

**The State Vs. Bikash Ch. Majumdar**

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**Court :** Kolkata

**Decided On :** Jun-06-1976

**Reported in :** 1976CriLJ1800

**Judge :** P.C. Borooah and ;H.N. Sen, JJ.

**Appellant :** The State

**Respondent :** Bikash Ch. Majumdar

**Judgement :**

**H.N. Sen, J.**

1. This is a reference under Section 395(2) Cr. P.C. by Sri S. C, Mazumdar, Chief Metropolitan Magistrate, Calcutta, in connection with G. R. Case No. 123/1974.

2. The facts leading to the reference of the case may be, briefly stated, as follows:

The aforesaid G. R. Case was started on a Police Report in which ultimately charge-sheet was submitted against the accused under Sections 420, 467/471, I.P.C. on 6-2-1974. It was pending before a Metropolitan Magistrate for committal enquiry on 1-4-1974, the date of commencement of the new Code. Following the provisions laid down in the proviso to the Section 484(2)(a) of the new Code the case was committed to the City Sessions Court by order dated 22-4-1974. The learned Judge, City Sessions Court, however, referred back the case to the Chief

Metropolitan Magistrate under Section 228(1), Criminal Procedure Code after framing charges under Sections 420, 467, 468 and 471, Indian Penal Code.

3. The learned Chief Metropolitan Magistrate, Calcutta felt that the referring back of the case was fraught, with difficulties because a situation might arise when imposition of adequate punishment would not be possible for the Chief Metropolitan Magistrate within the powers laid down in Section 29 of the new Code and when Section 325 of the new Code did not provide as to what the Chief Metropolitan Magistrate would do if the punishment called for exceeded 7 years. In the opinion of the learned. Chief. Metropolitan Magistrate Section 323 of the new Code could not be resorted to as it did not mention Chief Metropolitan Magistrate. As such he has opined that Section 26 of the Code should be availed of and the case should be directed for trial before the Court of Session.

4. Mr. Prasun Chandra Ghosh appearing for the State justified the order of the Sessions Judge referring back the case to the Chief Metropolitan Magistrate and he admitted that the difficulties felt by the learned Chief Metropolitan Magistrate were more imaginary than real and should any situation arise during trial before the Chief Metropolitan Magistrate recourse may be taken to the provisions laid down in Section 323 of the New Code for commitment to the Court of Session for imposition of adequate punishment.

5. We have very carefully considered Section 484(2)(a) and its proviso. In our view there was no scope for availing of the proviso in the present case to make a commitment to the City Sessions Court under Section 209 of the New Code when a different forum for trial had been provided in the New Code. Under the New Code all the offences in question were not exclusively triable by the Court of Session but were triable by a Magistrate. The Schedule to the Code was an integral part of the procedural law laid down in the Code of Criminal Procedure 1973, When the offences were all triable by a Magistrate under the New Code there was no question about the Magistrate being satisfied that these were exclusively triable by the Court of Session as required under Section 209, Criminal Procedure Code. As such neither the proviso to Section 484(2)(a) nor Section 209 of the new Code will be attracted to the case in question. In the circumstances the

order committing the accused to the Court of Session was neither legal nor made in accordance with law. The learned Sessions Judge was, therefore, fully justified in referring back the case to the Chief Metropolitan Magistrate after framing charges in exercise of his powers under Section 228(1) of the Code.

6. We have in another judgment delivered today in connection with Reference Case No. 1/74 discussed at length the scope and application of Section 484(2)(a) of the New Code, and its proviso and we need not repeat it here. Suffice it for the purpose of the present reference to say that the proviso can be attracted and a commitment made under Section 209 in pending inquiry under Chapter XVIII of the Old Code in respect of cases arising on a police report only when the offence was exclusively triable by the Court of Session under the Schedule to the New Code but not otherwise. No other interpretation is possible on a reading of Section 209 alongside the proviso to Section 484(2)(a) of the New Code.

7. The difficulties mentioned in the report made under Section 395(2) Cr. P.C. appear to us to be rather imaginary. If in a given case the Chief Metropolitan Magistrate finds that no adequate punishment can be imposed by him within his powers under Section 29, Criminal Procedure Code he could very well invite application of the provisions laid down in Section 323 of the New Code which provided that a Magistrate proceeding with a trial may commit To the Court of Session if it appears to him at any stage of the proceeding that the case ought to be tried by the Court of Session being one in which he cannot impose adequate punishment. Absence of mention of the Chief Metropolitan Magistrate in Section 323 does not preclude the Chief Metropolitan Magistrate from resorting to the provisions laid down in that section for the purpose indicated therein. This is because the Chief Metropolitan Magistrate is also a Magistrate and must be deemed to have been included in the term 'Magistrate' referred to in Section 323 of the New Code,

8. In the premises mentioned above, we are of the view that there is no substance in the Reference and we, therefore, reject the same and direct the learned Chief Metropolitan Magistrate to proceed with the trial of the case on the charges framed by the learned Judge, City Sessions Court. Let the record of the case be sent

down forthwith.

**P.C. Borooah, J.**

9. I agree.

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