

Satyahari Choudhury Vs. the State

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Court : Kolkata

Decided On : Apr-16-1953

Reported in : AIR1953Cal661,57CWN581

Judge : Mitter and ;S.K. Sen, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 496; ;West Bengal Criminal Law Amendment (Special Courts) Act, 1949 - Section 12; ;West Bengal Criminal Law Amendment (Special Courts) (Amendment) Act, 1952; ;[Indian Penal Code \(IPC\), 1860](#) - Section 420

Appeal No. : Criminal Revn. No. 1233 of 1952

Appellant : Satyahari Choudhury

Respondent : The State

Advocate for Def. : J.M. Banerjee, Adv.

Advocate for Pet/Ap. : A.K. Dutta, Adv.

Disposition : Application dismissed

Judgement :

S.K. Sen, J.

1. In this revisional application the petitioner Satyahari Choudhury has prayed for setting aside the order of the Special Judge Birbhum holding that he had jurisdiction to try the petitioner along with the other accused of the case -- 'State v. Phani Bhusan Das', which was allotted to the Special Judge Birbhum by Government Notification No. 5596 J dated 9-10-1952.

2. The facts of the case are briefly as follows: Some plots of land belonging to one Bholanath Gorain were acquired for irrigation purposes by the Land Acquisition Collector, Birbhum. In respect of one of the plots the award happened to be in the name of a fictitious person Tribhanga Murari Das and the amount awarded in respect of that plot was Rs. 1426/3/6. It appears that during the field work in connection with the land acquisition case, the land acquisition amin Phani Bhusan and the land acquisition Kanungo Ramesh Chandra Ghosh reported that though the plot originally belonged to Bholanath Gorain it was purchased by Tribhanga Murari and was in his possession and they prepared the preliminary papers in connection with the land acquisition. The award was based on these papers prepared accordingly by the amin and the kanungo. In Refund Case No. 596 of 1949-50 payment of the award was actually made and it appeared that a revenue agent Lal Monan Das received a cheque for the amount and the petitioner Satyahari, who is a Muktear of the locality, cashed the cheque on 7-2-1951. The fraud was detected when Bholanath filed a petition before the Land Acquisition Collector complaining that he had not received the compensation for the particular plot of land and then it was found that the record of the Refund Case No. 596 of 1949-50 was also missing. The Land Acquisition Collector after a preliminary enquiry sent information to the officer-in-charge of Suri Police Station on 13-10-1951. According to the prosecution case a fraud in respect of the land acquisition money amounting to Rs. 1426/3/6 was committed by the amin Phani 'Bhusan and the kanungo Ramesh Chandra Ghosh, the revenue agent Lal Mohan and the Mukhtear Satyahari in conspiracy with one another and also in conspiracy with Gobinda Saran Sadhu who was then the peshkar of the Land Acquisition Collector, Birbhum, and Sachidananda Bhowmik, a peon of the Land Acquisition Department at Birbhum.

3. Between 30-11-1951 and 14-8-1952, various accused appeared before the Sub-Divisional Officer, Suri, who granted bail to them. On 14-8-1952, charge sheet was submitted against the six accused including the petitioner Satyahari. The Sub-Divisional Officer then decided that the case was triable exclusively by the Special Court under Act 21 of 1949, the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, as amended by the Amending Act 12 of 1952; and on 20-8-1952, he sent the record to the District Magistrate of Birbhum for taking necessary action. The District Magistrate on 14-10-1952, directed the accused to appear before the Special Judge, Birbhum on 21-10-1952, the Government Notification for allotment of the case having been published in the meantime. As already stated the Government Notification is dated 9-10-1952. On 15-11-1952, the petitioner Satyahari filed a petition before the Special Judge claiming that the Special Judge had no jurisdiction to try the case or at least to try him along with the other accused in the case. The learned Special Judge, after hearing both sides, rejected the petition and held that he had jurisdiction to try the case and tried the petitioner along with the other accused. Against that order this revisional application is directed.

4. Three points have been urged in support of the application. These points were also urged before the learned Judge. The first point is that since the petitioner and other accused had appeared before the Sub-Divisional officer who had granted bail to them it must be said that there was a proceeding before the Court in respect of the case before the allotment was made to the Special Judge and that therefore the Special Judge had no jurisdiction. In this connection Mr. Ajit Kumar Dutta has referred to Section 12 of Act 21 of 1949 as amended by the Amending Act 12 of 1952. This section runs as follows:

'Nothing in this Act shall apply to any proceedings pending on the date of the commencement of the West Bengal Criminal Law Amendment (Special Courts) Amending Ordinance, 1952, in any Court other than a Special Court.'

The Ordinance came into force on 9-4-1952. This was long before the submission of the charge-sheet, the charge-sheet having been submitted on 14-8-1952. The learned Special Judge held that pending proceedings as referred to in Section 12

of Act 21 of 1949 must refer to pending judicial proceedings and that no judicial proceedings were pending on 9-4-1952 when the Ordinance came into force because the case was then still under investigation and the charge-sheet on which the Magistrate could take cognizance had not yet been submitted. Mr. Dutta has urged that the word 'proceedings' in Section 12 of Act 21 of 1949 must be taken to have been used in a wider sense because in Section 12 there is only reference to proceedings pending in Court and not to judicial proceedings. In this connection Mr. Dutta has referred to Section 496, Criminal P. C. which provides that when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail. From this section it would appear that from the stage that an accused appears or is brought before a Court the existence of a proceeding before such Court is contemplated. There is no doubt proceedings of some sort as soon as an accused is brought before a Court even when there is no complaint or charge-sheet, but the question is whether in Section 12 of Act 21 of 1949 the word 'proceedings' before a Court is used in the wider sense or is used in the particular or restricted sense of a judicial proceeding. Even in the Criminal Procedure Code in which Section 4 (m) defines the term 'judicial proceedings' the word 'proceedings' is some times used in the restricted sense of judicial proceedings. Reference may be made in this connection to section Section 344, Criminal P.C. which refers to the power of a Court to postpone or adjourn 'proceedings'. The body of the section' reads that if, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may do so for reasons to be recorded. It is, therefore, clear that the word 'proceedings' in this section is used in the sense of inquiry or trial, that is, it is used in the sense of judicial proceedings. Similarly in Section 435, Criminal P. C. it must be held that the word 'proceedings' is used in the sense of judicial proceedings. It is true that in Section 496, Criminal P. C. to which reference has been made by Mr. Dutta the words 'proceedings before a Court' are used in wider sense and not in the restricted sense of judicial proceedings alone. But in Section 12 of Act 21 of 1949 it would

appear that the word 'proceedings' must have been used in a restricted sense of 'judicial proceedings'. In Section 12 there is reference to proceedings pending in a Special Court. Now proceedings pending in a Special Court could be only judicial proceedings because proceedings before a Special Court could be started only on a complaint or on receipt of a charge-sheet. Since the term 'any proceedings in other Court' is used in the same context in Section 12 of Act 21 of 1949 it would be logical to hold that the proceedings pending in other Court also would mean judicial proceedings and not proceedings in the wider sense such as is used in Section 496, Criminal P. C.

5. Under Section 167, Criminal P. C. if investigation cannot be completed within 24 hours the police must produce the accused before a Magistrate and the Magistrate even if he has no jurisdiction to try the case may order further detention from time to time not exceeding 15 days on the whole or he may grant bail if he so thinks fit. Under the provisions of the Constitution, production before a Magistrate within 24 hours is now compulsory, but a case would not be allotted to a Special Court until the charge-sheet is ready, and proceedings before a Special Court would commence ordinarily with the submission of charge-sheet or a complaint by a police officer after completion of the investigation. Before that stage is reached the accused must be produced before an ordinary Magistrate and it cannot be argued that since the accused is produced before the ordinary Magistrate and the question of bail is considered there is a proceeding before the Court and therefore Section 12 of Act 21 of 1949 bars the jurisdiction of the Special Court. We must agree, therefore, with the learned Special Judge in holding that the words 'proceedings pending before a Court' in Section 12 of Act 21 of 1949 would mean judicial proceedings which started with the submission of a charge-sheet or a complaint or taking cognizance thereon. In this case there were no proceedings pending on 9-4-1952, when the Ordinance came into force and therefore, Section 12 of the Act does not bar the jurisdiction of the Special Court.

6. The second point urged is that under Clause 3 of the Schedule of Act 21 of 1949 an offence punishable under Section 420, I. P. C. is within the cognizance of the Special Court only if it is committed by a public servant or by a person dealing with property belonging to Government as an agent of Government, and in this

case the petitioner Satyahari is neither a public servant nor a person dealing with property belonging to Government as an agent of Government and that therefore, he cannot be tried by the Special Court. It is true that the petitioner Satyahari who is a Mukhtear practising at Birbhum is neither a public servant nor can he be said to be an agent of Government and dealing with Government property as such. Therefore, if there were a charge against him under Section 420, I. P. C. and no other section, the Special Court would have no jurisdiction to try the case. Clause 8 of the Schedule, however, provides that the Special Court also has jurisdiction to try any conspiracy to commit or any abetment of any of the offences specified in other items including item 3. In this case, according to the prosecution, the petitioner Satyahari was involved in the conspiracy to commit the offence of cheating and he also abetted the offence of cheating by other persons falling within the scope of item 3 of the Schedule. Four of the six accused in this case are definitely Government servants being respectively, amin, kanungo, land acquisition peshkar and a peon of the Land Acquisition Department. If the offence under Section 420, I. P. C. was committed by these public servants the offence would, clearly, be cognizable by the Special Court and even if the petitioner though not a public servant was concerned in the offence of conspiracy to cheat with such public servants he would also be triable by the Special Court in view of item 8 of the Schedule. This point, therefore, fails also.

7. The last point urged is that the money alleged to have been taken as the result of cheating was not Government money because it was the money included in an award. Even if it were held that the money was not Government money, it would not affect the jurisdiction of the Special Court because the Special Court would have jurisdiction to try an offence under Section 420, I.P.C. if committed by a public servant and it would not be necessary that he should be taking Government money by the offence of cheating. In this case further it must be held that the money concerned was Government money although it was included in an award. The money included in an award has no separate entity until it was actually paid, and until it is paid out it remains Government money. Therefore, if there is cheating in respect of the sum included in an award it is an offence committed in respect of the Government money.

8. No other point has been urged. The application, therefore, fails and the Rule is discharged.

Mitter, J.

9. I agree.

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