

Kaviraj Basudevananda Vs. the State

Kaviraj Basudevananda Vs. the State

SooperKanoon Citation : sooperkanoon.com/877905

Court : Kolkata

Decided On : Jun-23-1969

Reported in : 1970CriLJ632

Judge : N.C. Talukdar, J.

Appellant : Kaviraj Basudevananda

Respondent : The State

Judgement :

N.C. Talukdar, J.

1. This Rule must be made absolute.

2. The Rule is against an order dated the 12th March, 1969, passed by Sri K.R. Banerjee, Magistrate, 1st Class, Howrah in Case No. G. R. 1011 of 1967/ T. R. 141 of 1963--charging the accused-petitioner Kaviraj Basudevananda under Section 406 of the Indian Penal Code where to he pleaded not guilty and claimed to be tried and fixing two dates for evidence.

3. The facts leading on to the present Rule are short and simple. On the 6th April, 1967, one Dibakar Chakravorty as the Manager of the Estate of Mr. C.L. Daga and Sm. Ratan Kunwar Debi, filed a petition of complaint under Section 406 of the Indian Penal Code against the present accused Kaviraj Basudevananda, before

the Sub-Divisional Magistrate (Judicial), Howrah, and on receipt of the said complaint, the learned Sub-Divisional Magistrate, sent the petition of complaint to the Police for taking cognizance and for investigation. The said complaint, thereupon, was treated as the First Information Report and, after completing the investigation, a charge-sheet was submitted against the accused-petitioner under Sections 420/406 of the Indian Penal Code before the learned Sub-Divisional Magistrate, Howrah. The case was, ultimately, transferred to the file of the present incumbent Sri K.R. Banerjee, Magistrate, 1st Class, Howrah for disposal. Copies of documents and statements were supplied to the accused and, after hearing the parties, the learned trying Magistrate, by his order dated the 12th March 1969, framed a charge under Section 406 of the Indian Penal Code against the accused-petitioner. The said charge has been impugned and forms the subject-matter of the present Rule.

4. Mr. Chintaharan Roy, Advocate (with Mr, Arun Kishore Das Gupta, Advocate), appearing on behalf of the accused-petitioner, in support of the Rule, has made a two-fold submission. The first contention of Mr. Roy is that the present proceedings are unwarranted and untenable, in view of the two earlier suits in the Civil Court now pending, namely, one in the court of the learned Munsif, 5th Court at Howrah and the other in the Hon'ble High Court over the said properties. Mr. Roy argued in this context that the cause of action is essentially civil in nature and the criminal proceedings are an abuse of the process of the Court. The second contention of Mr. Roy is that the date of the incident is, ex facie, significant being the 21th day of March, 1948 and for agitating such an old matter, the criminal court is, certainly, not the proper forum. Mr. Narayan Ranjan Mukherjee, Advocate, appearing on behalf of the State has submitted that there is nothing on the record to show that there is a suit pending in the High Court and that there is no bar in law to the institution of the present criminal proceedings, merely because, over the same property a suit in the civil court at Howrah is pending. With regard to the second contention raised by Mr. Roy, Mr. Mukherjee has submitted that it is, undoubtedly, unusual but not illegal and he left the matter to the discretion of tile Court.

5. Having heard the learned Advocate-appearing on behalf of the respective parties and on going through the materials on record, I find that there is a considerable force behind the submissions of Mr. Chintaharan Roy. On or about the 15th December, 1965, long before the institution of the present criminal case under Section 406 of the Indian Penal Code, Smt. Ratan Kunwar alias Ratan Kunwar Debi as well as Kaviraj Basudevananda, the present petitioner, jointly instituted Title Suit No. 233 of 1965 in the court of the learned Munsif, 5th Court at Howrah against one Sidheswar Chakravorty for khas possession of the suit properties evicting the said Sidheswar Chakravorty and it was clearly averred therein that the property was possessed by the plain-. tiff No. 1 Smt. Ratan Kunwar Debi by virtue of a declaration made by the plaintiff No. 2, Kavirai Basudevananda. The said suit, thereafter, was decreed and the present criminal case was filed much after the said civil suit. This would appear from paragraphs 1 and 2 of the petition affirmed in this Court by one Tara Pada Ghose. There is no demurrer on the part of the State. I, however, do not find any material on the record to support Mr. Roy's other submission in this context that there is also a suit pending in the Hon'ble High Court over the said issue. Be that as it may, it is abundantly clear that the relief prayed for in the instant proceedings in the criminal court is a civil one and for a proper determination of the issue that has been raised, the criminal court is, perhaps, not the proper forum. Having regard to the fact that over the same subject-matter a suit was also filed in the civil court and the same has been decreed, a continuance of the present proceedings in the criminal court would be unwarranted and untenable. I uphold the first contention raised by Mr. Roy on behalf of the accused-petitioner.

6. The second ground taken by Mr. Roy is also on a strong footing. The charge itself brings to light the intriguing fact that the cause of action is alleged to have taken place so far back as on the 24th day of March, 1948. It is pertinent in this context to refer to the said charge which is as follows:

That you, on or about the 24th day of March, 1948, being entrusted by Smt. Ratan Kunwar Debi and/or her husband Sohanlal Daga alias Seth, since deceased, with property to wit, cash amounting to Rs. 1,04,000/- or Rs. 70,000/- dishonestly used that property in violation of the legal contract, express or implied, which you made

touching the discharge of such trust and thereby committed an offence punishable; under Section 406 of the Indian Penal Code and within my cognizance.

It is passing strange that a complaint is made in the criminal court with regard to an offence purported to have taken place so far back as on the 24th March, 1918. Much water had flowed down the Ganges since that time and has been followed by civil suit which has also been decreed. Mr. Mukherjee has contended that there is no legal bar to the institution of such a case. The question, however, is one of principle and the question is not essentially of legality but also of propriety. Therefore, in the facts and circumstances of the present case, I hold that a continuance of the present criminal proceedings in the court below on such a charge would not be proper and maintainable.

7. In the result, I make the Rule absolute, set aside the charge that was framed under Section 406 of the Indian Penal Code on the 12th March, 1969 by Sri K.R. Banerjee, Magistrate, 1st Class, Howrah, in G.R. Case No. 1011 of 1967/T.R. 141 of 1968, and I quash the relative proceedings pending before me. Rule made absolute.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com