

Jay Shankar Jha Vs. the State

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Court : Kolkata

Decided On : Dec-14-1981

Reported in : 1982CriLJ744

Judge : Manoj Kumar Mukherjee and; S.N. Sanyal, JJ.

Appellant : Jay Shankar Jha

Respondent : The State

Judgement :

S.N. Sanyal, J.

1. This revisional application is at the instance of the petitioner Jay Sankar Jha against whom a proceeding being Case No. G. H. 572 of 1977 Under Sections 279 and 338 of Penal Code and Sections 89(a)(b) and 118A of the Motor Vehicles Act is pending before the learned Metropolitan Magistrate, Third Court. Calcutta. The petitioner was arrested on Sept. 3, 1976 in connection with that case. The petitioner was granted bail by the learned Chief Metropolitan Magistrate, Calcutta on Sept. 4, 1976. The police prayed for time on different dates for completing the investigation and challan was submitted against the petitioner on June 27, 1977. The learned Chief Metropolitan Magistrate took cognizance and transferred the case to Metropolitan Magistrate, Third Court. The case was triable as a summons case and the learned Magistrate proceeded with the trial in course of which eight prosecution witnesses were examined. The accused thereafter filed an

application Under Section 167(5) of the Criminal P. C. contending that there was violation of the mandatory provision of Section 167(5), Cr.P.C. as the investigation was not completed within six months from the date of arrest and the challan was submitted beyond the statutory period without seeking any permission from the Magistrate. The accused contended that the cognizance taken was bad in law and further continuance of the case was an abuse of the process of Court. The prayer of the accused was that further proceeding should be stopped and the accused should be acquitted.

2. The learned Magistrate rejected the application on the ground that cognizance was taken by the learned Chief Metropolitan Magistrate and it was not within his competence to challenge the order of the learned Chief Metropolitan Magistrate as he could not sit in judgment over the order of the learned Chief Metropolitan Magistrate.

3. The accused has come up before this Court in revision for quashing the proceeding.

4. The learned Advocate for the petitioner has contended that cognizance taken was bad in law and the subsequent proceeding thus became illegal and an abuse of the process of Court. The mere fact that the petitioner did not raise the objection earlier cannot deprive him of the right granted by law. It has been further contended that the record does not show that before the expiry of the period of six months from the date of arrest of the accused any attempt was made by the officer making the investigation to satisfy the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months was necessary. The contention of the learned Advocate for the petitioner is that in the instant case the Magistrate was obligated to make an order stopping¹, further investigation as required by the mandatory provisions of Section 167(5) of the Criminal P. C. In support of his contention the learned Advocate for the petitioner has referred to the case of Ram Kumar v. The State, reported in 1981 Cri LJ 1288(Cal).

5. There is no dispute that the accused Jay Sankar Jha was arrested on September 3, 1976 in connection with the instant case which admittedly is a case

triable by a Magistrate as a summons case. The investigation of the case was not concluded within a period of six months from the date of arrest. The challan was submitted on June 27, 1977 and the learned Chief Metropolitan Magistrate took cognizance on that date. In view of Section 167(5), Cr.P.C. the investigation beyond the period of six months can be continued only if the officer making the investigation satisfies the Magistrate that for 'special reasons' and in the 'interests of justice' the continuation of the investigation beyond the period of six months is necessary. This satisfaction of the Magistrate must take place before the expiry of the period of six months. In order to see whether any such satisfaction was there it will be necessary to consider the relevant orders recorded by the learned Magistrate. The relevant orders are as follows:

1. 4-9-76: Seen police report and F.I.R. Let it be kept with the record. Accused Jay Sankar Jha is on P.S. bail. He may find a fresh bail of Rs. 1,000 i. d. to J. C. till 18-9-76. Bail bond furnished and accepted.
2. 18-9-76: Seen police report. Accused as before on C.B. till 26-11-76.
3. 26-11-76: Seen police report. Accused as before on C.B. till 4-2-77.
4. 4-2-77: Seen police report. Accused as before on C.B. till 19-4-77.
5. 19-4-77: Seen police report. Accused as before on C. B. till 27-6-77. I. O. to expedite.
6. The next order is the order dated 27-6-77 when the Chief Metropolitan Magistrate received the challan Under Sections 279/338, I.P.C. and 89(a)(b) & 11'8A M. V. Act against the accused and took cognizance. Before the expiry of the period of six months no prayer in any of the applications filed by the Investigating Officer was made that for special reasons and in the interests of justice the continuation of the investigation beyond six months was necessary. The routine prayer of the Investigating Officer made in the applications that the investigation of the case was in progress and the accused may be remanded to a certain date for further investigation of the case is wholly insufficient to meet the statutory requirements for continuation of the investigation beyond the period of six months.

7. As no attempt was made by the officer making the investigation to satisfy the Magistrate as required by Section 167(5), Cr.P.C. the Magistrate was bound to make an order stopping further investigation into the offence. The continuation of the investigation thus, beyond the period of six months in contravention of law, is illegal and the cognizance taken by the Magistrate is bad in law and the subsequent proceeding is without jurisdiction. It cannot be said that by asking the Investigating Officer on 19-4-77 to expedite investigation and by taking cognizance after the expiry of the period of six months the Magistrate has impliedly allowed the continuation of investigation. In our opinion the Magistrate has no such competence as the investigation beyond the period of six months can only continue if the conditions laid down in Section 167(5), Cr.P.C. P. are fulfilled.

8. The next question for consideration is whether the accused, having not raised the objection immediately on the expiry of the period of six months, is entitled to raise the objection now, specially when as many as eight prosecution witnesses have been examined, unless he shows that he has been prejudiced by the continuation of investigation beyond the period of six months. In our opinion no such contention can prevail in view of the specific provisions of Section 167(5), Cr.P.C. The accused was not required to raise any such objection as the obligation was upon the Magistrate to stop further investigation. The illegality remained an illegality and the delay or failure on the part of the accused to point out the same will not make it otherwise. The question whether the accused has been prejudiced or not is thus wholly irrelevant.

9. For the reasons stated as above, we are of the opinion that the investigation carried on after the expiry of the period of six months was without jurisdiction and the cognizance taken on police report based upon such an investigation was bad in law. The subsequent proceeding was without jurisdiction. We thus quash the proceeding of G.R. Case No. 572 of 1977 pending against the petitioner in the Third Court of the Metropolitan Magistrate, Calcutta. The Rule is thus made absolute.

Monoj Kumar Mukherjee, J.

11. I agree.

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