
(1970) 05 CAL CK 0001

Calcutta High Court

Case No: Criminal Revision No. 98 of 1970

R.S. Baweja

APPELLANT

Vs

Mahabir Prasad Agarwala

RESPONDENT

Date of Decision: May 24, 1970

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 156(1), 173, 84

Citation: (1974) 2 ILR (Cal) 189

Hon'ble Judges: R.N. Dutt, J

Bench: Single Bench

Advocate: Prasun Chandra Ghosh and Md. Taher Ali, for the Appellant; J. Pugalia, for opposite party No. 1, S.K. Dutta, for opposite party No. 5, S.S. Mukherjee, S. Mukherjee and Samar Roy Chowdhury for opposite party No. 6, for the Respondent

Judgement

R.N. Dutt, J.

One Gur Charan Singh, said to be the manager of Hiraikund office of Messrs. New General Trading and Transport Corporation entrusted some aluminium ingots to the opposite parties Nos. 2 and 3, the driver and cleaner of lorry No. W.B.K. 6322, for their delivery at Belur in Howrah through the office of the said New General Trading and Transport Corporation at 126 Mahatma Gandhi Road, Calcutta. On December 3, 1969, at about 6 a.m. the driver and the cleaner came to the manager of the firm's office at 126 Mahatma Gandhi Road and asked him to take necessary steps for unloading the goods at Belur. The driver and the cleaner were asked to wait, but at 7 a.m. it was noticed that the truck with the driver and the cleaner was missing. The Petitioner, a partner of Messrs. New General Trading and Transport Corporation, lodged a first information report with the Jorasanko P S. the same day alleging that the goods were disposed of by the opposite parties Nos. 1, 4, 5 and 6 in the Calcutta market with the connivance of the opposite parties Nos. 2 and 3. The Jorasanko Police took up investigation and arrested the opposite parties. Some of the goods said to have been thus disposed of were subsequently recovered by the Jorasanko

Police from some godowns at Howrah. Gur Charan Singh, the manager of the Hirakund office, had in the meantime lodged a first information report with the Hirakund P.S. over the same incident and the Hirakund Police also started investigation. The Jorasanko Police on the arrest of the opposite parties produced them before the Additional Chief Presidency Magistrate, Calcutta, who released some of them on bail, and on the relevant date the opposite parties Nos. 2 and 3 were still in custody. The Hirakund Police, in course of their investigation, is said to have approached the Additional Chief Presidency Magistrate, Calcutta, with some production warrants and some warrants of arrest against the opposite parties. On January 2, 1970, the Jorasanko Police filed a petition before the Additional Chief Presidency Magistrate, Calcutta, praying for transfer of the case to Hirakund P.S. for investigation. The learned Additional Chief Presidency Magistrate made an order on January 6, 1970, refusing to transfer the case to the Hirakund P.S. for "investigation and trial". Subsequently, on February 4, 1970, Sub-Inspector Misra, C.I.D., S.B., Orissa, produced warrants of arrest issued by a competent Magistrate at Sambalpur against the opposite parties Nos. 2 and 3 and prayed for execution of the same. The learned Magistrate, however, refused the prayer. The Petitioner, who lodged the first information report at Jorasanko P.S., thereafter obtained this Rule against these orders of the learned Magistrate.

2. There appears to have been a procedural misconception in this matter. The Jorasanko P.S. in West Bengal and the Hirakund P.S. in Orissa appear to have each taken cognizance of the alleged offence and both started investigation, obviously, u/s 156(1) of the Code of Criminal Procedure. The investigation has not been completed by either of the Police Stations and no challan has been submitted before the Additional Chief Presidency Magistrate. So, the Additional Chief Presidency Magistrate had not taken cognizance of the alleged offence, and so there was before him no question of an enquiry or trial. He has no control over the investigation that is being made by the Jorasanko P.S. If the investigating officer is of opinion that he has no jurisdiction, he can close the investigation and make a prayer before the Additional Chief Presidency Magistrate for discharge of the opposite parties who are before the Magistrate on remand. The Additional Chief Presidency Magistrate has no jurisdiction to transfer either the investigation or the case to Hirakund P.S. or the Sambalpur Court. The prayer made by the Jorasanko P.S. for transfer and the order made by the Additional Chief Presidency Magistrate refusing to transfer were both misconceived and the order of the Additional Chief Presidency Magistrate in that respect should, therefore, be set aside. Further, the order of the Additional Chief Presidency Magistrate refusing permission to S.I. Misra for execution of the warrants of arrest issued by the Magistrate at Sambalpur is also misconceived. The Hirakund P.S. was making an investigation and, in course of that investigation, had obtained the warrants of arrest from a competent Magistrate at Sambalpur for execution within the jurisdiction of the Additional Chief Presidency Magistrate, Calcutta. u/s 84 of the Code the officer entrusted with execution of a

warrant is to take it for endorsement either to a competent Magistrate or to a Police officer not below the rank of an officer-in-charge of a Police Station, within the local limits of whose jurisdiction the warrant is to be executed, and such Magistrate or Police officer "shall" endorse his name thereon and such endorsement shall be sufficient authority to the Police officer to execute the warrant. S.I. Misra did not want more than this and so the learned Magistrate should have acted u/s 84 of the Code. On the records before me, however, I find that on that date the opposite parties Nos. 2 and 3 were in jail custody and, since that was so, the warrants of arrest against them could not have been executed. But that was not the ground for which the learned Magistrate refused endorsement.

3. Be that as it may, this Rule is made absolute and the orders of the learned Additional Chief Presidency Magistrate, Calcutta, dated January 6, 1970, in regard to the transfer of investigation and dated February 4, 1970, refusing permission to S.I. Misra for execution of warrants of arrest are set aside. The records be sent down to the Court below at once. The Jorasanko Police will now decide for themselves if they have jurisdiction to make investigation in the case u/s 156(1) of the Code and then pray for discharge of the opposite parties before the Additional Chief Presidency Magistrate if they are of the opinion that they have no jurisdiction. Otherwise, they will proceed with the investigation and submit appropriate reports u/s 173 of the Code. If in future any warrant of arrest issued by a competent Magistrate at Sambalpur against the opposite parties is produced before the Additional Chief Presidency Magistrate, Calcutta, for execution within his jurisdiction, he should act in accordance with the provisions of Sections 84 of the Code. This order does not affect the order of the Additional Chief Presidency Magistrate made on January 6, 1970, returning the seized goods to Rukmini Debi on a bond of Rs. 25,000.