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Court : Kolkata

Decided On : Feb-03-1976

Reported in : 1976CriLJ1609

Judge : N.C. Mukherji and ;B.C. Ray, JJ.

Appellant : Ananta Singh

Respondent : State

Advocate for Pet/Ap. : Mr. Snehansu Acharya

Judgement :

N.C. Mukherji, J.

1. This is an application under Section 401(1) of the Code of Criminal Procedure, 1973 read with Sections 439 and 561-A of the Code of Criminal Procedure 1898 and directed against the order dated 28th November 1974 passed by the 4th Tribunal at Alipore in Tribunal Case No. 1 of 1970 rejecting the petitioner's applications dated 9-10-1974, 16-11-1974 and 19-11-1974. In those petitions several legal and constitutional points were raised.

2. The first question raised was that the cognizance of the offence taken by the Tribunal by Order No. 1 dated 3-11-1970 is not according to law as there has been a violation of the mandatory provisions of Section 200 of the Code of Criminal

Procedure and that this illegality is fatal for the subsequent proceedings. The second point raised was regarding the validity of the Tribunal of Criminal Jurisdiction Act, 1952. It was contended that the Act of 1952 specially Sections 5 and 11 are repugnant to the provisions of the New Criminal Procedure Code which came into force on 1st of April 1974. Sections 5 and 11 of the Act have become void by operation of proviso to Clause (2) of Article 254 of the Constitution of India. Several other objections were raised in those petitions before the Tribunal, but in this Court only the first two objections have been raised. On both the points as referred to above the Tribunal decided against the petitioner. Being aggrieved, the present application has been filed.

3. Mr. Snehansu Acharya, learned Counsel for the petitioner in the first place submits that in this case written complaint was filed by the Assistant Commissioner of Police under authority of Deputy Commissioner of Police. The Assistant Commissioner was not competent to file this complaint. He had no knowledge about the facts of the case and it cannot be said that he acted in the discharge of his official duties. He simply filed the complaint as he was directed by the Deputy Commissioner. From these facts Mr. Acharya contends that it was incumbent on the part of the learned Judge to examine the complainant as soon as the complaint was filed and as the complainant was not examined at that time and cognizance was taken, the cognizance so taken was taken illegally. It is true that if a written complaint is filed by a public servant acting or purporting to act in the discharge of his official duties then it comes under proviso (aa) of Section 200 of the Code and in that case the Court need not examine the complainant. But from the facts of the present case it cannot be said that the Assistant Commissioner who filed the complaint was acting in the discharge of his official duties and that being so, this case cannot come under proviso (aa) of Section 200 of the Code. Mr, Acharya draws our attention to Order No. 1 dated 3rd November, 1970. The relevant portion of the order reads as follows:

Complaint by Shri Suniti Bhusan Sarkar, Assistant Commissioner of Police authorised by the Deputy Commissioner of Police, Detective Department, Calcutta, against Ananta Singh and 51 others is filed today. Perused the complaint. Heard the learned public prosecutor Mr. P. C. Ghosh. The relevant

notifications published by the Government of West Bengal under the Tribunals of Criminal Jurisdiction Act, 1952 are also put up. Copies of Gazette Notifications have also been filed along with the petition of complaint. These are all perused. Cognizance is taken of the offences alleged against the accused persons under Section 120-B I.P.C. read with Sections 302, 307, 326, 396, 397, 412, I.P. C. and under Sections 25, 27 of the Indian Arms Act.

From the above order Mr. Acharya wants to contend that cognizance was taken by the Judge without examining the complainant and that being so it was a violation of the provisions of Section 200 of the Code which are mandatory in nature. In support of his contention Mr. Acharya very much relies on the decision in Criminal Appeals 23 to 26 of 1961 (Cal) (unreported) {Sudhir Ch. Bhattacharjee v. State) (Popularly known as Raj Bha-van Case). It was held in this case that the complaint was not filed under the orders of either of the departmental head or of the State Government. No such order was proved in any manner and the petition of complaint that was filed by the Inspector of Police who could have filed the petition of complaint as a private person was not and could not have been filed by him either in discharge of his statutory official duty or in discharge of his official duty enjoined by his departmental head, the Commissioner of Police or by the State Government. That being so, it was further held that the learned Judge was under obligation to examine the complainant before taking cognizance in the case.

4. Mr. Priti Bhusan Barman, learned Advocate appearing on behalf of the State, submits that Section 200 of the Code has no application in the present case. He submtis that Section 200 of the Code is under Chapter XVI and Chapter XVI deals with the complaints to Magistrates. When a complaint is filed before a Magistrate, the Magistrate taking cognizance of an offence is under an obligation to examine the complainant. The Judge trying a case according to the Tribunals of Criminal Jurisdiction Act need not examine the complainant, as a Sessions Judge trying a sessions case is not required to examine the complainant. Cognizance in such a case is not taken under Section 190 of the Code of Criminal Procedure, but cognizance is taken according to Section 5 of the Tribunals; of Criminal Jurisdiction Act. Section 5 reads as follows:

A Tribunal may take cognizance of scheduled offences without the accused being committed to it for trial and, in trying ace-used persons, shall follow the procedure prescribed by the Code for the trial of Warrant cases by Magistrates.

Mr. Barman submits that even if no complaint is filed, as soon as allotment 13 made the Tribunal takes cognizance and that being so, it is not at all necessary for the Tribunal to examine the complainant. Section 5 as referred to above is exactly the same as Section 5 of the West Bengal Criminal Law (Amendment) Act. The very same question arose for decision before a Full Bench of this Court which has been reported in AIR 1961 Cal 560 (FB). The Full Bench case went up to the Supreme Court and it has been reported in : AIR 1963 SC765 (Ajit Kumar Palit v. State of West Bengal). This was a case under West Bengal Criminal Law Amendment Act. Their Lordships approving the Calcutta Full Bench decision held

The word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means becomes aware of and when used with reference to a Court or Judge, to take notice of Judicially. Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence. Where the statute prescribes the materials on which alone the judicial mind shall operate before any step is taken obviously the statutory requirement must be fulfilled. But statutory provision apart there is no set material which must exist before the judicial mind can operate.

Their Lordships further held.

A Sessions Judge cannot exercise that original jurisdiction which magistrate specified in Section 190(1), can but the material on which alone he can apply his judicial mind and proceed under the Code is an order of commitment. It appears to us therefore that as soon as a special Judge received the orders of allotment of the case passed by the State Government it becomes vested with jurisdiction to try the case and when it receives the records from the Government it can apply its mind and issue notice to the accused and thus start the trial of the proceedings assigned to it by the State Government.

Thus it appears that Supreme Court in clear terms indicated that immediately or receiving the orders of allotment of the case a Special Judge becomes vested with jurisdiction to try the case and on receipt of the records from the Government it can apply its mind and issue notice to the accused and start the trial. That being so, that is nothing but taking cognizance of the case and if cognizance is taken on allotment being made and on receipt of the records from the Government, then it must be said that Section 190 of the Code of Criminal Procedure which deals with the complaints filed before the Magistrates has no application to the cases which are tried under the Tribunals of Criminal Jurisdiction Act. And if this be the legal position then we need not take the trouble of deciding whether the complainant was authorised to file the complaint. But even then from the facts of the case we find that in this particular case the Assistant Commissioner was authorised by the Deputy Commissioner to file the complaint. The officer in question filed the complaint as per direction of the Superior officer and that being so, we do not see any point in saying that the complainant was not authorised to file the complaint and he did not file the complaint in the discharge of his official duties. Though after the Supreme Court decision it is not necessary to refer to any other case yet we may refer to the unreported decision cited by Mr. Barman being Criminal Appeal No. 453 of 1971 (Cal). In this case the learned Judge took cognizance of the offences on the written report and put the appellant on trial. It was held that the cognizance was validly taken. In this case also there was no examination of the complainant and provision of Section 200 was not complied with.

5. In the second place Mr. Acharya contends that after the new Criminal Procedure Code came into force Sections 5 and 11 of the Act of 1952 became void as those Sections were repugnant to the provisions of the new Criminal Procedure Code. It is contended that the Act of 1952 related to the concurrent list. Both State Legislaure as well as the Parliament have powers to enact legislation upon this subject. When Act of 1952 was passed the State Legislature was competent to pass the law. But in view of Article 254(1) of the Constitution if any State law which is inconsistent with any Central Law, the State law will be void to the extent that it is repugnant to the Central Act. As Sections 5 and 11 of the Act were repugnant to the old Code the assent of the President to the Act had to be obtained. After the new Criminal Procedure Code came into force the Act of 1952

can no longer be considered as valid law because by reason of the operation of the proviso to Clause 2 of Article 254 of the Constitution of India, the Act of 1952 which is a State Law, has become void as the new Criminal Procedure Code created repugnancy.

6. Mr. Barman in this connection refers to Section 10 of the Tribunals of Criminal Jurisdiction Act which reads as follows:

The provisions of the Code or of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act, shall apply to all matters connected with, arising from, or consequent upon, a trial by a Tribunal constituted under this Act as if the Tribunal were a Court of Session exercising original Criminal jurisdiction.

Mr. Barman contends that the procedure that Section 5 of the Act lays down is that a Tribunal in trying the accused persons shall follow the procedure prescribed by the Code for the trial of warrant cases by Magistrate. This trial started on 3rd February 1970 and the procedure that was followed was the procedure prescribed for the trial of warrant cases by Magistrates as provided under the old Code. Section 484(2) of the New Code provides 'Notwithstanding such repeal if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) as in force immediately before such commencement, (hereinafter referred to as the Old Code) as if this Code had not come into force,' Mr. Barman contends that Section 484(2) of the New Code saves all the trials which are going on and which were started according to the procedure laid down in the old Code. In such circumstances it is not at all necessary that after coming into operation of the new Code a fresh assent of the President was required to be taken. It may be mentioned in this connection that the Tribunals of Criminal Jurisdiction Act, 1952 received the assent of the President. For the reasons stated above we negative this contention also raised on behalf of the petitioner.

7. We should note in this connection that in this case the cognizance was taken on 3rd of November, 1970, 336 witnesses have been examined and out of them 322 witnesses have already been cross-examined. It is true that the new Criminal Procedure Code has come into operation from the 1st of April, 1974, but even then the petitions before the learned Tribunal were filed only on 9-10-1974, 16-11-1974 and 19-11-1974. With regard to the objections that there was non-compliance of provisions of Section 200 of the Code that objection could have been raised much earlier. There is, therefore, no doubt that the petitioner raised the above objections at a very late stage. Mr. Barman in this connection refers to a decision reported in : 1960 CriLJ1239 (R.P. Kapur v. State of Punjab). In this case some of the categories where inherent jurisdiction to quash proceedings can and should be exercised have been enumerated namely: 1) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offence alleged, 2) where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, 3) where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.

8. Mr. Barman also refers to a decision in : 1973 CriLJ577 (Amar Chand Agarwalla v. Shanti Bose). In this case it has been laid down.

The jurisdiction under Section 439 is normally to be exercised only in exceptional cases, when there is a glaring defect or error on point of law and consequently there has been a flagrant miscarriage of justice.

As in the case before us we have negatived both the objections raised on behalf of the petitioner, we do not find anything to quash the proceedings.

9. In the result, the application fails and the Rule is discharged

B.C. Ray, J.

10. I agree.