

State of West Bengal Vs Bejoy Kumar Bose and Others

Court: Supreme Court of India

Date of Decision: Dec. 7, 1977

Acts Referred: Criminal Procedure Code, 1973 (CrPC) " Section 190(1), 200

Penal Code, 1860 (IPC) " Section 109, 120B, 34, 379, 409

West Bengal Criminal Law Amendment (Special Courts) Act, 1949 " Section 4, 4(2), 5

West Benga

Citation: AIR 1978 SC 188 : (1978) CriLJ 138 : (1978) 1 SCC 173 : (1978) SCC(Cri) 78 : (1978) 2 SCR 382 : (1978) 10 UJ 30

Hon'ble Judges: V. D. Tulzapurkar, J; P. K. Goswami, J

Bench: Division Bench

Advocate: A.P. Chatterjee, G.C. Chatterjee and Mukti Moitra, for the Appellant; A.K. Sen, Uma Bannerjee and S.Swarup, for the Respondent

Final Decision: Allowed

Judgement

Goswami, J.

These appeals by certificate are from the common judgment of the Calcutta High Court of 28th May, 1975 disposing of three

Criminal Misc. Revisions Nos, 304, 318 and 371 of 1975. There is a common question of law and will be disposed of by this judgment.

2. Briefly the facts are as follows :

A complaint was made against the accused by Shri J. F. C. Mc. Mohan, Dock Manager, Calcutta Port Commissioners, to the South Port Police

Station alleging offences under Sections 120B/420/379/ 466/468/471. I.P.C. against several accused including the respondents who happened to

be public servants at the material time. The State Government issued a Notification No. 3165-J on 8-4-1970 u/s 4 of the West Bengal Criminal

Law Amendment (Special Courts) Act (hereinafter referred to as the Act) allotting the said case for trial to the Third Additional Special Court,

Calcutta constituted under the provisions of the said Act for trial, of the offences mentioned in the schedule to that Act. There is no dispute about

the particular order of allotment of the case to the Special Court under the. said Act. Following the Notification of April 8, 1970 the State of West

Bengal through Ranajit Roy, Sub-Inspector of Police, filed a complaint before the Third Additional Special Court, Calcutta) on 11-9-1970

detailing all the allegations against the accused and indicating the material facts that transpired in the course of the investigation of the case. The

Special Court Judge after perusal of the complaint and hearing the Public Prosecutor took cognizance of the case under Sections 409/109 and

409/34, I.P.C. which are offences mentioned in the schedule of the Act. The learned Judge thereupon issued processes against the respondent and

other accused. In due course trial commenced. The prosecution after examining 70 witnesses closed its case on May 2, 1974. the Court framed

charges against four accused including the respondent and discharged the remaining two accused by a lengthy order With, reasons on 26-2-1975.

Charges were framed under various sections-including Sections 409 & 420 read with 120B, I.P.C.

3. The respondent moved the Calcutta High Court in revision for quashing the trial on March 25, 1975. The High Court allowed the Petition on

28th of May, 1975 and granted certificate to -appeal to this Court under Article 134(1)(c) of the Constitution on March 26,, 1976. Hence these

appeals.

4. The High Court accepted the contention of the respondent that no legal and valid cognizance of-offence was taken by the learned Judge,

Special Court and, therefore, the entire proceedings became vitiated and hence were quashed. The High Court in disposing of the matter in this

way followed two earlier Division Bench decisions of the said Court in Sudhir Chandra Bhattacharjee v. The State Criminal Appeals Nos. 23 to

26 of 1961 decided on 29th March, 1967, and Shyama Saran Das Gupta v. The State, decided on 11th April, 1975.

5. The question that falls for decision in these appeals to the cognizance of the offences by the Special Judge under the Act. As the preamble

shows, the Act provides for the more "speedy trial "and more effective punishment of certain offences specified in the schedule thereto. Section

4(1) of the Act provides that notwithstanding anything contained in the CrPC 1898 or in any other, the offences specified in the schedule shall be

triable by Special Courts only Provided that when, trying any case a Special Court may also try any offence other than an offence specified in the

schedule, with which the accused may -under the CrPC, 1898, be charged with the same trial. There is, however, no dispute that the offences

charged are exclusively triable by the Special Court.

6. Section 5 of the Act which is material for our purpose may be read

A Special Court may take cognizance of offences, in the manner laid down in Clauses (a) & (b) of Sub-section (1) of Section 190 of Code

Criminal "Procedure, 1898 without the accused being committed to his Court for trial, and in trying the accused persons, shall follow the

procedure prescribed by the "Code of Criminal procedure, 1898, for the trial of warrant cases by Magistrates, instituted "otherwise than on a

police report.

This section underwent some changes by two amendments in 1956 and 1960. -Prior to the amendments Section 5(1) did not contain the Words

in the manner laid down in Clauses (a) & (b) of Sub-section(1) of the Code of criminal Procedure, 1898"" and the words ""instituted otherwise than

on a police report."" We are not concerned in these appeals with the amendment of 1956 by which the words instituted otherwise than on a police

report"" were inserted.

7. It may be of interest to note that in a case under the unamended section before the Special Court this Court had to deal with the question of

cognizance canvassed before it in *Ajit Kumar Palit v. State of West Bengal* [1963] Supp. (1) S.C.R. 953. This Court held on the terms of the

provisions of the un-amended Section 5(1) of the Act as follows :-

The word ""cognizance"" has no esoteric or mystic significance in criminal law or procedure. It merely means- become aware of and when used with

reference to a Court or Judge, to take notice of judicially. It was stated in 906061 by the learned Judges of the Patna High Court in a passage

quoted with approval by this Court in 281388 that the word, cognizance" was used in the Code to indicate the point when the Magistrate or Judge

takes. judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As

observed in *Emperor v. Sourindra Mohan Chuckerbutty* ILR [1910]1865 Cal. 412. ""taking cognizance does not involve any formal Action.; or

indeed action of any kind, but occurs as soon-as a Magistrate, as such, applies his mind to the suspected commission of an offence.... "" It appears

to us therefore that as soon as a special judge receives the orders of allotment of the case passed by the State government it becomes Vested with

jurisdiction. to try "the case and. when it receives the record from the Government it can apply its mind and issue notice to the accused and thus

start the trial of the proceedings assigned to it by the State Government.

8. The above decision of this Court could have concluded the matter, but it is pointed out by Mr. A.K. Sen, appearing on behalf of the respondent

that in view of the amendment of Section 5(1) of the Act by the West Bengal Act XXIV of 1960 introducing the words ""in the manner laid down in

Clauses (a) and (b) of Sub-section (1) of Section 190 of the CrPC, 1898"", the legal position has completely changed. He submits that it is now

obligatory for (he Special Judge to examine the complainant raider Section 200, Cr.P.C. prior to taking cognizance of the offence. Since in the

present case, proceeds the argument of Mr. Sen, the Special Judge took cognizance merely on the complaint of the Sub-Inspector of Police

without proceeding in accordance with Section 200, Cr.P.C. the ""entire proceedings are vitiated.

9. We are unable to accede to the above submission of Mr. Sen. It is true that the amendment has introduced the manner of taking cognizance in

accordance with Section, 190(1)(a) & (b), Cr.P.C. appearing in Chapter XV of the Criminal Procedure Code, 1898, but the legislature in the

amendment at the same time, has advisedly omitted to include Section 200, Cr.P.C. and the other provisions of the next Chapter which is Chapter

XVI dealing with ""complaints to Magistrates"".

10. It is clear that u/s 4(2) of the Act, the allotment by the State Government to the Special Judge of a case involving of scheduled offences vests

the necessary jurisdiction In the Special Judge to proceed to trial and is, therefore, equivalent to that Court's taking cognizance of the offence (See

Ajit Kumar Palit's case (Supra). Because of the amendment of Section 5(2) in 1960, it may be now open to the Special Judge to apply his judicial

mind to the complaint apart from allotment of the case in order to come to a decision as to whether he is satisfied on the materials laid before him

at that stage to take cognizance of the offence and proceed to trial. If he chooses to examine the complainant or any witnesses before issuing

process against any accused, there is nothing in law to prevent him from doing so. If he doe not do so and is satisfied on perusal of the complaint

after allotment of the case by the Government that an offence has-been disclosed against definite persons, no valid objection could be taken against

his taking cognizance on the written complaint without complying with the provision of Section 200, Cr.P.C. No grievance can be made then that

the Special Judge has not examined the complainant u/s 200, Cr.P.C. prior to issuing of process.

11. Section 200, Cr.P.C, in terms, comes into play after taking cognizance of an offence by a Magistrate (See Gopal Das Sindhi and Ors. v. State

of Assam and Anr. AIR 1961 S.C. 986. There is, therefore, no merit in the submission that taking cognizance of the offence in this case is invalid

for which the whole trial is vitiated.

12. The words ""in the manner laid down in Clauses (a) and (b) of Sub-section (1) of Section 190 of the Criminal Procedure Code, 1898"" do not

automatically introduce the provisions of Section 200, Cr.P.C. of Chapter XVI, nor do the above words in Section 5(2) of the Act mandatorily

compel the Special Judge to resort to the provisions of Chapter XVI.

13. Apart from this, Chapter XVI in terms refers to ""complaints to Magistrates"" and thereby excludes Special Judges who are to be guided by the

special provisions of the special Act in the matters provided therein. There is nothing in Section 5(1) of the Act even after the amendment in 1960

to compel the Special Judge to comply with the provisions of Section 200, Cr.P.C.

14. The objection of the respondents to the trial is on the score of the invalidity of the cognizance taken by the Special Judge on perusal of the

written complaint after allotment of the case by the Government for the sole reason that the complainant had not been; examined u/s 200, Cr.P.C.

prior to issuing of process. The objection is clearly untenable for the reasons given above.

15. The appeals are, therefore, allowed and the judgment of the High Court is set aside. Since the case is an old one, trial before the Special Judge

shall be expedited.