

Asoke Chakraborty Vs. the State

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Court : Kolkata

Decided On : Jun-23-1976

Reported in : 1977CriLJ157

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

Appellant : Asoke Chakraborty

Respondent : The State

Advocate for Pet/Ap. : Mr. Barendra Nath Sur

Judgement :

H.N. Sen, J.

1. The petitioner has, in this Rule, impugned the order dated 27-4-1974 passed by Shri S.K. Das, Metropolitan Magistrate 12th Court, Calcutta in G.R. Case No. 760 of 1973 and has prayed for quashing the proceeding and alternatively for transferring the case to the Court of Sessions Judge, Howrah for trial.

2. The petitioner was arrested on 22-10-72 over an incident said to have taken place on 14-10-72 at about 8 p.m. on a ferry boat near Palghat and Belur-gtoat on the river Hooghly within the jurisdiction of Bally Police Station. Over the said incident North Port Police Station recorded a case being Case No. 98, dated 15-10-72 under Section 395/397, I.P.C. and on completion of investigation, submitted

a challan under Section 395/397, I.P.C. on 13-8-73 before the Chief Metropolitan Magistrate, Calcutta. The case was ultimately transferred to the file of the Metropolitan Magistrate, 12th Court for disposal. By his order dated 27-4-74. the learned Magistrate committed the petitioner and another accused to the High Court to face a charge under Section 395/397, I.P.C. on the ground that the City Sessions Court, Calcutta had no jurisdiction to try the case-the incident having taken place on river Hooghly.

3. Mr. Barendra Nath Sur. learned Advocate appearing for the petitioner, has urged before us that the investigation done by North Port Police Station was unauthorised and without jurisdiction as the occurrence took place within the jurisdiction of Belly P.S., District Howrah. As such, Mr. Sur further urged that the subsequent committal proceeding resulting in an order of commitment of the petitioner and another to the High Court was also without jurisdiction. Mr. Sur submitted before us that the petitioner would be put to serious inconvenience and prejudice if the case was to be tried by the High Court, Lastly, Mr. Sur has urged before us that the learned Magistrate had failed to appreciate that under the Code of Criminal Procedure, 1973 there was no extraordinary criminal jurisdiction of the High Court for holding Sessions trial and the present case being not that type of a rare case where operation of Section 474. Cr.P.C. has to be called for, the learned Magistrate ought to have made a reference under Section 395, Cr.P. C, for necessary directions from the High Court.

4. It appears from the order dated 27-4-74 that the learned Metropolitan Magistrate committed the petitioner and another accused to the High Court for trial in exercise of its extraordinary criminal jurisdiction as the case was exclusively triable by the Court of Session and as the occurrence had taken place inside a boat on the river Hooghly. the City Sessions Court would have no jurisdiction. According to him, the place of occurrence though within the territorial jurisdiction of the Sessions Judge, Howrah, convenience demanded trial in Calcutta as most of the principal witnesses were resident in Calcutta.

5. In support of the rule Mr, Sur, drew our attention to the unreported decision by us in Criminal Revn. Case No. 158 of 1974 (Cal) and submitted that the

investigation done in the present case by the North Port Police Station was unauthorised and without jurisdiction and the proceeding should be quashed on that ground alone, in our view, the unreported decision cited before us cannot really help the petitioner inasmuch as the occurrence took place on the river Hooghly. Under Section 20 of the Code of Criminal Procedure, 1898 every Presidency Magistrate (now designated as Metropolitan Magistrate) had jurisdiction in all places within the Presidency town for which he was appointed and within the limits of the Port of the said town and in any navigable river or channel leading thereto in so far as the limits were defined under the law for the time being in force for the regulation of ports and portdues. The Code of Criminal Procedure 1898 has since been repealed and replaced by the new Code of 1973, But notwithstanding such repeal, under Section 484(2)(b) of the Code of 1973 'notifications published, proclamations issued, powers conferred', forms prescribed, local jurisdictions defined, etc... under the old Code and which were in force immediately before the commencement of the new Code shall be deemed, respectively to have been published, issued, conferred, prescribed, defined, etc.... under the corresponding provisions of the new Code Section 20 of the old Code related to local jurisdiction of the Presidency Magistrate (now designated as Metropolitan Magistrate). The corresponding section in the new Code is Section 16(3). Therefore, by virtue of the saving provisions in Section 484(2)(b) of the Code of 1973 the jurisdiction of Metropolitan Magistrate extends to the limits indicated in Section 20 of the old Code. Conceivably, therefore, a Metropolitan Magistrate of Calcutta is vested with the jurisdiction to inquire into an offence committed on the river Hooghly leading to the port for the town of Calcutta. The North Port Police Station has within its jurisdiction the northern part of the port and the navigable channel leading to the river Hooghly and within its jurisdiction the offence in question had been committed. In the circumstances, the investigation would not be bad for want of jurisdiction, Commitment made by the Metropolitan Magistrate on the basis of the chaltan submitted by the North Port Police Station was thus a proper commitment.

6. A question, however, arises for our consideration as to whether the learned Magistrate should have committed the accused petitioner and another to the proper Court of Session i.e., the Court of Session at Howrah within the local limits

of the jurisdiction of which Palghat and Belurghat lay. On this question we have a decision of our High Court reported in ILR (1953) 2 Cal 150 where it was held that ordinarily a Presidency Magistrate (now designated as Metropolitan Magistrate) may commit a person for trial to the Court of Session or to the High Court for any offence triable by such Court. The offence in the present case was under Section 395/397, I.P.C. and they are shown as triable by a Court of Session in the schedule to the Code. Therefore, ordinarily such cases should be committed to the proper Court of Session outside Calcutta and not to the High Court. The question, however, does not rest there. The question for consideration would be whether the High Court has got jurisdiction of its own to try such a case committed to it. True, the ordinary original criminal jurisdiction of the High Court which was limited to the Presidency Town of Calcutta by Letters Patent establishing the High Court has been abolished with the enactment of the West Bengal City Sessions Court Amendment Act 33 of 1959 which had done away with the original criminal jurisdiction of the High Court at Calcutta. But reference to the High Court in Section 26 of the Code of Criminal Procedure 1973 would manifestly indicate that the High Court's right to exercise its extraordinary original criminal jurisdiction under Clause 24 of the Letters Patent remained wholly unaffected. The right under Section 26 of the new Code of 1973 can only be exercised subject to the other provisions of the Code i.e. Section 193, which requires a commitment for the purpose of assumption of jurisdiction to take cognizance. Section 474 of the new Code further makes provisions for such cases where the High Court has to try an offence in exercise of its extraordinary criminal jurisdiction.

7. Clause 24 of the Letters Patent reads as follows:

We do further ordain that the said High Court of Judicature at Fort William in Bengal (now at Calcutta) shall have extraordinary original criminal jurisdiction over all persons residing in places Within the jurisdiction of any Court now subject to the Superintendence of the said High Court and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate General or by a Magistrate or other officer specially empowered by the Government in that behalf.

8. It would, therefore, appear that under Clause 24 of the Letters Patent the High Court has original criminal jurisdiction of an extraordinary kind which though not mentioned in the Code was however preserved by that Code under Section 26 to try a case in respect of any person whose case has been brought before it by a commitment by any Magistrate which will necessarily include a Presidency Magistrate (now designated as Metropolitan Magistrate).

9. In the aforementioned decision it was, therefore, held that the jurisdiction of the High Court in a case of this nature under Clause 24 of the Letters Patent was co-extensive with that of any Court of Session outside the Metropolitan City of Calcutta over the offence which was committed within the local limits of the jurisdiction of such other Court of Session. As indicated already, the High Court's right to try such a case in exercise of this extraordinary criminal jurisdiction has also been provided for in Section 474 of the Code of Criminal Procedure 1973.

10. From the discussion aforesaid it is clear that in the present case there was a valid commitment and the High Court is competent to proceed with the case in exercise of its extraordinary criminal jurisdiction under Clause 24 of the Letters Patent. Incidentally, it may be stated that the jurisdiction of this Court being extraordinary it had also its powers to direct the Magistrate to commit any case to the Court of Session outside the town of Calcutta if that course appeared to be more just and convenient. Such a situation, however, does not arise in the present case as the learned Magistrate considered the case from that standpoint and there would be, therefore, no occasion for the Magistrate to make any reference to this Court under Section 395, Cr.P.C. for directions.

11. In the premises mentioned above, the commitment was a valid commitment and there being no just reason against it. we have to hold that this Court is competent to try the case committed to it in exercise of its extraordinary original criminal jurisdiction.

12. The Rule is accordingly discharged.

P.C. Borooah, J.

13. I agree.

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