dacoity there; four with deadly weapons. Roughly speaking, the locus delicti is somewhere opposite the Nimtala (Mat on the Calcutta side of the Ganga.

3. The point I have been called upon to decide is if this Court has jurisdiction to try the seven accused men.

4. To determine the question of jurisdiction reference must first necessarily be made to Section 8 of the City Sessions Court Act, 20 of 1953, hereinafter referred to, for brevity's sake, as 'the Act.' By virtue thereof the High Court shall not have jurisdiction to try any person unless he is committed to the High Court for trial of a scheduled offence. The Act defines what a scheduled offence is. Section 2(6) of the Act reads:

'Scheduled offence' means an offence specified in the First Schedule.

The First Schedule to the Act lists eight categories of offences. The offences Under Sections 395 and 397 of the Penal Code are not there.

5. Thus if the matter stands here, the conclusion seems to be ineluctable that the High Court has no jurisdiction to try the accused men on charges Under Sections 395 and 397 of the Penal Code. They are not scheduled offences. They are non-scheduled offences triable by the City Sessions Court (vide Section 7 read with Section 2(5) of the Act.)

6. Mr. Ajoy Basu appearing for the State however contends that that will not be a right approach to make. He is good enough to invite my attention to Section 3(1) of the Act and says that the City Sessions Court has been established for the Presidency-town of Calcutta. In that he is entirely right. But the question of all questions is: what is the Presidency-town of Calcutta? It includes the question: does the Ganga where the crime takes place form part of the Presidency-town?

7. To answer these questions attention must be called to Section 3(44) of the Central General Clauses Act, 10 of 1897. It reads.

Section 3(44) 'Presidency-town' shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be.

That again gives rise to another question. What is the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta? Now, in the year 1962 the answer, and a very good answer at that, is to be found in the Calcutta High Court (Jurisdiction Limits) Act, 15 of 1919. Section 2 of the aforesaid Act prescribes inter alia that the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal shall be exercised within the limits set out in the schedule. There is a proviso to this section. But let that be left alone. Because that does not bulk large here. The Schedule to the aforesaid Act defines the boundaries north, east, south and west. The facts here being what they are, the boundaries on the east and the south do not concern me. The boundaries on the north and the west do. The opening line of the northern boundary reads:

A line commencing on the western side of the river Hooghly at a point.

So the words to be remembered are 'the western side of the river Hooghly'. That means the Howrah side of the Ganga. This is not all. The western boundary reads:

A line commencing from the point last defined along the water-line of the Howrah side of the river Hooghly to the western extremity of the northern boundary.

What is 'water-line' has been explained:

When the expression 'water-line' is used in the schedule all pucca ghats and other objects permanently attached to the bank and in contact with the water shall be deemed to appertain to the area to which the land on that bank appertains, and the water in contact with such objects shall be deemed to appertain to the other side of the boundary.

8. In my judgment the meaning cannot be clearer. Where the land and the ghats on the western side of the Ganga end, Howrah ends and the Presidency-town of Calcutta begins. That being so, it looks more than clear that the river Ganga in so far as it is contiguous to the town of Calcutta proper does very much form part of the Presidency-town.

9. Mr. Basu contends that it will not be correct to apply the definition of the Presidency-town in Central General Clauses Act to the Act, a State Act. I agree

with him. But the Act is not the only Act which calls for consideration here. The Procedure Code is to be taken into reckoning. And it is not a State Act but a Central Act.

10. I have not overlooked Section 20 of the Procedure Code which provides amongst other things that every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto. It will be remembered, however, that the Code is a Code of 1898. The Central General Clauses Act an Act of 1897. At and about that time or even after that a distinction could have been made between the Presidency-town and the port area in so far as that part of the port area faces Calcutta proper. After the Calcutta High Court (Jurisdiction Limits) Act, 15 of 1919, it is there only to be seen that the port case in so far it is opposite the Presidency-town of Calcutta does form part of the Presidency-town itself. So it may very well be held that only to that extent the words 'with in the limits of the port of such town' as they occur in Section 20 of the Procedure Code are otiose. In any view of the matter, that part of the Ganga which is contiguous to the Presidency-town of Calcutta is part of that town.

11. Mr. Basu reminds me that the port of Calcutta extends from sand head on one side to Kalna on the other

Let it extend so. Even then that part of the port area in the Ganga which is contiguous to the Presidency-town of Calcutta is part of the Presidency-town itself, What considerations will apply to the other parts of the port area which are not so contiguous to Calcutta proper do not fall to be considered here.

12. Mr. Basu rightly points out that the Act contains no definition of the Presidency-town of Calcutta. But the Presidency-town of Calcutta is such a well-known concept by now it was a well-known concept too in 1953 when the City Sessions Court Act came into being that there was no need for any further definition.

13. The Central General Clauses Act does define the Presidency-town of Calcutta. Such a definition does apply to the Procedure Code. Once that is held, and that

must be held, the Presidency-town of Calcutta for the purposes of the Code does include very much the Ganga as well in so far as it is contiguous to that town. Indeed this has been the position in fact and at law from 1919. And can it therefore be said that the 1953 Act, a State Act though it may be, still needed a definition?

14. There are other Acts as well where from one can have a very clear idea as to what the Presidency-town of Calcutta is. I need only refer to a still more 'ancient' Act, the Calcutta Police Act, 4 of 1866. Section 3 of the aforesaid Act provides that the word 'Town of Calcutta' shall include all places within the local limits of the jurisdiction of the High Court at Calcutta. I hasten to add that this definition holds good only for the Calcutta Police Act, 1866 and for no other. But this only shows what is meant by the town of Calcutta.

15. First and last, the test to be applied is: how far does the ordinary original civil jurisdiction of the Calcutta High Court extend? Does it extend to the river Ganga up to its western bank? To my mind, the answer cannot be in doubt. It does. If it does, that is the Presidency-town of Calcutta.

16. In support of what I say, reference may be made to Clause 22 of the Letters Patent. It is captioned 'Criminal Jurisdiction'. Its marginal heading is captioned, 'Ordinary original jurisdiction of the High Court'. How far does that jurisdiction, the ordinary original criminal jurisdiction, extend? The answer is that the local limits of the High Court's ordinary original civil jurisdiction are the local limits of the High Court's ordinary original criminal jurisdiction as well. And that indeed is the Presidency-town of Calcutta, subject to this that it does not extend over the river Ganga, as soon as it ceases to touch the Presidency-town of Calcutta. Other jurisdictions then begin.

17. It will not perhaps be out of place to recall to one's mind the object of the Act. The object is to 'relieve the original side of the High Court', to relieve the High Court in exercise of its ordinary original criminal jurisdiction. For that the legislature makes a dichotomy of offences, scheduled and non-scheduled. The scheduled offences are triable by the High Court and the High Court alone. The non-scheduled offences are triable only by the City Sessions Court. There are certain exceptions which do not count here. So I leave them alone. And this dichotomy

has been made for all offences taking place within the limits of the ordinary original criminal jurisdiction of the High Court which to but another name for the Presidency-town of Calcutta in the context of facts here. But for the Act all committals for offences within this periphery would have been made to this Court. After the Act, such committals of scheduled offences only reach High Court and of all non-scheduled offences go to the City Sessions Court.

18. Having regard to the foregoing considerations, hold that this Court lacks jurisdiction to try the seven accused men arraigned Under Sections 395 and 397 of tow Penal Code non-scheduled offences both.

19. Mr. Basu next contends that even though the commitment has not been proper or regular, I should not mind this impropriety or irregularity. In support of his contention he refers to Sections 531 and 532 of the Procedure Code. With respect, these two Sections can have no manner of application to the facts I am seized of. No. Court, no Judge, will rush headlong into an illegality with eyes wide open, For reasons good or bad the law of the land prescribes that these offences shall not be tried by the High Court. Before the trial begins I find the and still I shall go on with the trial? I confess, I cannot conceive of it even. (See *Radharani v. Rahim Sardar* sulk Cal WN 552 : A.I.R. 1946 Cal 459. Section 531 excuses what may be called a bona fide act. If fully aware of the fact that I lack jurisdiction to try these offences, to begin the trial, the error I shall commit will cease to be bona fide one. I am afraid, it will border on a mala fide one. SO Section 531 cannot be attracted. Nor Section 532 for the obvious reason that it is not a case where the Presidency Magistrate has assumed jurisdiction to commit though he has no such jurisdiction. The jurisdiction of the Magistrate is obvious. All he has done, is to make the commitment to a wrong forum. And the answer?. I have given to Mr. Basu's contention about Section 531 the same also apply *mutatis mutandis*.

20. The last contention of Mr. Basu is that Section 8 (b) of the Act is there and that I should tripe the trial for the ends of justice. Section 8 (d) provides for a proposition which is just the reverse. A non-scheduled offence is in seisin of the City Sessions Court. The High Court may, if it so thinks fit, have that case transferred to it. Section 8 does not provide anywhere that a wrong commitment

made to the-High' Court can be tried. Here-also the same consideration arises. If I do have a trial, though I see very clearly that I lack jurisdiction to try the accused men, .there might be no end of complexities and difficulties in the long run. And then who should a Court of law held a trial which the- law says 11 Has no jurisdiction to try? To put it another way, here is a commitment by a competent Magistrate but to a Court the jurisdiction of which to try such offences has been taken sway by the Act.

21. I am not happy either at this turn. The witnesses are inconvenienced. So, I believe, are the accused men. But I cannot help it. The law is there. And it is not for me to rise above the law. Had the crime alleged-taken place on the Ganga not within the limits of the Presidency-town of Calcutta I could have invoked the extraordinary original criminal jurisdiction under Clause 24 of the Letters Patent, were I so minded. But the place of crime being on that part of the Ganga which is the Presidency-town of Calcutta, I cannot do so. And then the Act overrides the Letters Patent (vide Section 16 *ibid*).

22. What is then to be done now? One thing is clear. I shall not, I must not, hold a trial of the accused men on charges Under Sections 395 and 397 of' the Penal Code which I have no jurisdiction to try. But Section 215 of the Code of Criminal Procedure is beyond my resent It is for a commitment made Under Section 213 *Ibid*. Here the commitment has teen Under Section Z87-A *ibid*.

23. Section 439 of the Procedure Code is beyond my reach too. I sit here as a Court of original Jurisdiction, not as a Court of revisional Jurisdiction. But Section 561-A of the Procedure Code is there. Reference may be made to the case of Arunachalam Swami v. State of Bombay reported in : AIR1956 Bom695 where it has been held that it is open to the High Court to interfere with an order of commitment made Under Section 207A of the Procedure Code not Under Section 215 but Under Section 561-A *ibid* and also under Article 227 of Die Constitution. A bench decision of the Mysore High Court in M. Pavalappa v. The State of Mysore A.I.R. 19S7 Mys 61, is to that end too. It refers to the powers of the High Court Under Section 561A. And it doubts if Parliament had really intended to take away the powers of the High Court Under Section 215 by not incorporating Section 207-

A there.

24. I realise that the inherent powers of the Court Under Section 561-A cannot be invoked in matters covered I by special provisions of the Procedure Code. But what is before me is a matter not covered by Section 215 or any other Section of the said Code. When I say this, I have in mind the Supreme Court decision in Khushi Ram v. Hashim A.I.R. 1959 SC 542. But. that was a commitment not Under Section 207-A. That v/as a commitment Under Section 213. And the Allahabad High Court went out of its way to interfere though nothing like a point of law was there. The reason of the Supreme Court's decision is just that.

25. In the result, I quash the commitment made to : this Court and direct that the accused men do appear before the Chief Presidency Magistrate inside of a fortnight from today in order that the inquiry Under Section 1207-A of the Procedure Code may be disposed of in accordance with law.

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