S. Banerjee Vs. the State

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Court : Kolkata

Decided On : Jan-31-1950

Reported in : AIR1951Cal388

Judge : Sen and ;K.C. Chunder, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 197, 197(1) and 367

Appeal No. : Appeal No. 206 of 1949

Appellant : S. Banerjee

Respondent : The State

Advocate for Def. : K.P. Khaitan, Standing Counsel and ;Sukumar Mitra, Adv.

Advocate for Pet/Ap. : S.C. Talukdar and ;Amiyalal Chatterjee, Advs.

Disposition : Appeal dismissed

Judgement :

Sen, J

1. The applt Major S. Banerjee has been convicted by the Ct of the First Special Tribunal, Calcutta, of having committed an offence punishable under Section 403, I. P. C., that is to say, he has been convicted of criminal misappropriation. He has been sentenced to undergo rigorous imprisonment for a period of six months & to

pay two fines which aggregate to the sum of Rs. 1826/8/-, in default of payment to undergo rigorous imprisonment for a further term of three months.

2. The case for the prosecution briefly is as follows: The applt Satyamoy Banerjee was Superintendent of the Telegraph Workshops, Alipore, at the time of the alleged commission of the offence charged. As such Superintendent he was in charge not only of the administration of the workshops but also of all the properties such as the stores, timber & other materials used in the workshops. The case against him is that during the period between February & April 1945 the applt got certain articles of furniture made for himself with the materials belonging to Govt which were in his charge as Superintendent of the Telegraph Workshops, Alipore. These articles of furniture were made by carpenters, polishmen & other workmen employed by Govt in the aforesaid workshops. The value of the furniture is said to be Rs. 826/8/-. This briefly is the case for the prosecution. The defence taken is that the articles of furniture which formed the subject-matter of the charge were purchased by the accused & were not made with the materials belonging to the workshop or by any of the 'mistries' or workmen of the workshop. The case, as will be evident from what has been stated above, is really a simple one. Certain matters however will have to be referred to in connection with this case.

3. The case originated as follows: There was an investigation held by the Special Police Establishment, Govt of India, in respect of fraud, criminal breach of trust & other offences in the Govt Telegraph Stores & other telegraph workshops. The accused came under suspicion of the police & they applied for a search warrant of the premises occupied by him on 18-6-1945. The object of the search warrant was to seize certain documents mentioned in the list submitted to the Addl Dist Mag, Alipore, & other incriminating documents that may be found there. This search warrant, it may be mentioned, was issued not in connection with the present case but in connection with certain other activities of the accused which raised the suspicions of the Special Police. The warrant was endorsed over to B. C. Dutt, prosecution witness No. 12 for execution & on 20-6-1945 Dutt proceeded to execute the warrant. It seems that he had received certain information relating to the present case & acting on that information he took two persons Jogesh Chandra Ghose, prosecution witness No. 2 & Sudhir Chandra Ghose, Prosecution

witness No. 11 with, him when going to search the house of the applt. From what has transpired from the evidence it seems that Dutt had received information that certain furniture would be found in the house of the accused which had been made from material belonging to the Telegraph Workshop by 'mistries' and carpenters employed by the Telegraph Workshop. Dutt arrived at the house of the accused with these two witnesses & upon their identification he seized certain articles of furniture & made a search list thereof which is Ext. 4. The original purpose for which the search warrant had been taken out was not carried out at this stage. Among the articles seized was a large almirah with secret drawers. That was found in the bedroom of the accused & it was sealed apparently for the purpose of preserving any documents which may be in it. Thereafter on a subsequent date namely 26-6-1945 the search for the documents took place but we are not concerned with the result of that search. After investigation a petn of complaint was filed by the Superintendent of Police in which it was stated that certain articles of furniture had been seized from the residence of the accused which had been made from materials belonging to the Govt workshops by labour for which Govt had paid & that these articles of furniture were kept by the accused for his own personal use. There were certain other allegations made in the petn of complaint with which this case is not concerned. Upon the petn of complaint being filed the accused was tried on a charge of criminal breach of trust, an offence punishabe under Section 409, I. P. C. After hearing the evidence & the arguments of the lawyers for either side the Tribunal was of opinion that proof of entrustment was not satisfactory & that therefore the charge under Section 409 I. P. C. of criminal breach of trust was not appropriate. The Tribunal accordingly altered the charge to one of, criminal misappropriation punishable under Section 403, I. P. C. & convicted the accused of having committed that offence.

4. The first point which has to be considered is whether the trial is bad by reason of the fact that sanction for the prosecution of the accused was not a proper one. Sanction for the prosecution of the accused had been obtained; it is Ext. 1. That sanction however relates to the activities of the accused during the period 1942 to 1944 whereas the charge against the accused relates, as I have said before, to the period between February and April 1945. It is argued that this sanction cannot be availed of by the prosecution for the trial of this case. We are of opinion that

this contention is sound. The sanction obviously was with respect to acts done which are different from the acts for which the accused was tried & therefore it cannot be said that this sanction was a sanction for the present prosecution. Learned Standing Counsel very fairly & frankly said that he was not going to argue that the sanction was a proper sanction. His contention however is that no sanction at all was necessary for the prosecution of the accused for the offence with respect to which he was charged. In this connection he referred us to the provisions of S. 197, Criminal P. C. & to certain decisions of the Judicial Committee regarding the interpretation of that section. The learned Tribunal has also considered this point in their judgment & has dealt with it exhaustively. It has come to the conclusion that no sanction was necessary, & it has given its reasons for this conclusion. We may say at once that we entirely agree with the view of the learned Tribunal & are of opinion that no sanction is necessary in a case of this description. Section 197, Criminal P. C. is in the following terms:

'1. When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Provincial Government or some higher authority is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (a) in the case of a person employed in connection with the affairs of the Federation, of the Governor General exercising his individual judgment; and (b) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his individual judgment.

2. The Governor General or Governor, as the case may be, exercising his individual judgment may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted and may specify the Court before which the trial is to be held.

3. In relation to the period elapsing between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, the

references in this section to the Federation and to the Governor General exercising his individual judgment shall be construed as references to the Governor General in Council.'

The section is not intended to put a wall round public servants so as to protect them from prosecution for criminal offences committed by them. That obviously could not be the object of the section or the intention of the Legislature. In our view the object of the section is to enable public servants to perform their duties fearlessly by protecting them from vexatious, 'mala fide' or false prosecutions for acts done in the performance of their duties. In order to ensure this fearless performance of their duties the law provided that acts done by public servants in the course of the performance of their duties should not be the subject of prosecution until a superior authority after due consideration was of opinion that the acts may constitute an offence & sanction such prosecution. If the acts which form the subject matter of the offence charged are not done in the course of the performance of their duties that is to say, if the alleged criminal acts are not connected with the performance of their duties or are not done under colour or under the cloak of the performance of their official duties, no sanction is necessary. Thus, if a police officer in the course of arresting a woman commits rape on her, no sanction would be necessary for the purpose of prosecuting the police officer because it could not possibly be said that the commission of rape was an act done under the cloak of or under the colour of performance of the duties of a police officer. On the other hand, if a police officer is charged with causing hurt to a person while he was arresting that person, then sanction to punish the police officer would be necessary because in making the arrest a police officer is entitled to use force if necessary, and the causing of hurt may have been legitimate use of force in the performance of the duties of a policeman. We do not think we need elaborate the point any further. We would refer to two well known decisions of the Judicial Committee namely the cases of 'H. H. B. Gill v. The King & 'Phanindra Chandra Neogy v. The King . In the present case the accused is alleged to have directed his workmen -- I use the word 'workmen' in the general sense to include carpenters, polishmen etc. -- to take property belonging to Govt & make articles of furniture out of them for himself. We entirely fail to see how it can be said that the accused when he did these acts was acting in the course of his

duties or was acting under the colour of his office. We hold therefore that no sanction is necessary in this case. This disposes of the first point urged.

5. The next point for consideration is whether the prosecution has succeeded in proving beyond all reasonable doubt that the accused misappropriated timber, masonite & other articles belonging to Govt for his own use by having furniture made out of these articles with me help of the workmen under him. The decision of this point would depend upon whether the witnesses who have deposed to these facts should be believed or not . The main witnesses regarding this point are prosecution witnesses Nos. (1) Bhusan Chandra Mandal, (2) Jogesh Chandra Ghose (4) Abinash Chandra Mandal, (5) Haran Chandra Naskar, (6) Nani Lal Das, (7) Nalin Kumar Mandal, (8) Sanjay Kumar Mandal, (10) Atul Parbat & (11) Sudhir Chandra Ghose. The 'Tribunal has discussed their evidence & the criticisms levelled against them in the Ct below in very great detail & has come to the conclusion that these witnesses are witnesses of truth. In arriving at this conclusion the Tribunal has described their demeanour in detail & has said that the demeanour was such that left the Tribunal in no doubt as to their truthfulness regarding the matters to which they deposed. It is true that on appeal we should consider the evidence afresh because in this Ct both points of law & facts may be raised, but in deciding whether we should accept the evidence of a particular witness or not we must give due weight to the opinion of the trial Ct which had the opportunity of seeing the witnesses & drawing conclusions from the demeanour of the witnesses. His Lordship considered some criticisms of the prosecution evidence and proceeded:

6-10 There is however one matter which requires some consideration & this relates to two articles which were seized namely the Radio stand made of mahogany & a tray made of masonite. It is pointed out by Mr. Talukdar that the Bin record of the relevant date shows that there was no masonite or mahogany in the storeroom of the workshops & he says that this fact disproves the prosecution case that these articles were made out of materials belonging to Govt. The learned Tribunal has considered this point & in spite of the fact that the Bin records show that there was no masonite or mahogany in the store room after 1943 has held nevertheless that the masonite & mahogany used in these articles belonged to

Govt and consisted of 'left overs' in the Workshops. We are of opinion that the fact that the Bin records do not show that there was mahogany & masonite in the store room after 1943 does not necessarily disprove the case for the prosecution. The evidence is that materials received in the godown are entered in the Bin record & when materials go out of the godown they are also entered in the Bin record. The Bin record however has nothing to do with what happens in the workshops. If the workshops take out certain materials & if all the materials taken out are not used, there will be no entry in the Bin records regarding the fact that the materials were not fully used up. If however, the materials are returned to the godown, then the Bin records would show such return. It was thus quite possible that mahogany & masonite were taken out of the godown & that some portions of these two materials were left over left (sic) use of. the remainder for Govt purposes. If they were left over, then they could have been utilised by the accused for his own purposes & the Bin records would not show anything, one way or the other. We realise that if the case against the accused was confined only to the Radio stand & the tray, we may have held that the case for the prosecution was not proved conclusively & that the accused was entitled to the benefit of a doubt regarding the truth of the case for the prosecution. It may be that in such a case the accused could claim an acquittal, but Mr. Talukdar wants us to go further & to hold that because the case against the accused regarding the masonite & mahogany articles has not been proved, we should disbelieve the entire case for the prosecution. We are quite unable to accept this contention. We do not say that we disagree with the finding of the Tribunal as regards these two articles. All we say is that it may be that if left to ourselves we may not have convicted the accused with respect to any offence connected with these articles, but we are quite unable to hold that because there is some doubt regarding these articles, the evidence of the witnesses regarding the other articles should be rejected or should be held as being doubtful.

11. We are satisfied from the evidence that the applt utilised the property belonging to Govt for his own purpose dishonestly. We hold therefore that the conviction of the accused by the Special Tribunal is proper. As regards the sentence we are of opinion that it is merited.

12. The appeal is accordingly dismissed.

13. The accused applt shall surrender to his bail & serve out the remainder of his sentence & pay the fines directed, in default, the applt shall undergo imprisonment for the period imposed.

Chunder, J:

I agree.