Prabir Sur Vs Subhash Chandra Pratihar

Court: Calcutta High Court

Date of Decision: Feb. 28, 2011

Acts Referred: Administrative Tribunals Act, 1985 â€" Section 28, 29A
Constitution of India, 1950 â€" Article 227
Criminal Procedure Code, 1973 (CrPC) â€" Section 190, 190(1), 197, 197, 197(1)
General Clauses Act, 1897 â€" Section 16
Penal Code, 1860 (IPC) â€" Section 109, 120B, 166, 191, 219
West Bengal Criminal Law Amendment (Special Courts) Act, 1949 â€" Section 4, 5, 5A

Citation: (2011) 4 CHN 114

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: Y.Z. Dastoor and Prabir Majumdar, for the Appellant; Naba Kumar Das, Pathik Bandhu Banerjee for the Opposite Party No. 1 and Chandreyee Alam for the State in C.R.R. 4233 of 2007, for the Respondent

Final Decision: Allowed

Judgement

Syamal Kanti Chakrabarti, J.
Since some common issues are involved in both the revisional applications, the same are taken up together

for consideration.

2. In CRR 4233 of 2007 six petitioners namely, i) Dr. Prabir Sur, Director, Institute of Post Graduate Medical Education Research, ii) Dr. Pradip

Kumar Saha, Joint Director of Medical Education, iii) Dr. Chittaranjan Maity, Ex-Director of Medical Education and Ex-Officio Secretary, iv) Dr.

Basanta Kumar Khan, Ex-Deputy Director of Medical Education, at present Vice Principal and Superintendent, Nilratan Sarkar Medical College

Hospital, v) Dr. Kalyan Kumar Bagchi, Principal Secretary, Department of Health and Family Welfare and vi) Sri Asim Barman, Ex-Principal

Secretary, Department of Health and Family Welfare, now posted as Chairman, Damodar Valley Corporation, have challenged the legality and

propriety of the criminal proceeding being T. R. No. 410 of 2006 including orders dated 03.09.2007 and 21.11.2007 arising out of case No. C-

2153 of 2006 under sections 120B, 166, 219, 191, 406, 409, 420 and 109 of the Indian Penal Code pending before the 2nd Court of learned

Judicial Magistrate, Alipore, South 24-Parganas.

3. The petitioners herein have contended that they are senior personnel in the service of the State of West Bengal under the Department of Health

and Family Welfare and some of them belonged to the cadre of Indian Administrative Service. The opposite party No. 1 Dr. Subhas Chandra

Pratihar also joined the Department of Health and Family Welfare, Government of West Bengal. On 31st March, 1995. He was placed under

suspension on charge of receiving Rs. 100/- from a patient while folding a non-practicing post and for distributing leaflets. A departmental

proceeding was initiated against him and concluded on 24th August, 1995. The finding of the enquiring authority was ratified by the Public Service

Commission, West Bengal who had intimated on 8th July, 1996 that the opposite party No. 1 was found guilty of charge No. 1 in full, charge No.

2 in part and he was not found guilty of the charge No. 3 and recommended that ""Dr. Subhas Chandra Pratihar be compulsorily retired from

service"". Being aggrieved by and dissatisfied with such finding the opposite party No. 1 filed T. A. No. 5 of 1996 before the West Bengal State

Administrative Tribunal. On 13th November, 1998 learned Tribunal dismissed the application with the observation that there is no perversity of

evidence and that the exemplary punishment awarded to the opposite party was not disproportionate. Subsequently, the opposite party No. 1

moved another application before the West Bengal Administrative Tribunal being O. A. No. 1040 of 2002. The same was disposed of by the

learned Tribunal by order dated 27.09.2002 directing the Director of Medical Education to hear the opposite party personally and to pass a

reasoned order. In obedience of such order of the learned Tribunal the opposite party was given hearing and a reasoned order was passed on

12.12.2002 rejecting his prayer.

4. Challenging the entire matter the opposite party No. 1 then moved the learned City Civil Court in T. S. No. 1134 of 2002. By ex parte order

dated 5th May, 2003 the learned City Civil Court exonerated the opposite party No. 1 of all the charges and passed certain directions. Therefore,

the opposite party filed Title Execution case No. 195 of 2003 and claimed a sum of Rs. 17,97,656/- which was paid to him.

5. Thereafter, on 20th May, 2006 the opposite party filed a petition of complaint, against the aforesaid six petitioners in the Court of the learned

Chief Judicial Magistrate, South 24-Parganas at Alipore alleging commission of offences punishable u/s 109/120B/166/191/219/406/420 of the

Indian Penal Code. By order dated 19th June, 2006 the learned Chief Judicial Magistrate, South 24-Parganas was pleased to hold that in the

instant case sanction of the government is not necessary and so took cognizance of the offence and transferred the case to the file of the learned

Judicial Magistrate, 2nd Court at Alipore for disposal accordingly.

6. On 1st September, 2007 the opposite party No. 1 filed two applications before the learned Magistrate concerned. In the first application he

prayed for adding certain other persons, namely, a) Mrs. Leena Chakraborty, Ex-Secretary, Department of Health and Family Welfare, b)

Rathindra Nath Mukherjee, ex-Secretary, Vigilance Commission, West Bengal, c) Balai Chand Chakravorty, Ex-Joint Secretary, Department of

Health and Family Welfare, d) Dr. Rathindra Nath Basu, Ex-Professor IPGME&R, e) Dr. Bishnu Pada Majhi, Ex-Prof. IPGME&R and f) Dr.

Bidhan Kumar Sanyal, Ex-S. Superintendent, S.S.K.M. Hospital, Kolkata as co-accused in the said proceeding. In the second application he has

prayed for adding section 409 of the Indian Penal Code to the alleged offences for which cognizance has already been taken. By order dated 3rd

September, 2007 the learned trying Magistrate has been pleased to allow both the aforesaid applications. Thereafter, he examined the opposite

party No. 1 and two, witnesses and issued summons upon the petitioners u/s 109/120B/166/191/219/406/409/420 IPC. Challenging the legality

and propriety of the aforesaid order of the learned Chief Judicial Magistrate, South 24-Parganas and as well by the transferee Magistrate the

instant revisional application has been filed praying for quashing the entire proceeding including the aforesaid orders.

7. Out of six added co-accused in CRR 285 of 2008 three petitioners namely, Mrs. Lina Chakraborty, Sri Balai Chandra Chakraborty and Dr.

Bidhan Kumar Sanyal have also challenged the legality and propriety of the same proceeding, that means, T. R. No. 410 of 2006 arising out of

case No. C-2153 of 2006 contending inter alia, that the petitioner No. 1 being a member of the Indian Administrative Service served the State of

West Bengal for decades in various posts including the post of Secretary, Department of Health and Family Welfare from January, 1989 to

November, 1996 and since retired. The petitioner No. 2 also served the State of West Bengal in various capacities including the post of Joint

Secretary, Department of Health and Family Welfare from February. 1993 to January, 1996 and since retired. The petitioner No. 3, Dr. Bidhan

Kumar Sanyal also was a member of the State Health Service under the Government of West Bengal and served in various places including the

Superintendent of S. S. K. M. Hospital, Kolkata prior to his retirement. It has already been pointed out that on 1st September, 2007 the opposite

party No. 1 filed two applications before the learned Transferee Magistrate one for adding of certain additional persons and the other for adding

section 409 IPC. In fact by order dated 3rd September, 2007 the present three petitioners have been further added as co-accused in the case and

they have also challenged the legality and propriety of the aforesaid proceeding including the order so passed by the learned transferee Magistrate

dated 3rd September, 2007.

8. On behalf of all these petitioners now it is contended by their learned Advocate, Mr. Dastoor that all these petitioners being public servants

cannot be removed from their office except by or with the previous sanction of the State Government and the sanction of the Government is a sine

qua non for taking cognizance of the alleged offence as required u/s 197 Cr. PC. In fact in placing the opposite party No. 1 under suspension and

in awarding punishment of compulsory retirement the petitioners have exercised their discretionary power in the discharge of their administrative

function while on duty. Therefore, the learned Chief Judicial Magistrate, Alipore has wrongly held that in such circumstances previous sanction of

Government is not necessary for prosecution of these public servants.

9. It is further contended by Mr. Dastoor that in the Criminal Procedure Code there is no provision for amendment of petition of complainant for

the purpose of including the names of certain other persons in the application filed by the complainant prior to his examination u/s 200 Cr. PC.

Therefore, addition of some persons as co-accused, i.e., the present petitioners is without jurisdiction and not sustainable in law and process has

been issued against them in violation of the mandatory provisions of section 201(1) Cr.PC. It is further contended that after taking cognizance of

the offence and transferring the case there was no scope for addition, of section 409 IPC by the learned Transferee Magistrate because in terms of

section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 the offences specified therein including section 409 IPC are

triable by Special Courts only. Offences other than such offences will also, however, be tried by such a Special Court, if required. Clause 2 of the

Schedule to the said amendment of 1949 refers to the commission of offences u/s 409 IPC by a public servant. It is submitted that once section

409 IPC is added to the alleged offences the learned trying Magistrate, looses his jurisdiction to proceed further in the matter. Therefore, the

added accused have also prayed for quashing of the entire proceeding including the above order. Learned Lawyer for the State Mrs. Alam has

supported the contentions of Mr. Dastoor.

10. After careful consideration of the facts and surrounding circumstances of the copies and all documents and materials furnished before me and

the submissions made by the learned Lawyer for the petitioner as well as the learned Lawyer for the State, I hold that the following points need be

considered in deciding the merits of both the revisional applications:

i) Whether all the petitioners accused in both the revisional applications have acted in the discharge of their official duties in the matter of

suspension and termination of services of the complainant, i.e. the opposite party No. 1 and as such will be treated as public servant within the

meaning of section 197 Cr. PC?

ii) Whether the learned trying Magistrate can add section 409 IPC to the alleged offence after taking cognizance by the learned Chief Judicial

Magistrate and try the case himself which is exclusively triable by the Special Court referred to in the West Bengal Criminal Law Amendment

(Special Courts) Act, 1949; AND

iii) Whether there are prima facie materials against all the petitioners for commission of the offence punishable under sections 109, 120B, 166, 191,

219, 406, 409 and 420 IPC in view of the ex parte judgement and decree dated 05.05.2003 passed by the learned City Civil Court in Title Suit

No. 1134 of 2002 exonerating the opposite party No. 1 from all the charges.

11. So far as point No. (i) is concerned, it is an admitted position of law as contained in section 197(1)(b) Cr. PC that no Court shall take

cognizance of an offence except with the previous sanction of the State Government in the case of a person who employed or as the case may be,

was at the time of commission of the alleged offence employed, in connection with the affairs of a State. It is also admitted position that at the

material point of time the petitioners were working under the Government of West Bengal in the Department of Health and Family Welfare in

various capacities and dealt with the disciplinary proceedings drawn against the opposite party. As such their services can only be terminated by

the State Government which is one of the tests for prior sanction for their prosecution as contemplated in section 197 Cr. PC. In his petition of

complaint the O.P. No. 1/Petitioner as alleged that in course of his employment under the administrative control of all the accused persons in the

Department of Health and Family Welfare he was misbehaved and illegally placed under suspension followed by the departmental proceedings

which culminated in his premature retirement from service, with effect from 31st July 2002.

12. In Paras 40 and 41 of the petition complaint has made the fallowing statements;

40. Your Complainant submits that this is a glaring example of Public Servants misusing their powers

41. Your Complainant submits that the accused persons have intentionally been individually and collectively committed offences u/s

109/120B/166/191/219/406/420 of the Indian Penal Code, 1860.

13. The order issued by the accused persons placing O.P. No. 1 under suspension is an exercise of the administrative power conferred upon the

Secretary of the department under the Disciplinary and Control Rules applicable in this case. When an officer exercises such administrative power

and discretion such act shall be treated as action taken in course of his employment under the Disciplined and Control Rules. So such action should

be treated as the discharge of his official duty. When on the basis of result of disciplinary proceeding the service of a Government officer is

terminated by the appointing authority prematurely by way of punishment, this is also an administrative discretionary power exercised by the

employer in the discharge of his official duty. In fact, in his petition of complaint the complainant himself has admitted in para 40 as stated above

that the accused persons have misuse their power and this is a glaring example of misused of power vested in and exercised by a public servant.

14. In section 16 of the General Clauses Act 1897 it has been specified that where, by any Central Act or Regulation, a power to make any

appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall

also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. Therefore, the

power vested in the appointing authority includes disciplinary powers to be exercised by the same authority which is competent to impose penalty

like compulsory retirement as in the instant case. Therefore, substantially the entire allegation made by the complaint is directed against the arbitrary

exercise of administrative power vested in the accused persons who are admittedly public servants and removable from service only by the

Government of West Bengal on whose behalf they were exercising such administrative power. Therefore, although there are some allegations in the

petition of complaint regarding misbehaviour and biasness it is an act done in the discharge of official duty. The complaint relates to unlawful

removable of the complainant from service by compulsory retirement by misusing the administrative power conferred upon the accused persons.

This being the position I hold that previous sanction of the employer is required u/s 197(1)(b) of the Cr. PC for the purpose of prosecution of the

accused persons. Since it is not complied in the instant case, the entire criminal proceedings is void ab initio for non-compliance of such mandatory

provision.

15. In the order dated 19.06.06 passed by the learned Chief Judicial Magistrate, Alipore while taking cognizance it was observed inter alia that of

all the allegations made u/s 109/120B/191/219/406/420 of the Indian Penal Code, the offence of criminal conspiracy punishable u/s 120B of the

Indian Penal Code cannot come within the purview of section 197 Cr.PC because it is not part of the duty of the public servant while discharging

his official duties to enter into a criminal conspiracy or to indulge in criminal misconduct. So it took cognizance of the offence without previous

sanction of the State Government as required u/s 197 Cr. PC and relied on the principles laid down in State of H.P. Vs. M.P. Gupta, . The ratio

held therein by the Hon''ble Apex Court is that:

The protection given u/s 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences

alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford

adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties

without reasonable cause, and if sanction is granted to confer on the Government, if they chose to exercise it, complete control of the prosecution.

The said protection has. certain limits and is available only when the alleged act done by the public servant is reasonably connected with the

discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but

there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the

public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element

necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as

such in the discharge of his official capacity. Before section 197 can be invoked, it must be shown that the official concerned was accused of an

offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which

requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction

of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important

and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to

determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One

safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of

could have made him answerable for a charge of dereliction of his official duty; if the answer to this question is in the affirmative, it may be said that

such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act

complained of and the official duty of the public servant.

The said case relates to approval of a rate contract by the Controller of Stores, Himachal Pradesh for the purchase of galvanized-steel barbed

wires for fencing at the rate contract valid up to 30.09.1985 at a subsequent period without following tender rules. The present case relates to

drawing up disciplinary proceedings against a doctor for receiving profession fees from private person after drawing non-practicing allowance and

for disallowing him to discharge his official duties. If such allegations are proved the controlling officers themselves liable to be dealt with on charge

of misconduct on their part under the relevant Disciplinary Rules and this is a surer test to prove that the acts complained of were done in the

discharge of their official duties. So the said case is distinguishable from the facts and circumstances of the present case and as such I hold that the

above principle is not applicable in this case and the learned Courts below misconceived ratio of this case and so cognizance taken by the learned

Chief Judicial Magistrate Alipore dated 19.06.06 is bad and not sustainable in law.

16. After taking cognizance the learned Chief Judicial Magistrate has transferred the case to the Court of learned Judicial Magistrate, 2nd Court,

Alipore for the disposal. Thereafter complainant filed two petitions, one dated 01.09.07, which was disposed of by the learned Judicial Magistrate,

2nd Court, Alipore on 03.09.07. In one petition the complainant sought for inclusion of some persons as co-accused which was allowed under the

observation that the complainant has full liberty to choose the person against whom he has his grievance. Thereafter he considered another petition

dated. 01.09.07 filed by the complainant seeking addition of section 409 of the Indian Penal Code. Learned Transferee Court also allowed such

prayer since the learned Chief-Judicial Magistrate has already taken cognizance of the offence u/s 109/120B/166/191/219/406/420 of the Indian

Penal Code. Thus, the offence which is not at all explained and stated in the petition of complaint u/s 409 of the Indian Penal Code was added to

in the alleged offence by the learned Transferee Court without cogent reason. He has also ignored the statutory provisions for dealing with such

type of offence u/s 409 of the Indian Penal Code laid down in the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. Section 4

of the said Act runs as follows;-

4. Offences to be tried by Special Courts.-- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law in

force, the offences specified in the Schedule shall be triable by Special Courts only:

Provided that when trying a case, a Special Court may also try any offence other than the offence specified in the Schedule, with which the

accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial:

Provided further that every offence specified in the Schedule shall be tried by the Special Court constituted for the particular area within which the

offence was committed, and where there are more than one Special Court constituted for any particular area, by such one of them as may be

specified by the State Government by notification in the Official Gazette.

17. From a plain reading of the aforesaid provision it will appear that after addition of the alleged offence of section 409 Indian Penal Code, it is a

Special Court constituted for the purpose by the State Government shall try such offence alongwith other offences on which cognizance had been

taken by the learned Chief Judicial Magistrate, Alipore. Therefore, it is also an error apparent on the face of the record that the learned Transferee

judicial Magistrate has added section 409 of the Indian Penal Code to the petition of complaint without reasonable cause and jurisdiction. It is the

Special Court which is only competent, to take cognizance of the offence u/s 409 of the Indian Penal Code as mentioned in section 5 of the Act

which runs as follows :-

5. Procedure and powers of Special Courts.-- (1) A Special Court may take cognizance of offences in the manner laid down in clauses (a) and (b)

of sub-section (1) of section 190 of the Code of Criminal Procedure, 1973, 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, 1973, for the trial of warrant cases by

Magistrates, instituted on a police report:

Provided that a Special Court shall not be bound to adjourn trial for any purpose unless such adjournment is, in its opinion, necessary in the

interests of justice.

18. It has, how ever, been stipulated in section 5A of the Act as follows:-

5A. Jurisdiction of Magistrates for certain purposes not to cease.-- Nothing in section 4 or section 5 shall affect the jurisdiction and powers of

Magistrates under the Code of Criminal Procedure, 1973 during the investigation by the police under the said Code of offences specified in the

Schedule.

19. Therefore, the limited power of jurisdiction of a Judicial Magistrate as stated in section 5A of the Act of 1949 is confined during the

investigation by the police and not in course of taking any action u/s 200 Cr. PC. Accordingly I hold that such order of the learned Transferee

Magistrate adding section 409 IPC cannot be protected u/s 5A of the Act and so the same is also not sustainable in law.

20. The fun of fun is that after impleading some accused and after adding section 409 of the Indian Penal Code to the offences narrated in the

petition, of complaint the learned Transferee Court examined the complaint and dealt with the matter in the following way which is incompatible

with the procedure established by law. Relevant portion of his order dated 03.09.07 is quoted below:-

Complt. is present filing hazira. Petnss dt. 1.09.07 is taken up for hearing.

Hd. Considered.

By one petn. dt. 1.9.07, the Complt. has sleeked to add certain persons as accused to this case. I do not find any reason to disallow the petition at

this stage as because the Complt. has full liberty to choose the person against whom he has his grievance.

Hence, the petn. be allowed, and the persons named in the said petn. be added as accused persons named by Complt. in this in this case.

The Complt. by another petition has sought to add section 409 in the column of offence committed by the accd. The ld. C.J.M. Alipore has

already taken cognizance of the case and transferred this case for disposal to this Court. Hence, I find no reason to disallow the petn. of the

Complt. and I am also of the opinion that if the petn. of the Complt. is rejected he might loose his valuable right to ventilate his grievance before the

Court. Hence, the petn. is allowed. Let section 409 IPC be added in this case.

The Compt. and two witnesses are examined on S/A. Perused the documents filed by the Complt.

From the statements and the documents there appears a prima facie case under sections 120B: 166, 191, 219, 406, 409, 420 read with section

109 IPC being made out against all the accd. persons. Issue summons accordingly.

Requisite at once.

To 3.10.07 for S/R & appr.

Sd/-A. N. Bhattacharya

2nd J. M. Alipore.

21. For the reasons discussed above I hold the said order is contrary to provisions of section 4 of the West Bengal Criminal Law Amendment

(Special Courts) Act 1949 and as such not sustainable in law as no offence of section 409 of the Indian Penal Code has been enumerated in the

petition of complaint and examination of the complainant on S/A is to explain the fact of allegations made in the complaint and such examination

cannot be extended to import new things contrary to the contents of the petition of complaint. Only by adding section 409 IPC to a petition of

complaint the object of criminal prosecution is neither fulfilled nor permissible to continue without narration of any fact leading to the constitution of

such offence. Moreso, when taking of cognizance by a Judicial Magistrate is barred by special statute which shall always prevail upon general law

laid down in the Criminal Procedure Code. For the said reasons I hold the proceeding in question is not sustainable in law and this second point is

thus decided.

22. So far as, the third point is concerned it is to be decided as to whether a prima facie case has been made out against all the petitioners in view

of ex parte judgment dated 05.05.03 passed by the learned City Civil Court in Title Suit No. 1134 of 2002 exonerating the complainant from all

the charges.

23. Admittedly, the petition of complaint was filed before the learned Chief Judicial Magistrate on 20.05.06. In his lengthy petition of complaint the

complaint has nowhere stated that in the disciplinary proceeding in question he was found guilty and the punishment of premature retirement

inflicted upon him by the Disciplinary Authority and against such findings he preferred an appeal being Title Appeal No. 5 of 1996 before the

learned West Bengal Administrative Tribunal. The learned Tribunal by order dated 13.11.1998 had observed inter alia that there was no perversity

of evidence and that the exemplary punishment awarded to the opposite party was not disproportionate and has dismissed the appeal. Against the

said findings of the learned Administrative Tribunal dated 13.11.1998 the complaint did not move before the higher forum challenging the legality

and propriety of such order and as such the same had reached its finality after expiry of the period of appeal. Therefore, the articles of charges

being charge No. 1, full and charge No. 2 in part, having been proved and ratified by the Public Service Commission, West Bengal as per their

communication dated 08.07.1996 upheld by the first learned Appellate Tribunal is a settled fact legally establishing his misconduct and debarred

him from reopening the issue clandestinely is a civil suit without praying for setting aside the order dated 13.11.1998 passed by the learned

Tribunal.

24. Suppressing this material fact of the existence of the final order of his premature retirement ratified by the State Administrative Tribunal, the

complainant had filed Title Suit being No. 1134 of 2002 before the learned City Civil Court, Calcutta claiming arrear subsistence allowance and

retiring benefits withheld by the petitioners herein. This fact also clearly establishes that the opposite party has accepted the final verdict of the

learned Administrative Tribunal and now bound by the doctrine of estoppel by conduct. Even, in course of the examination of the complaint on

S.A. he has suppressed this fact before the learned Chief Judicial Magistrate. Annexure "D" to the complaint in CRR 285 of 2008 is the ex parte

order passed by the learned City Civil Court on 13.05.2003 in Case No. 1134 of 2002. It appears from the said order that the learned City Civil

Court ha;: consciously placed on record the facts in issue decided by order dated 03.11.1998 passed by the learned Tribunal as appears from

page 3 of the aforesaid ex parte judgment and without framing any specific issue and without discussing anything regarding trial order of this

learned Tribunal dated 03.11.1998 and without setting aside such order relied upon unchallenged ex parte evidence of the plaintiff/ opposite party

and exonerated the plaintiff of fall the charges without jurisdiction.

25. While the legislature prescribed a forum (i.e. the Central Administrative Tribunal) for preferring appeal against the order of the State Tribunal

there seems to be exercise of power by the learned City Civil Court without jurisdiction. Sections 28 and 29A of the Administrative Tribunals Act,

1985 run as follows :-

Section 28. Exclusion of jurisdiction of Courts except the Supreme Court.-- On and from the date from which any jurisdiction, powers and

authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or

service, matters concerning members of any Service or persons appointed to any Service or post, [no Court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other

corresponding law for the time being in force shall have), or be entitled to exercise any jurisdiction, powers or authority in relation to such

recruitment or matters concerning such recruitment or such service matters.

The provision for filing of appeals before the Central Administrative Tribunal within the specified data has also been enumerated in section 29A of

the Act runs as follows:

Section 29A. Provision for filing of certain appeals.-- Where any decree or order has been made or passed by any Court (other than a High

Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such

that it would have been, if it is had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against

such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired

before such establishment, such appeal shall lie.

(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives

the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(b) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or

order, whichever is later.

26. From the aforesaid order it appears that the learned City Civil Court has decreed the suit ex parte which is not enforceable in law and in the

said ex parte order the final order of the State Administrative Tribunal has not been set aside. Yet, the learned City Civil Court usurped the

jurisdiction of the learned Appellate Tribunal as contemplated section 29A of the Administrative Tribunal Act 1985 and proceeded to consider the

legality and propriety of the articles of charges framed against the plaintiff complainant in the disciplinary proceeding initiated by the competent

authority. Such a decree is neither enforceable in law nor can override the mandate and decree of the Tribunal affirming the administrative action

taken by the State Government against the complainant in consultation with the State Public Service Commission.

27. It has been set at rest in the case of Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani, that illegal decree is a

nullity and cannot be allowed to be enforced. Relying upon above principle I hold that ex parte decree passed by the learned City Civil Court, is

void ab initio inoperative and unenforceable.

28. Against such a settled law the learned Chief Judicial Magistrate as well as the subsequent Transferee Court proceeded to take action against

the disciplinary authority on the basis of the findings of the learned City Civil Court without any valid sanction of the State Government under the

provisions of section 409 of the Indian Penal Code which is exclusively triable by a Special Court. In several cases including the case of Firm and

Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, and State of Tamil Nadu Vs. Ramalinga Samigal Madam, it has been set at

rest that the Special Acts ordinarily provides when the decision of a Tribunal or any other authority becomes final. In other words, the Special Act

makes provision for appeal'' against the order of the Tribunal or any other authority. For example, an order against Railway Claims Tribunal lies to

the High Court. In case there be an appeal, the order of the Tribunal becomes Final after the decision of the High Court and the Tribunals order

merge with the Appellate order passed by the High Court. Apart from that any party aggrieved by an order of the Tribunal or any other authority

may seek remedy under Article 227 of the Constitution. Apart from that, Civil Courts can interfere when the order of the Tribunal or any other

authority is really not an order under Act conferring special jurisdiction and thereby is nullity.

29. In the instant case the complainant plaintiff in Title Suit No. 1134 of 2002 has not sought for any declaration that the order of the State

Administrative Tribunal is a nullity and not binding upon him. Only for this purpose the Civil Court could examine the order of the learned Tribunal

dated 13.11.1998 which was barred by limitation. Suppressing the material facts if any order of the Civil Court is obtained with a view to

frustrating the penalty of the order of the State Tribunal, such judgment and decree of the City Civil Court is void ab initio and inoperative. On the

basis of such void and inoperative ex parte decree obtained by the complainant by suppressing material truth cannot be the basis of a reasonable

cause of action for criminal prosecution of the public servants in respect of action taken by them in the discharge of their official duties.

Unfortunately on account of suppression of such material fact before the learned Chief Judicial Magistrate, cognizance was taken by him against

the present, accused petitioners and they have been further prosecuted u/s 409 of the Indian Penal Code by a Judicial Magistrate Who has equally

usurped the power of the Special Court created by the State Government as stated above. Such a criminal proceeding is, therefore, not sustainable

in law and will be treated as a mere abuse of the process of law. Therefore, this point No. 3 is accordingly decided. I hold that no prima facie case

appears against the present petitioners u/s 109/120B/166/191/219/406/409/420 of the Indian Penal Code as alleged in the petition of complaint

and adjudication in a void ex parte decree of the learned City Civil Court which is obtained by suppression of material fact cannot reopen the issue

in a criminal proceeding. Such a harassing proceeding, in my opinion, should not be allowed to continue any more.

30. Suffice it to say that on the basis of the ex parte decree the complainant has already been paid a sum of Rs. 17,97,656/- (Rupees Seventeen

lakh ninety seven thousand six hundred and fifty six only) by filing Title Execution Case No. 195 of 2003 is the State Government on the basis of

other applications claiming subsistence allowance and retiring benefits which has been fully satisfied in terms of the petition dated 29.07.05 filed

before the learned Judge, City Civil Court, Calcutta. Payment of any retiring benefit and arrear subsistence allowance by the State Government in

obedience of Civil Court''s order in execution case is no admission of allegations of biasness and misuse ''of administrative power as presumed by

the complainant and under this wrong impression he has preferred the complaint against the senior officials of the State Government in the manner

discussed above. It is in my opinion, abuse of the process of law to prosecute Government officials on the basis of void decree of the City Civil

Court suppressing finality of the Disciplinary proceedings by the learned Administrative Tribunal. All the points raised are thus decided.

31. Therefore, I hold that there are sufficient merits in the revisional application which is allowed to prevent the abuse of the process of law and the

criminal proceedings being Case No. T.R. 410/06 and all orders passed in connection with the complaint made by the opposite party now pending

before the Court of learned Judicial Magistrate, 2nd Court at Alipore is hereby quashed and all the petitioners in both the revisional applications

are discharged and those on bail are released from their respective bail bonds. Both the revisional applications are thus disposed of.

32. Urgent photostat certified copy of this order, if applied for, be supplied to the respective parties, upon compliance of all requisite formalities.