

Panchanan Mondal Vs. the State

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Court : Kolkata

Decided On : Sep-29-1970

Reported in : 1971CriLJ875

Judge : Talukdar, J.

Appellant : Panchanan Mondal

Respondent : The State

Judgement :
ORDER

Talukdar, J.

1. This Rule is at the instance of the accused petitioner against an order dated the 21st April 1969, passed by Sri A. K. Roy. Sub.Divisional Magistrate, Tamluk in C. R. Case No. 728 of 1968 rejecting the prayer of the accused-petitioner to grant a certified copy of the first information report in the case to him.

2. A point of law of some importance arises in the Rule and the background of facts leading on to the same may be put in a short compass. The accused Panchanan Mondal was arrested in connection' with Panskura P. S. Case No'28 of 396m under Sa 302/201, Penal Code and produced before the learned Sub-Divisional Magistrate, Tamluk on 22.10-1968. The forwarding report by the police stated that the accused was suspected in the P. I R. by the complainant and his

complicity transpired during the investigation He was directed to be in jail custody till the 6th November, 1968. On a prayer for bail made on his behalf on 6 11-1968, the C. 8 I. opposed the same and the prayer was rejected at that stage Tagid was issued for the report from the I. O and the memo of evidence was called for. On 20 11.1968, the memo of evidence, which was not submitted was again called for and the application for bail was rejected. The next date fixed was on 4 12 1968, when again the prayer for bail was rejected by the learned Magistrate on going through the memo of evidence. On the 18th December 1968, again the prayer for bail was refused on the ground that the allegations were serious and there was a chance of abacondence. A tagid was issued for the report by the I. O. fixing 2 1.1969 as the next date. The prayers for bail made on behalf of the accused were thereafter rejected on 2.1.1969, U.I. 1969, 8.3-1969, 15.3.1969 and 31.3-1969. A tagid was also issued for the report from the I. O. on the last date, On 21-4-1969 a prayer was made on behalf of the defence for granting a oopy of the first information report and the same was opposed by the C. S. I. The learned Sub Divisional Magistrate ultimately rejected the said prayer on the ground that the charge sheet was not yet submitted and that the right to obtain a copy of the P. I. R. before the charge sheet is filed, has been taken away by implications under the provisions of Section 173 (4), Criminal P.C. The said order has been impugned and the present Rule was issued.

3. Mr. Ajit Kumar Dutt, Advocate (with Mr. Chittaranjan Das, Advocate) appearing in support of the Rule -made a four.fold submission. Mr. Dutt contended in the first place that the F. I. R. is not the result of an investigation consisting of materials collected during the same and as such it is not barred Under Section 162 of the Code of Criminal Procedure. The second contention of Mr Dutt is that the accused is entitled to have copies of any document sent to the Court as part of the record and the F. I, R. being one such document, the accused is entitled to a copy thereof on payment of the legal fees, under the provisions of 8. 157 (1) of the Criminal P.C. The third contention of Mr, Dutt in one of law and is that the P. I. R, is a public document, entitling the party concerned to have a certified copy thereof Under Sections 74(1)(iii) and 76 of the Indian Evidence Act read with Rule 308 of the Criminal Rules and Orders of the High Court, Calcutta on payment of the legal fees therefore Mr. Dutt referred to several cases in support of his contention and

the flame would be considered in the proper context. The fourth and last submission of Mr. Dutt is the ground of prejudice, based on the principles of natural justice. He contended that if a copy of the first information report be denied to the accused at the earliest stage and is made to wait till he is entitled to receive a free copy of the same Under Section 173(4) of the Criminal P.C. at a later stage, he will be seriously handicapped in his defence particularly with regard to his prayers for bail. Mr. Praaun Chandra Ghosh, Advocate, appearing on behalf of the State fairly submitted that the point raised by Mr. Dutt is one of first impression there being no reported decision on the same after the amendment. He made, however, a broad submission that the Rule has become infructuous as the charge-sheet, has since been submitted in this case entitling the accused to receive a free copy of the P. I. R, along with other documents or relevant extracts thereof on which the prosecution proposed to rely. In reply to specific contention raised by Mr. Dutt based on 8. 157 (1), Criminal P.C., Mr. Ghosh submitted that the copies of all documents sent to the Court, thereby forming part of the record, cannot be as such delivered to the accused irrespective of the stage reached, in the ease and that the delivery of such copies will depend on the stage as enjoined in the statute. So far as the F. I. R. is concerned Mr. Ghosh contended that in view of the provisions of 8. 173 (4) of the Criminal P.C., a certified copy thereof should not be given to the accused at this stage. Mr. Ghosh next contended that in view of the provisions of Section 164 of the Criminal P.C. the first information report is not a public document and in this connection he referred to the language of the provisions contained in 8. 74 (1) (iii) of the Indian Evidence Act. In any event, according to Mr. Ghosh, the accused is not entitled to a certified copy of the F, I. R. at this stage in view of the provisions of Section 173 (4) of the Criminal P.C. Some cases were also referred to by him and the same would be considered in the proper context. Mr. Ghosh finally submitted that there is no question of prejudice as the accused will duly receive a free copy of the F. I. R. at the proper stage Under Section 173 (4) of the Criminal P.C.

4. The first contention of Mr. Dutt has got much force behind it. The F. I. R. is not barred Under Section 162 of the Criminal P, C. as it is not the result of any investigation and does not consist of materials collected during the same, To be precise, the F. I. R. is indeed the starting point of an investigation and not the

result thereof and he is not barred Under Section 162 of the Criminal P.C.

5. The second contention of Mr. Dutt is a very wide one, Mr. Dutt contended that the accused is entitled to have copies of any document including the F. I. R. sent to the Court as part of the record on payment of the legal fees therefore He relied on the provisions of Section 157 (1) of the Criminal P.C. in this con. text. The said provisions are as follows :

If from information received or otherwise an officer-in-charge of the police station has reason to suspect a commission of an offence which he is empowered Under Section 157 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report

On the basis of the same Mr. Dutt contended that the accused is entitled to a copy of the F. I. R. as part of the record. The question however is one of stage and the provisions contained in Section 157 (1) of the Criminal P.C. by themselves do not entitle the accused to such a copy. Copies of all the documents sent to the Court and forming part thereof cannot as such be granted to the accused irrespective of the stage reached in the case. Section 173 (4) of the Criminal P.C. undoubtedly lays down one such stage and is as follows :

After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Sub-section (1) and of the first information report recorded Under Section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded Under Section 164 and the statements recorded under Sub-section (3) of 161 of all the persons whom the prosecution proposes to examine as its witnesses.

I accordingly hold that although the F. I. R , when forwarded to the court, forms part of the record, the accused will not be entitled, merely on that footing, to a copy thereof irrespective of the stage reached, independently of the other provisions in the statute, and of other considerations, entitling him to have the same. In view, however of the other specific provisions in the different statutes,

which have been considered at length in the context of the other issues, I hold that the case of F. I. R. is different and the accused is entitled to a copy thereof on payment of the legal fees therefore at any stage.

6. The third contention of Mr. Dutt is one of law viz., that the F. I. R. is a public document entitling the party concerned to a certified copy thereof under 8s. 74(I)(iii) and 76 of the Indian Evidence Act read with Rule 308 of the Criminal Rules and Orders of the High Court, Calcutta Mr. Dutt urged that the accused being a person 'entitled to obtain copies' has also the right of inspection of the F. I. R. which is a public document inasmuch as such a right of inspection is a concomitant of the right of a person 'entitled to obtain copies'. Section 74 of the Indian Evidence Act relates to public documents and is as follows :

The following documents are public documents (1) documents forming the acts or records of the acts-(i) of the sovereign authority (ii) of official bodies and tribunals, and (iii) of public officers legislative, judicial and executiveor of a foreign country.

Section 76 deals with certified copies of public documents and is as follows:

Every public officer having the custody of public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees there, for together with a certificate written at the foot of such copy that it is a true copy of such document or. part thereof as the case may be

It is also necessary to refer to the provisions of Rule 308 of the Criminal Rules and Orders of the High Court, Calcutta which are as follows :

Parties a criminal proceeding are entitled to obtain copies certified or uncertified, of any portion of the record of trial or enquiry, including such police papers as may be made use of as evidence at the trial or enquiry and final reports submitted by police Under Section 173 of the Criminal P.C.

It is therefore abundantly clear that the intention of the legislature is that a person having the right to inspect a public document is entitled to a certified copy thereof on payment of the legal fees therefore The provision for a free copy of the F, I. R.

Under Section 173 (4) of the Criminal P.C., does not affect or alter the right of the accused to have a certified copy thereof at an earlier stage on payment of the charges as per the provisions of Sections 74(1)(iii) and 76 of the Indian Evidence Act read with Rule 308 of the Criminal Rules and Orders of the High Court, Calcutta. The two rights are distinct and separate, arising at different stages and do not rule out each other. They co-exist and do not overlap. The learned Sub-divisional Magistrate has misunderstood and misinterpreted the provisions contained in Section 173 (4) of the Criminal P.C., which do not repeal or take away the existing rights of the accused to have a copy of a public document like the F.I.R., as there is no theory of implied repeal or repugnancy in law. It is pertinent also to refer to the principle of harmonious construction of statute whereby the provisions of s. 173 (4) of the Criminal P.C., and of ss. 74 and 76 of the Indian Evidence Act coexist and do not rule out one another. The learned Sub-divisional Magistrate has erred in not giving effect to the mandatory provisions of a Central Act on the purported footing of the theory of implied repeal and the same has unduly circumscribed the intention of the legislature. He has also misunderstood and misinterpreted the principles laid down in the case reported in *State of Madras V. G. Krishnan* : AIR 1961 Mad 92 (PB).

7. It is now pertinent to refer to the cases and authorities cited by the learned Advocates appearing on behalf of the respective parties. Mr. Dutt referred to Stroud's Judicial Dictionary (2nd Edn. 1, Vol. 3, for the definition of the expression 'public document'. Lord Blackburn defined it in the case of *Stuila v. Freccia* (1880) 5 App Cas 623 at pp. 643 and 644 as to mean a document that is made for the purpose of public making use of it and being able to refer to itthe very object of it must be that it should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards. In the case of *Queen Empress v. Arumugam* (1897) ILB 20 Mad 189 (PB) it was held by the Full Bench (Subramanian Ayyar J., dissentient) that report made by a police officer in compliance with Sections 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of Section 74 of the Indian Evidence Act and consequently an accused person is not entitled before trial, to have copies of such reports. Chief Justice Collins and Mr. Justice Benson further held that the same rule applies to reports made by a police officer in compliance with s. 173 of the

Criminal Procedure Code, while Mr. Justice Shephard and Mr. Justice Subramanian Ayyar on whose finding Mr. Dutt relied, held that such reports are public documents and consequently an accused person, being a person interested in such documents is entitled by virtue of 8. 76 of the Indian Evidence Act to have copies of such reports before trial. Mr. Dutt next referred to the case of Chittar Singh v. Emperor : AIR1925 All303 wherein Mr. Justice Sulaiman observed at P. 304 that

Technically speaking it may be conceded that a first information report taken down by a police officers amounts to an entry in an official record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty and in the performance of a duty especially enjoined by law, under which such record is kept, and therefore falls within the scope of S 35.

It was further held that the first information report is not however a substantive piece of evidence. Mr. Dutt also referred to the case of Bherumal Khanohand v. Emperor A.I.R. 1937 Sind 303 wherein it was observed by Rupchand Bilaram J. C. at pages 303-304 that

Even if it be assumed that the first report does not form part of the learned Magistrate record until such time as it is tendered in evidence and that it was discretionary with the learned Magistrate to grant or refuse to grant a copy of the first report until it was exhibited, we think that it was an unwise and improper exercise of discretion by the learned Magistrate to refuse to grant a copy.

A reference in this context may be made to the case of Emperor v. Mahadeo Tatya A.I.R. 1942 Bom 121 (FB). Chief Justice Beaumont delivering the judgment of the Court observed at p. 123 that

In our opinion there can be no doubt that in fairness counsel for the accused ought to have been supplied with a copy of the first information when the complainant was giving her evidence. The first information would have supplied starting material for cross-examination on several points.

Mr. Ghosh, in the first instance, referred to the case of *Nawab Bibi v. Sher Zaman*. A.I.R. 1930 Lah 1067 wherein two reports were made to the police to the effect that a certain woman had been married to a certain man. They were brought into evidence to prove the marriage. Mr. Justice Tapp held that those would be inadmissible as they were not public documents and as reports of the nature in question were not covered by Section 154 and 155 of the Code of Criminal Procedure or by Section 44 of the Police Act of 1861. It is dear therefore that the principles laid down in the said case are not applicable to the facts of the present case. Mr. Ghosh next referred to the case of *In re T. S. Swaminathan*. : AIR1944 Mad419 wherein the accused applied before the Special First Class Magistrate at Rajah-mundry to inspect the records of cases registers etc. in the Court of the Joint Magistrate mentioned in the charge-sheet and sent to the Court by the police, The accused contended that the documents being public documents he was entitled to inspect them Under Section 76 and for copy thereof. It was held by Mr. Justice Kuppaswami Ayyar that in view of the explanation to Section 76 of the Indian Evidence Act, it is only an officer who by the ordinary course of his official duty is authorised to deliver such copies, shall be deemed to have the custody of such documents and the Joint Magistrate of Rajahmundry being such an officer having custody of such records, it is that officer before whom the application for copies should be made by the accused. It will appear again that the principles laid down in the aforesaid cases do not support the present proposition put forward by Mr. Ghosh. Mr. Ghosh finally relied on the case of *State of Madras v. G. Krishnan* : AIR1961 Mad92 (FB) for his proposition that a copy of the first information report is not available to the accused before the stage Under Section 173 (4) of the Code of Criminal Procedure. The learned Sub-divisional Magistrate also relied on the said decision to reject the prayer of the accused. It is therefore necessary to refer to the principles laid down in the said case, It was held by the Full Bench that Section 76 of the Evidence Act entitled a person interested in a public document to inspect or obtain certified copies thereof and that a statement recorded Under Section 164, Cr.PC, being a public document a person interested would be entitled to obtain a certified copy thereof, if there is no other statutory prohibition. The Full Bench further proceeded to hold that the provisions of Section 173 (4) of the Code of Criminal Procedure occurring in Chap. XIV Cr.PC, and providing for the supply

of a free copy of the statement referred to there, in, control the provisions of Section 76 and that the said Section should be construed as impliedly prohibiting the grant of copies earlier than the time prescribed by it, constituting a repeal or a abrogation in part of the right Under Section 76 of the Indian Evidence Act- It is apparent however that the case is in the context of a statement Under Section 164 of the Code of Criminal Procedure and not of a first information report recorded Under Section 154 of the Code of Criminal Procedure. The stages and the nature of the copies as mentioned in those provisions are also different. Section 173 (4) of the Code of Criminal Procedure provides for free copies at a specified stage ' while Section 76 of the Indian Evidence Act provides for a certified Copy to be granted on payment of the legal fees therefore irrespective of the stage. The learned magistrate misunderstood and misinterpreted the principles laid down in the aforesaid Full Bench case and the same has vitiated the ultimate order passed by him, On a perusal of the respective provisions in the statute and on a consideration of the different cases I hold that Section 173 (4) of the Code of Criminal Procedure, far from circumscribing the effect of the provisions of Section 76 of the Indian Evidence Act read with Rule 308 of the Criminal rules and Orders of the High Court, Calcutta, by confining their operation only to a particular stage of the case, lends assurance to the said provisions by providing for even a free copy of the F. I. B. to be given to the accused, thereby pinpointing the importance of the F. I. B. in the context of a proper defence of the accused. A denial or a delaying of the same right would ultimately frustrate the intention of the legislature. The third contention of Mr. Dutt accordingly succeeds.

8. The fourth and last contention of Mr. Dutt is the ground of prejudice. The steps of Mr. Dutt's reasoning in this connection are that the denial of the copy of the first information report which is a material document at the early stage will clearly handicap the accused in his defence, particularly with regard to his prayer for bail; that after the passing of the Constitution, this denial is clearly against the principles of natural justice and de hors Article 21 of the Constitution of India; and that the rules of the Police regulation Bengal also lend assurance to the same. There is much force behind the said contention, more so, in view of the Amending Act 26 of 1955 introducing the new procedure which now obtains. No evidence is recorded before the charge and accordingly if the accused be denied the right to have a

certified copy of the first information report at the stage prayed for, he will be materially prejudiced in his defence not only in matters relating to bail but also in relation to his other rights enjoyed under Article 21 of the Constitution of India. It is also to be noted that the F. I. B. is a document which is of considerable value to the accused, showing as it does on what materials the investigation commenced and what was the prosecution case in the first blush. In the case of the Emperor v. Khamu Kuki (1902) 11 Cal W N 554 Chief Justice Prinsep and Mr. Justice Henderson observed at page 556 that: -

The first information if recorded as directed by Section 154 at the time that it is made, is of considerable value at the trial because it shows on what materials the investigation commenced and what was the story then told.

In the later case of Moni Mohon Ghose v. The King, Emperor reported in (1931) 35 Cal W N 623 - (A.I.R. 1931 Cal 740), Mr. Justice Lord Williams and Mr. Justice S. E. Ghose observed at page 628 that:

'first' information or 'first' information report is not mentioned in the Code. But these words are always understood to mean information recorded . Under Section 154 of the Criminal Procedure Code.

It was further observed that the first information is that which first indicates the commission of a cognizable offence by what is therein stated and alleged by the informant. A reference in this context may also be made to the case of Emperor v. Nazir Ahmad wherein Lord Porter observed at page 208 that: -

In truth, the provisions as to an information report (commonly called a first information report) are enacted for other reason. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished.

The question of prejudice of the accused on account of the denial of the copy of the F. I. R. at the earlier stage therefore assumes greater importance and on a proper consideration thereof, I hold that it is expedient in the interests of justice that a certified copy of the first information report, which is a public document,

should be granted to the accused on his payment of the legal fees therefore at any stage even earlier than the stage of 8. Hi (4) of the Code of Criminal Procedure. At the later stage the accused will have the right to have a free copy but the same would not take away the right he already has in law to have a certified copy of the first information report on payment of the legal fees. The fourth and last contention also of Mr. Dutt therefore succeeds.

9. In the result, the Rule is made absolute; the order dated the 21st April, 1969 passed by Sri A. K. Boy, Sub-divisional Magistrate, Tamluk, in C. B. Case No. 728 of 1968 rejecting the prayer of the petitioner to grant to him a certified copy of the first information report in the case is set aside; and I direct that the certified copy of the first information report, as prayed for, be granted to the accused by the learned Sub-divisional Magistrate, Tamluk, on his payment of the legal fees therefore.

10. The records are to go down as early as possible.

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