

Prafulla Kumar Ghosh Vs. the State

Prafulla Kumar Ghosh Vs. the State

SooperKanoon Citation : sooperkanoon.com/886871

Court : Kolkata

Decided On : Feb-24-1978

Reported in : 1978CriLJ1497

Judge : Sudhamay Basu, J.

Appellant : Prafulla Kumar Ghosh

Respondent : The State

Judgement :

ORDER

Sudhamay Basu, J.

1. This Rule concerns an order passed by the Additional Sessions Judge, Alipore 6th Court, in Sessions Trial No. 3 of May 1976 rejecting the prayer of the petitioner to remit the case Under Section 228 : of the Code of Criminal Procedure to the Chief Judicial Magistrate, Alipore to try the alleged offences Under Sections 406 and 467 of the Indian Penal Code.

2. In this case on a complaint being filed after investigation the police submitted a charge sheet Under Sections 406 and 467 of the Indian Penal Code. In March, 1973 the learned Magistrate proceeded to enquire into the allegations under chapter 18 of the old Code for committing the accused. While the enquiry was pending the new Criminal Procedure Code came into force. The petitioner was

committed to the court of session and the learned Additional Sessions Judge took up the case for framing charges on the 14th of May, 1976. Objections were raised on behalf of the petitioner that inasmuch as the new Criminal Procedure Code made the offences Under Sections 406 and 467 triable exclusively by a Magistrate of 1st Class the petitioner was not liable to be tried by the learned Sessions Judge. The same was, however, dismissed by the impugned order on the 14th of May, 1976. The same is the subject-matter of challenge in this rule.

3. The matter was called on for hearing several times but unfortunately nobody appeared in support of the rule. Mr. Mukti Prasanna Mukherjee, the learned advocate appearing on behalf of the State, however, made his submissions.

4. It appears that in rejecting the petition the learned Sessions Judge relied on a decision reported in 1975 Cri LJ 995 (Orissa). It, however, appears that the point has been concluded by several decisions of this Court. It is true that in a case reported in 1975 Cri LJ 995 (Orissa) (Sakati Narayan v. B. Lachu) Mishra, C. J. of the Orissa High Court decided that when an offence Under Section 467 I.P.C. for committal proceedings under the old Code were pending before a Magistrate on 1-4-74 the Magistrate by virtue of Section 484(2)(a) proviso must submit the case to the Sessions Judge Under Section 209. No doubt Section 484(2) provides that all pending appeals, applications, trials, enquiries and investigations are to continue in accordance with the old Code but makes an exception in the case of an enquiry under chapter 18 which should be disposed of in accordance with the new Code. But in giving effect to the said proviso what is not taken note of is that under the provision of the new code the substantive offence itself may be triable only by a Magistrate. In the instant case the offence Under Sections 406 and 467 are made exclusively triable by a Magistrate, 1st Class but under the old Code the offence Under Section 406 was triable by both the Court of Session and a Magistrate, but the offence Under Section 467 was exclusively triable by the Sessions Court. The result is that when the learned Magistrate under the provision of Section 484(2A) started to commit the case to the Sessions he could no longer satisfy himself that the offences are triable exclusively by the Court of Session. There is also another case Adya Prasad v. R. Mahto reported in 1975 Cri LJ 997 (Pat) in which Justice C. P. Sinha of Patna High Court gave a decision more or less in accord with the

Orissa decision. In the case of Ram Chandra Maity v. Sudhir Chandra Mondal reported in (1977) 1 Cal LJ 110 : (1977 Cri LJ 481) a Division Bench of this Court had occasion to consider this aspect of the matter. In course of delivering the judgment I held that by allowing a Magistrate to commit it would be overruling and not giving effect to express provision of the statute. I further observed:

It can hardly be doubted that the schedule to the new Code is as much an integral part as any other provision contained in the same. The provision in the schedule itself can hardly be ignored. To hold that the committal enquiry commenced by the Magistrate under the old Code should continue in spite of the offence being triable by a Magistrate of 1st Class under the new Code is to arbitrarily ignore the existence of the new Code and not to give effect to the same'. It is to be noted that another Division Bench decision of this Court namely State v. Abdul Rasid reported in (1976) 3Cal HC(N) 569 also supports the view we took. My attention was also drawn to a decision of my learned brother Banerjee, J. who sitting singly held similar views in Kevn. Case No. 976 of 1974 (Cal) (Ajit Kumar De v. The State of West Bengal).

5. It is not necessary to go into further details. In view of the new provisions in the Code the case is clearly to be governed by the new Criminal Procedure Code. The petition, therefore, must succeed. The impugned order dated the 14th of May, 1976 and the committal proceedings itself are set aside. Let this case be transferred by the learned Sessions Judge to the appropriate Magistrate to be dealt with in accordance with law.

6. The rule is made absolute.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com