
(2005) 08 CAL CK 0030

Calcutta High Court

Case No: C.R.R. No"s. 478 of 2002 and 188 of 2003

Ram Swarath Yadav
and Others

APPELLANT

Vs

State of West Bengal
and Others
 Bimal
Prakash @ Bijoy @
Munna Tewari Vs State
of West Bengal

RESPONDENT

Date of Decision: Aug. 26, 2005

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 186, 2, 267, 267(1)
- Penal Code, 1860 (IPC) - Section 302, 364, 406

Citation: (2005) 4 CHN 756

Hon'ble Judges: Pravendu Narayan Sinha, J

Bench: Single Bench

Advocate: Milon Mukherjee and A. Adhya, in C.R.R. No. 478/02 and Joymalya Bagchi and N.N. Roy, in C.R.R. No. 188/03, for the Appellant; Kazi Safiullah, Id. P.P. and S.K. Mallick in C.R.R. No. 478/02 and Kazi Safiullah, Id. P.P. and Barin Roy in C.R.R. No. 188/03., for the Respondent

Final Decision: Allowed

Judgement

Pravendu Narayan Sinha, J.

As the points of law involved in these two revisional applications are identical, I intend to dispose of both the revisional applications by this judgment and order.

2. C.R.R. No. 478/02 has been filed by Ram Swarath Yadav and two others u/s 401/482 of the Criminal Procedure Code (in short Code) praying for quashing the proceeding of Complaint Case No. C/649 of 2001 in which the learned Sub-Divisional Judicial

Magistrate (in short SDJM), Alipore passed order to start investigation u/s 156(3) of the Code treating the complaint as First Information Report (in short FIR). Though they have prayed for quashing the said criminal proceeding, their main grievance is concerning issue of production warrant by the learned SDJM, Alipore in connection with Budge P.S. Case No. 31 dated 7.4.01 which, arose out of Case No. C/649 of 2001 seeking his production before the said Court from the Kanpur Correctional Home where he is now lodged under the custody of the learned Metropolitan Magistrate, 4th Court, Kanpur in connection with Niwari P.S. Case No. 58 dated 12.3.01.

3. In C.R.R. No. 188/03 the petitioner Bimal Prakash @ Bijoy @ Munna Tewari has filed the revisional application u/s 482 of the Code assailing the order dated 11.10.02 passed by the learned SDJM, Barrackpore in G.R. Case No. 1387/02 arising out of North Bidhannagar P.S. Case No. 73 dated 2.6.02 u/s 364 of the Indian Penal Code (IPO by which the learned Magistrate issued production warrant seeking his production before him from Benaras Jail where he is now lodged in connection with Dashasamed P.S. Case No. 57 dated 20.3.02 u/s 302 of the IPC and Dashasamed P.S. Case No. 212 dated 25.8.02 u/s 25 of the Arms Act.

4. Appearing for the petitioners of C.R.R. No. 478/02 and appearing for petitioner of C.R.R. No. 188/03 learned Advocates submitted earlier that the learned Magistrates cannot issue production warrant as the word "proceedings" u/s 267 of the Code does not include "investigation" by the police and, since in those two cases no enquiry, trial or proceedings were pending before the learned SDJM, Alipore and the learned SDJM, Barrackpore, the said Magistrates have no jurisdiction to pass order or issue of production warrant for the petitioner for their production from the aforesaid Kanpur and Benaras Jail of Uttar Pradesh before them in connection with the cases of respective Courts at Alipore and Barrackpore mentioned above.

5. On the contrary, Mr. Kazi Safiullah, learned Public Prosecutor appearing for State of West Bengal submitted that the words "other proceedings under this Code" as mentioned in the first part of Sub-section (1) of Section 267 and the words "for the purpose of the said proceedings" in the last part of Section 267 of the Code includes "investigation" under the present Code and there is no illegality whatsoever in the orders passed by the learned Magistrates issuing production warrant for production of the petitioners before them from the respective correctional home or jails of Uttar Pradesh. The "investigation" against them in connection with the aforesaid Budge Budge P.S. case and North Bidhannagar P.S. case is pending and accordingly for the purpose of "investigation" their production from the respective jails of Uttar Pradesh is necessary.

6. Learned Advocates for the petitioners in the aforesaid two revisional applications placed reliance in the case of [Sk. Ismail Ali Vs. State of W.B.](#), where a learned Single Judge of this Court held that, the words "other proceedings" does not include investigation by police. Pradip Kumar Biswas, J. who heard the aforesaid revisional applications did not agree with the views of the learned Advocates for the petitioners and

he was of the view that the words "other proceedings" as appearing in Sub-section (1) of Section 267 of the Code and the words "for the purpose of said proceeding" appearing in the last part of the section includes "investigation". Pradip Kumar Biswas, J. was also unable to agree with the views expressed by the learned Single Judge in the case of Sk. Md. Ismail v. State of West Bengal (supra) and accordingly for maintaining judicial propriety and decorum of the Court he referred the matter to a larger Bench for decision on the following points:

"Whether an order and warrant u/s 267 of the new Code in Form No. 36 of 2nd Schedule thereof can be issued by a Criminal Court on the request of the police investigating agency in course of investigation."

7. In view of such reference made by Pradip Kumar Biswas, J., the Hon'ble the Acting Chief Justice placed the said reference before a Division Bench consisting of Justice Amit Talukdar and Justice Pranab Kumar Deb.

8. The Division Bench after hearing the learned Advocates for the petitioners and hearing the learned Public Prosecutor for the State answered the said reference in the "positive" by the following manner:

"Yes, an order and warrant u/s 267 of the new Code in Form No. 36 of 2nd Schedule thereof can be issued by a Criminal Court on the request of the police investigating into a case during the course of investigation."

9. The Division Bench also held that the decision laid down in Sk. Ismail All v. State of West Bengal (supra) cannot be said to be any longer good law. The Division Bench directed that since the said Bench has answered the reference, the matter may now be placed before the Single Bench for disposal and accordingly these two revisional applications have been placed before this Bench for disposal.

10. A decision of the Division Bench is binding on Single Bench of High Court in view of High Court Rules and Orders. Since the Division Bench has decided that an order and warrant u/s 267 of the Code in Form No. 36 of 2nd Schedule can be issued by a Criminal Court on the request of police investigating into a case during course of investigation, the contention of the petitioners in the revisional applications that order of the learned Magistrates issuing production warrant is illegal cannot be accepted. The settled law in view of the decision of the Division Bench is that for the purpose of "investigation" a production warrant may be issued in view of the words and languages appearing in the Section 267 of the Code.

11. Very recently Pull Bench of Rajasthan High Court in [State of Rajasthan Vs. Santosh Yadav](#), has held that,

"A bare reading of Section 2(h) Cr. PC would show that "all the proceedings" conducted by a police officer for collecting evidence come under the definition of "investigation". The

words "all the proceedings" referred to in Section 2(h), in our considered opinion, would also include the expression used in the words "other proceeding under this Code" [section 267(1), "for the purpose of any proceedings against him" Section 267(1) and "for the purpose of such proceeding" (last portion of Section 267(1)....The police can seek permission to remove an accused from judicial custody to police custody for completion of investigation in another case and for this purpose production warrant u/s 267, Cr. PC can be issued. The expression "other proceedings" used in Section 267(1) and "for the purpose of any proceedings" occurring in Section 267(1)(a) would include "investigation" as defined u/s 2(h), Cr. PC.

12. The aforesaid Full Bench decision of the Rajasthan High Court and the Division Bench decision of this Court, on the basis of reference made by Pradip Kumar Biswas, J., make it clear that a SDJM or a Magistrate can issue production warrant against an accused on the prayer of police for bringing the said accused before the said Court for the purpose of "investigation" in connection with any case pending in the said Court. In view of the aforesaid decision of law the revisional application bearing No. C.R.R. 188/03 having no merit fails and is dismissed.

13. The C.R.R. No. 478/02 is also not entertainable or maintainable so far as it relates to the contention of the petitioners that issue of production warrant by the learned SDJM, Alipore was illegal and such contention has no foundation now in view of the aforesaid Division Bench decision of this Court in the above-stated reference and the Full Bench decision of Rajasthan High Court.

14. But Mr. Abhijit Adhya, learned Advocate for the petitioners raised one interesting point in this revisional application as he submitted that in connection with this case the entire incident took place at Uttar Pradesh and no part of incident took place within the jurisdiction of Alipore Court. He submitted that the petitioner No. 1 is the owner of the truck bearing No. HR 33 GA--2616 and petitioner No. 2 is the driver and petitioner No. 3 is co-driver. Petitioner No. 2 loaded refined soyabin oil from factory of M/s. K. P. Salvex Ltd. from the District of Tikamgarh in Madhya Pradesh and the said consignment was to be delivered to M/s. Kanahaiyalal Jhoomarmal at Dhubri in Assam. The truck on its way met with accident and was overturned and fell into a ditch at Barona Sahgank in the District of Jaunpur. On the basis of information lodged by one Madan Lai, son of B. C. Lokhotia, Niwari P. S. Case No. 58 dated 12.3.01 u/s 406 of the IPC was started. On 6.3.01 petitioner Ram Swarath Yadav also lodged a diary at Kotwali Sahganj at Jaunpur. On the basis of it, a case was started and chargesheet was submitted u/s 406 of the IPC. The learned Magistrate took cognizance of offence and evidence has also been recorded and the said case has reached almost concluding stage. By the order of the learned Magistrate he was placed in custody in Kanpur Correctional Home.

15. Mr. Adhya submitted that relating to same incident the opposite party S.P. Madan filed the complaint before the learned Magistrate at Alipore and, the learned Magistrate sent the complaint to O.C., Budge Budge P.S. for investigation u/s 156(3) of the Code

and on the basis of it Budge Budge P.S. Case No. 31 dated 7.4.01 was started. Though no part of the incident took place either at Budge Budge or within jurisdiction of learned SDJM, Alipore, the de facto complainant stated in the complaint that consignment note No. 122 dated 28.2.01 for the said soyabin oil was issued from his office at Budge Budge and as such the incident of breach of trust was committed within the jurisdiction of learned SDJM, Alipore. Lodging of the complaint at Alipore Court amounts to second FIR and it is bad in law when on the basis of FIR being Niwari P.S. Case No. 58 dated 12.3.01 a case is pending against the petitioners for the same incident and the said case has reached the stage of conclusion. When the concerned Magistrate of Uttar Pradesh has already taken cognizance earlier, continuation of the criminal proceeding against the petitioners in the Court of learned SDJM, Alipore is bad in law and it should be quashed.

16. Mr. Kazi Safiullah, learned Public Prosecutor submitted that in such a situation provisions of Section 186 of the Code would be applicable and, if the High Court finds that where two or more Courts have taken cognizance of the same offence and question arises as to which of them ought to inquire into or try that offence, the question shall be decided:

- a) if the Courts are subordinate to the same High Court, by that High Court;
- b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced and thereupon all other proceedings in respect of that offence shall be discontinued.

17. After hearing the submissions of the learned Advocates for the petitioners in C.R.R. No. 478/02 and the learned Public Prosecutor and perusing the papers and materials on record 1 find that the Niwari P.S. Case No. 58 dated 12.3.01 u/s 406 of IPC was started earlier. In the said case chargesheet has already been submitted on 8.5.01. It is also evident that the learned Magistrate, Niwari, Madhya Pradesh has already taken cognizance of said offence and trial is almost on verge of completion. Whereas in connection with the same incident S.P. Madan, a proprietary concern represented by Ajay Kumar Madan lodged the complaint which was sent to O.C., Budge Budge P.S. for investigation giving rise to Budge Budge P.S. Case No. 31 dated 7.4.01. Ajay Kumar Madan filed the complaint before the learned SDJM on 3.4.01 and the aforesaid Budge Budge P.S. case has been started on 7.4.01 and investigation in this Budge Budge P.S. case is still pending.

18. Reading of the FIR without adding anything to it or without subtracting from it clearly establishes that not a single part of incident into the alleged offence u/s 406 of IPC took place within the jurisdiction of learned SDJM, Alipore. This should be treated as second complaint against the same accused persons concerning same incident of loss of soyabin oil for which alleged charge of breach of trust have been levelled against the accused petitioners. This is a fit case where this Court should exercise its jurisdiction to interfere into the matter to stop abuse of the process of Court. It is of course clear that, two

criminal cases are pending in the Courts under different. High Courts. The Court of learned Magistrate, Niwari is not subordinate to this High Court. Still, it is clear that the entire subject-matter or allegations of complainant are identical and the Niwari P.S. Case was started earlier in which learned Magistrate took cognizance of offence and the case at Niwari is on the verge of completion. Over the same incident investigation at Budge Budge P.S. has not yet been completed and final report has not yet been submitted and learned Magistrate has not yet taken cognizance of offence. An accused cannot be vexed with two cases relating to same incident. Accordingly, it is a fit case where this Court should exercise its inherent jurisdiction u/s 482 of the Code. Continuation of the criminal proceeding being Budge Budge P.S. Case No. 31 dated 7.4.01 would be an abuse of the process of Court and accordingly the said criminal proceeding is hereby quashed. The aforesaid Budge Budge P.S. Case No. 31 dated 7.4.01 should be discontinued with being fait accompli as in the Niwari Court the proceeding relating to same offence first commenced.

19. In view of the discussions made above the revisional application being C.R.R. No. 478/02 is allowed and criminal proceeding being Budge Budge P.S. Case No. 31 dated 7.4.01 in connection with Case No. C/649 of 2001 pending in the Court of learned SDJM, Alipore is quashed. The learned SDJM, Alipore should recall the production warrants issued against the petitioners from this Court. The revisional application being C.R.R. No. 188/ 03 having no merit fails and is dismissed.

20. This order will govern both the revisional applications in C.R.R. No. 478/02 and C.R.R. No. 188/03.

21. All interim orders passed earlier stand vacated.

22. Criminal section is directed to send a copy of this order to the learned SDJM, Alipore and to the learned SDJM, Barrackpore respectively for information and necessary action.