

Dhirendra Ch. Bhowmick Vs. the State

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Court : Kolkata

Decided On : Feb-02-1978

Reported in : 1978CriLJ637

Judge : Jyotirmoyee Nag, J.

Appellant : Dhirendra Ch. Bhowmick

Respondent : The State

Advocate for Pet/Ap. : Mr. Das

Judgement :

ORDER

Jyotirmoyee Nag, J.

1. In these Rules the petitioner prays for quashing the charge framed against the petitioner Under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of Clause (7) of Iron and Steel Control Order, 1956.

2. The prosecution case is that the accused, Dhirendra Chandra Bhowmick, of 23/37, Gariahat Road, Calcutta-19, is the proprietor of M/s. Dhirendra Chandra Bhowmick & Co. having its factory situated at Christhadanga, Bankura. The accused petitioner obtained steel materials amounting to about 20 metric tons valued at Rs. 2267.55 paise from the Indian Iron and Steel Co., Calcutta, for the

purpose of repair and reconstruction of his factory. The accused petitioner instead of using the said steel materials for the purposes stated in his application sold away the same in black market. It is also prosecution case that the said factory at Bankura had been closed since 1966 and the steel materials never reached the factory site.

3. Mr. Das appearing for the petitioner has drawn my attention to the complaint of P. C. Mohanta, Officer-on-Special Duty (Vigilance) which was treated as F.I.R. by the Inspector, Central Bureau of Investigation, and also the statements of witnesses and the charge-sheet and he has submitted before me that the offence, if any, has been committed within the jurisdiction of Alipore Court inasmuch as the head office of the Firm is situated within 24 Parganas where the application for steel was made by the petitioner and delivery was made at Calcutta at the head office of the Firm of the accused and if any offence has been committed, it has been committed within the jurisdiction of the Alipore Court. He has also drawn my attention to the fact that this case was filed in Alipore Court previously and at the instance of the prosecution the case has been transferred to Bankura. In the charge-sheet on the basis of which cognizance was taken of the present case it is clearly stated that 'In course of investigation, the accused D. C. Bhowmick failed to produce or show any document in support of the carrying those steel goods from Calcutta to, his factory, Bankura for which steel materials were obtained. The factory on inspection was found completely closed without any manufacturing activities during the period of taking delivery of the above steel materials and afterwards. It has been established during investigation that the materials obtained by the accused were not utilised for the purpose of repairing and reconstruction of his factory at Bankura.'

4. Mr. Das has drawn my attention to Section 181 of the Or. P. C. Sub-section (4) of Section 181, Cr.PC relates to offence of criminal misappropriation or of criminal breach of trust and it is provided therein that an offence of misappropriation or criminal breach of trust may be enquired into or tried by a court within whose local jurisdiction the offence is committed or any part of the property which is the subject of the offence was received or retained or was required to be returned or accounted for, by the accused persons. Mr. Das points out that the property which

is the subject of the offence, i.e., steel articles were received at Calcutta within 24 Parganas at the Head Office of the Firm of the accused petitioner. Further, Calcutta would be the place where he has to account for the goods which he has received. Therefore, the trial at Bankura is without jurisdiction, accordingly the charge be quashed.

5. Mr. Prasun Chandra Ghosh appearing for the opposite party (the State of West Bengal) has submitted before me that this is not a case of criminal misappropriation or criminal breach of trust. Here there has been a violation of the Iron and Steel (Control) Order. According to that Order the accused has to utilise the materials which he has received for the purposes for which he made the application. That is, in this case he should have utilised the materials for repairing and for reconstruction of his factory at Bankura. Section 181 has no application to the present case and Section 177 Cr.PC is the proper section. As the offence consists in acts of omission, i.e., omission to utilise the materials for the purpose for which they have been obtained and that omission has taken place within Bankura Court, the Bankura Court had jurisdiction to entertain the case. I agree with the submissions made by Mr. Prasun Chandra Ghose and I hold that Section 177 of the Cr.PC is the proper section and not Section 181(4) Cr.PC as submitted by Mr. Das. The crime is an act of omission and where the crime is committed, is the place where the act which is omitted ought to have been done. As I have already stated that the omission consists in not utilising the steel materials at Bankura and hence within the local jurisdiction of that court the offence has been committed.

6. Accordingly I affirm the order of the learned Magistrate at Bankura and discharge the Rule.