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## Jitendra Nath Mitra and Another Vs State

None

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**Court:** Calcutta High Court

**Date of Decision:** July 10, 1974

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) " Section 200, 54#Factories Act, 1948 " Section 21, 92

**Citation:** (1974) CriLJ 1441 : 79 CWN 325 : (1975) 1 ILR (Cal) 636

**Hon'ble Judges:** N.C. Talukdar, J

**Bench:** Single Bench

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## Judgement

@JUDGMENTTAG-ORDER

N.C. Talukdar, J.

This rule is at the instance of the two accused-petitioners, directed against an order dated the 27th February, 1973

passed by the learned Sub-Divisional Judicial Magistrate, Siliguri and for quashing the proceedings pending before him being C. R. Case No. 569

of 1972, u/s 92 of the Factories Act, 1948 for a contravention of Section 21(1)(iv)(b) of the said Act.

2. The facts leading on to the Rule need not be set down in details. A. petition of complaint was filed on the 28th December, 1972 by P. R.

Mukhopadya. Inspector of Factories, Julpaiguri in the court of the learned Sub-Divisional Judicial Magistrate Siliguri. against two accused persons

viz. Jitendra Nath Mitra and Rabindra Nath Mitra. the occupier and the manager respectively of the Sannyasithan Tea Estate, P.S. Bagdogra u/s

92 of the Factories Act, 1948 for a contravention of Section 21(1)(iv)(b) of the Factories Act, 1943. The learned Sub-Divisional Judicial

Magistrate by his order of the same date issued summons against the accused persons who duly appeared and were granted bail. The prayer made

on behalf of the accused No 1 Jitendra Nath Mitra, for personal exemption was fixed for order on 27-2-1973 when the learned Magistrate

allowed the said accused exemption for the day and further allowed him to be represented day to day u/s 540A of the Code of Criminal

Procedure. This order as well as the proceedings pending were impugned and from the subject-matter of the present Rule. An ad interim stay was

granted by the High Court while issuing the Rule.

3. Two points of law were raised in support of the Rule by Mr. Nalin Chandra Banerjee Advocate (with Mr. Devesh Chandra Mukherjee,

Advocate). The first one appears to be one of first impression and relates to the interpretation of the first paragraph of Section 200 of the Code of

Criminal Procedure, as amended by the Amending Act 26 of 1955 substituting the words ""and the witnesses present, if any"" for the words used in

the old section and as qualified by Clause (aa) of the proviso thereof. Mr. Banerjee referred to some cases in support of his submission and the

same would be considered in their proper context. The second contention relates to merits viz., that the petition of complaint does not disclose any

offence u/s 21(l)(iv)(b) of the Factories Act, 1948, punishable u/s 92 of the said Act, An ancillary submission was also made by Mr. Banerjee, viz.

that the order passed by the learned Sub-Divisional Judicial Magistrate, Siliguri on 28.12.1972, issuing summons against the accused persona, is

bad and improper inasmuch as it does not specify the offences where under the same was issued; and that the restricted order of exemption, as

passed on the 27th February, 1973 has operated to the prejudice of the accused-petitioner No. 1. Jitendra Nath Mitro.

4. Mr. Sadhindra Kumar Palit, Advocate appearing on behalf of the State joined issue On the first dimension of Mr. Banerjee's contention, Mr.

Palit submitted that there has been no misinterpretation of the first paragraph of Section 200 of the Code of Criminal Procedure as qualified by

Clause (aa) of the proviso thereunder inasmuch as the exemption allowed under the said clause included the complainant specifically as well as his

wit-nesses by necessary intendment Mr. Palit next contended that the second submission of Mr. Banerjee is also unwarranted and untenable

inasmuch as on a reference to the petition of complaint itself it would be abundantly clear that it alleged substantially a non-conformance to the

ingredients of Section 21(1)(iv)(b) of the Factories Act. 1948 in mentioning that ""the following parts of transmission machinery were not fenced

though they were in motion and in use at the time of inspection"" As to the ancillary submission made on behalf of the accused-petitioners, Mr. Palit

submitted that the same is more technical than real because the accused petitioner No. 1 was ultimately granted personal exemption and that the

learned Sub-Divisional Judicial Magistrate, Siliguri, in his order dated the 28th December, 1972 referred categorically to the complaint as being

one u/s 92 of the Factories Act, 1948, though not specifically mentioning Section 21(a)(iv)(b) of the said Act.

5. I will now proceed to consider the first dimension of Mr. Banerjee's submission which appears to be one of first impression and of some

importance. The point raised relates to the Interpretation of the first paragraph of Section 200 of the Code of Criminal Procedure as amended by

Section 26 of the Amending Act 26 of 1955 which substituted the words and the witnesses present if any" for the former words, and as qualified

by Clause (aa) of the proviso thereunder, ruling out the examination of the complainant if he is a public servant acting or purporting to act in the

discharge of his official duties and if the complaint is made in writing. The steps of Mr. Banerjee's reasoning are that the first part of Section 200

as amended enjoins that a Magistrate taking cognizance of an offence on complaint "shall at once examine the complainant and his witnesses

present" that under Clause (aa) of the proviso to the said section when the complaint is made in writing, the examination of the complainant would

not be necessary in any case "in which the complaint has been made by a Court or by a public servant, acting or purporting to act in the discharge

of his official duties"; that the complainant in this case being such a public servant, was exempted from examination when the learned Sub-

Divisional Judicial Magistrate took cognizance and issued processes in conformance to Clause (aa) as referred to above: that this privilege

however does not extend also to the witnesses of the complainant, if any present at the aforesaid stage; and that the order sheet does not bring to

light that the witnesses on behalf of the complainant were not present on 23-12-1972 when the processes were issued Mr. Palit, on behalf of the

State, joined issue and submitted that even if the witnesses are present, the examination of the complainant himself having been ruled out, there is

no reason as to why his witnesses, nonetheless, should be examined.

6. The point at issue has to be approached in accordance with the principles relating to the interpretation of statutes as well as in the light of a long

catena of decisions on the first paragraph of Section 200 of the Code of Criminal Procedure. For a proper consideration of the point, a reference

in the first instance is necessary to the provisions of the statute itself, Section 200 is in Chapter XVI of the Code of Criminal Procedure relating to

the examination of the complainant, As amended by Section 26 of the Amending Act 26 of 1955, it stands as follows:

A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and

the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

There is a proviso thereafter consisting of 4 clauses, including Clause (aa), which was added by Section 54 of the Criminal Procedure

(Amendment) Act (XVIII of 1923) and is as follows:

When the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which

the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.

Section 200 and the proviso consisting of 4 clauses thereunder have had a chequered history spread over a number of years. The section

corresponds to Section 66 of the Code of 1861 enjoining that ""such Magistrate shall examine the complainant"" and that such examination ""shall be

reduced to writing and shall be signed by the complainant and also by the Magistrate."" Section 144 of the Code of 1872 provided that ""when in

order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, if he is

competent to receive such complaint, shall examine the complainant."" The next corresponding provisions viz. Section 3() of Act IV of 1877

(Presidency Magistrates Act) ran as follows:

Whenever a complaint is made to a Presidency Magistrate, such Magistrate if he has jurisdiction in the case, shall examine the complainant....,

The legislative changes went further and Section 54 of the Criminal Procedure (Amendment) Act (XVIII of 1923) added Clause (aa) of the proviso

to Section 200 of the Code of Criminal Procedure. Act II of 1926 added the words ""where the complaint is made in writing"" before the words

need not be reduced in writing"" in Clause (b) to the proviso under Section 200 of the Code of Criminal Procedure but a consideration thereof is

not necessary in the present context. It is now pertinent to refer to Section 26 of Act 26 of 1955 which added in the first paragraph of the section

the words ""and the witnesses present, if any"" after ""shall at once examine the complainant"" and also the words ""and the witnesses"" after the words

shall be signed by the complainant"" at the end of the said paragraph. It prima facie appears, therefore that while the enrolling part of the statute

enjoins the examination of the complainant and the witnesses present, if any proviso (aa) which is in the nature of an excepting or a qualifying

proviso lays down an exception thereto viz. that if and when the complaint is made in writing and has been made by a Court or by a public servant

acting or purporting to act in the discharge of his official duties the examination of such a complainant is not called for.

7. It is pertinent now to refer to the principles of interpretation of statute to ascertain the intent and meaning of the aforesaid provisions. Maxwell in

his Interpretation of Statutes (Twelfth Edition; Chapter 2, page 28) has observed that ""the object of all interpretation is to discover the intention of

Parliament."" The rule of construction is to intend the legislature to have meant what they have actually expressed. Lord Evershed M. R. observed

that ""the length and detail of modern legislation has undoubtedly reinforced the claim of literal construction as the only safe rule"" Crawford in his

Statutory Construction (1940) observed in Section 194 at page 332 that ""it is also well established as a principle of statutory construction that

words in different parts of a statute must be referred to their appropriate connection, giving to each in its place, its proper force and effect and if

possible rendering none of them useless or superfluous."" This is the principle known as ""Red-dendo Singula Singulis, "" Along with it is to be

considered another principle of interpretation viz. expressio unius est exclusio alterius (express mention and implied exclusion). As was observed

by Crawford, "as a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing."  
The principles

relating to the construction of provisos may now be considered. Maxwell in his Interpretation of Statutes referred to the difficulties  
sometimes

arising in construing provisos" and quoted the observations of Edmond Davies, J. in (1966) 1 Q B 764 viz. that a proviso is "of  
necessity... limited

in its operation to the ambit of the section which it qualifies". If a proviso cannot reasonably be construed, observed Maxwell,  
"otherwise than as

contradicting the main enactment then the proviso will prevail" on the principles that "it speaks the last intention of the makers".  
The observations of

Craies in "Statute law" (5th Edition) at page 210 compel consideration.

The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the proceeding  
portion of the

enactment, or to qualify something enacted therein, which but for the proviso would be within it.

A reference in this context may be made to the case of State of West Bengal v. Narayan Rao AIR 1963 Cal 512 : 1968 Cri LJ 1398,  
wherein the

Division Bench while considering the addition of the proviso to Sub-section (8) of Section 526. Criminal Procedure Code, as  
amended by the

Amending Act XXI of 1932, referred at page 579 to the observations of Lord Russell in the case of Jennings v. Kelly reported in  
(1939) 4 All E R

464 (HL) at pages 471-472 viz. that

Although a proviso may well be incapable of putting upon preceding words a construction which they cannot possibly bear it may  
without doubt

operate to explain which of two or more possible meanings is the right one to attribute to them. One must however read the whole  
Clause before

attempting to construe any portion of it and a perusal of the proviso fixes the meaning of the words which proceed it.

I agree with the observations made above and I hold ultimately that the language of the enacting part of the statute in Section 200,  
Criminal

Procedure Code, enjoining the examination of the complainant and the witnesses present if any" is accordingly qualified by "the  
excepting or

qualifying proviso" in Clause (aa) to Section 200 of the Code viz., that in the contingencies referred to therein, the complainant is  
not required to be

examined though enjoined in the first part of Section 200. Any interpretation short of that would be long off the mark. The  
interpretation, therefore,

by Mr. Palit that the exemption mentioned in Clause (aa) to the proviso u/s 200, Criminal Procedure Code includes, by necessary  
intendment, the

complainant as well as his witnesses, is de hors the intention of the legislation and unsustainable on merits. It further overlooks  
the well-known

principle "A verbis legis non est recedendum: From the words of law there should not be any departure" (5 Coke 118), It is  
therefore neither

expedient nor necessary to deviate from the words of the statute.

8. Now to a consideration of stare decisis. It must be observed at the outset that there is no decision pat on the point but the  
principles underlying

the cases referred hereunder substantially lend assurance to the findings arrived at in the foregoing paragraph. Mr. Nalin Chandra Banerjee relied

on the principles laid down in the case of *Mac Culloch Vs. The State and Another*, . The core of consideration in that case was the first paragraph

of Section 200, Criminal Procedure Code, with particular emphasis on the meaning and effect of the words "shall at one examine the complainant

and the witnesses present, if any", as used in the said paragraph, The excepting or qualifying Clause (aa) did not come up for consideration in the

facts of that case. The ultimate findings, however, arrived at therein have an impact on the point at issue in the present case, viz. that I ultimately

hold that the provisions of Section 200 are not a mere formality, but have been intended by the legislature to be given effect to for the protection of

the accused persona against unwarranted complaints." The proceedings in that case were ultimately quashed as the non-conformance referred to

above vitiated the criminal proceedings. The provisions of Section 200 including the proviso consisting of four clauses are not a mere formality or

an appendage but have been enacted by the legislature for good reasons. Mr. Banerjee next referred to an unreported decision by a Division

Bench of this Court dated the 20th February, 1974 in Criminal Revision Case No. 237 of 1971 : reported in *Brahmanand Goyal and Another Vs.*

*N.C. Chakraborty and Others*, The Division Bench approved of the principles laid down in the abovementioned Single Bench decision and the

proceedings were quashed for a non-conformance to the mandatory provisions of the statute. I respectfully agree with the observation made in the

abovementioned cases and I ultimately hold that it is not the intention of the legislature that in a case where the complaint is made in writing and the

same is by a Court or a public servant acting or purporting to act in the discharge of his official duties, "the witnesses present, if any, " shall also be

exempted along with the complainant from examination. In the present case, it does not appear from the record that the witnesses on behalf of the

complainant were not present on 23-12-1972 when the learned Sub-Divisional Judicial Magistrate, Siliguri, issued the process and as such there

has been a non-conformance to the mandatory provisions of the statute, resulting in a non-conformance to the procedure established by law:

vitiated thereby the ultimate proceedings. The doctrine of privilege is inevitably limited in its application and an over-expansive interpretation of

Clause (aa) of the proviso to Section 200 of the Code of Criminal Procedure is unwarranted and untenable. The exemption referred to in the said

clause, if allowed to stretch to cover other cases also, may (like Shakespeare's dreams) girdle the earth. The first dimension of Mr. Banerjee's

contention accordingly succeeds.

9. The second contention of Mr. Banerjee relates to merits. He urged that the petition of complaint does not disclose any offence u/s 21 (1) (iv) (b)

of the Factories Act, 1947 punishable u/s 92 of the said Act. The relevant provisions of Section 21 are as follows:-- "(1) In every factory the

following, namely--...(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they

would be if they were securely fenced, the following, namely, ...

(b) every part of transmission machinery;." In paragraph 2 of the petition of complaint it is stated that "the following parts of transmission

machineries were not fenced though they were in motion and in use at the time of inspection." It is abundantly clear, therefore that the allegations

contained therein do not constitute an offence for the contravention of Section 21(1)(iv)(b) of the Factories Act, 1948. The Factories Act, 1948 is

a special Act and the penalties imposed thereunder are to be strictly construed. It is for the prosecution to disclose the alleged offence in the

petition of complaint and if the same does not appear in the first blush, the accused in a criminal trial has a right to pray that the relevant proceeding

may be quashed as otherwise it would amount to an abuse of the process of the Court. Mr. Palit had contended that there is a substantial

compliance with the provisions though not in terms. The imprimatur of judicial decisions however, is that the test to be applied at this stage is the

test whether the petition of complaint does disclose the offence. The averments made in the complaint only touch a part of the provisions and the

same do not culminate into an offence, attracting the penalty u/s 92 of the Factories Act 1948. The second branch of Mr. Banerjee" submission

also succeeds.

10. In view of the findings arrived at on the first two points, it is not necessary and any further to enter into the ancillary point raised by Mr.

Banerjee in detail, I would only observe that in the facts and circumstances of the case, the circumscribed order of exemption, as passed on the

27th February, 1973, has operated to the prejudice of the accused petitioner No. 1, Jitendra Nath Mitra and that the other defects complained of

are a mere irregularity. The ancillary submission raised on behalf of the accused-petitioner is disposed of accordingly.

11. In the result, I make the Rule absolute; set aside the impugned order dated the 27th February. 1973; and quash the proceedings, being C.R

Case No. 569 of 1972, pending in the Court of the learned Sub-Divisional Judicial Magistrate Siliguri u/s 92 of the Factories Act, 1948 read with

Section 21(1)(iv)(b) of the said Act.

12. The records shall go down as early as possible.