

Amitava Ghose Vs. Emperor

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Court : Kolkata

Decided On : Jul-29-1936

Reported in : AIR1936Cal693,166Ind.Cas.384

Appellant : Amitava Ghose

Respondent : Emperor

Judgement :

Cunliffe, J.

1. The appellant Amitava Ghose, an undischarged insolvent, was tried before Mr. H.K. De, 4th Presidency Magistrate of Calcutta, on 14 charges comprising both cheating and criminal breach of trust as a banker, together with allegations of conspiracy in relation to these two types of charges with two named persons, one, Kalimuddin and the other Banerjee, with certain other unnamed conspirators. He was convicted and sentenced to four years' rigorous imprisonment in all, such sentence comprising separate convictions under both criminal breach of trust with conspiracy and cheating with conspiracy, the sentences to run concurrently. Now, the sole ground on which this appeal has been argued before us is a technical one. The learned Advocate for the appellant has confined himself to a criticism of the manner in which this man was tried in law. The complaint is that there was no evidence before the Court whatever to support the charges of conspiracy to which I have already referred. It appears that originally the appellant was not charged

with conspiracy. He was prosecuted for criminal breach of trust as a banker only and it was not until the case apparently got into the hands of a pleader and as we are told, the Court Inspector, that these charges of conspiracy were superadded. There seems to be a kind of mania in the Province for introducing charges of conspiracy into criminal cases. It is, I suppose, based upon an idea at the back of the minds of those conducting the prosecution that by introducing the conspiracy element into a charge of crime, you thereby let in, to use a colloquialism, certain evidence which otherwise it might be difficult to bring before the Court.

2. This is a very peculiar case, because there is only one accused person and there is very little evidence that there was any intention to bring any other accused persons before the Court with any resolution. We have been told that one of the named conspirators was at one time the subject of a charge, but he was never charged, and he was not placed before the Magistrate in the capacity of an accused standing his trial. Why, indeed, in addition to the conspiracy charge, there were so many as 14 different charges alleged, it is also difficult to see, with no evidence worth the name of conspiracy-certainly no evidence which would interconnect these various offences of cheating and misappropriation. I suppose the prosecution also thought that they would be on the safe side by introducing these numerous charges. As a matter of fact, if we had been unable to accept the argument that the conspiracy charge was not supported by the evidence before the Court, we should have been faced with another argument based upon a misapplication or infringement of Section 234, Criminal P. C. That is the section which sets out an exception to the ordinary rule laid down in Section 233 which deals with separate charges and provides that in some cases not more than three charges might be lumped together in one prosecution. As I have already said, there are 14 here. I am surprised that the learned Magistrate should not have appreciated firstly that there was no real evidence of conspiracy, and secondly that there was an illegal multiplicity of charges against the accused in the trial Court. He has convicted the appellant upon the conspiracy basis, and when we find that that was done without any evidence, it is our bounden duty to set aside the convictions and sentences.

3. In this particular case we shall order a new trial. But I should like to say that it is a sickening waste of public time that charges of conspiracy which always mean a long trial, however convenient the prosecution may think it is to the success of their case, should be introduced when no sort of proper appraisal of the preliminary prosecution evidence has apparently been adopted by the prosecuting authorities before the case comes to its actual trial. There is no blame attached here to the police authorities, as I have endeavoured to show; but there does lie a blame somewhere that we should have to set aside this case which ought by now to have been disposed of. It is, without expressing an opinion about it, a very serious case indeed from the prosecution's point of view of swindling, and we are now forced to start all over again. The order of the Court is that the convictions and sentences are set aside and there will be a new trial before the Additional Chief Presidency Magistrate.

Henderson, J.

4. I agree. It should be obvious to anybody that the police officers who sent up this case were alive to the realities of it. In my opinion, it is deplorable that the learned Magistrate did not put a stop to the transparent manoeuvre made by the gentleman in charge of the actual prosecution with the object of evading the provisions of the law with regard to a joint trial. It should have struck him as strange that when it was never suggested that anybody but the appellant was responsible for these offences, he should possibly have been charged with conspiracy. If he thought that the officers in charge of the prosecution before him had received subsequent information which would justify him in making an entirely new case, he should have, at any rate, insisted upon their producing evidence in support of it. He says not a word in his judgment to show in what way the appellant conspired with Kalimuddin, Banerjea and other unknown persons. The simple explanation of this is that there was no evidence that he conspired with any of them. The witnesses who referred to Kalimuddin are P. W. 24, P. W. 25, P. W. 26 and P. W. 30. There is nothing in any of their depositions to suggest that he had anything to do with the swindling of the appellant. The case with regard to Banerjea is even more ridiculous. This is to be found in the deposition of P. W. 14. All the evidence amounts to, if true, is this: that the witness had been caught by an

advertisement issued by Banerjea and that the appellant successfully took him away from Banerjea and persuaded him to make the money over to him. It should have been transparent to the learned Magistrate that there is nothing here to support the imaginary charge of conspiracy.

5. One unfortunate result was that the learned Magistrate's mind was entirely diverted from his real duty which was to decide whether certain specific charges had been established. He was so busy with this imaginary conspiracy that he does not say a single word in his judgment which would enlighten us as to the way in which he thinks that the specific charges were established. I entirely agree with my learned brother as to what the result of the manoeuvre is. But the whole trial has been rendered abortive and the only course open to us, however harassing it may be to both parties and the witnesses, is to order a re-trial and we sincerely trust that we shall not have any other cases of this sort.

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