

Paresh Chandra Nath and Others Vs The State and Another

Court: Calcutta High Court

Date of Decision: June 8, 1961

Acts Referred: Penal Code, 1860 (IPC) – Section 120B, 420

Citation: (1962) CriLJ 654

Hon'ble Judges: S.K. Sen, J; K.C. Sen, J

Bench: Division Bench

Judgement

S.K. Sen, J.

In this revisional application the petitioners have challenged the order of a transferee Magistrate, Shri D. K. Banerjee, in summoning them u/s 420/120B of the Indian Penal Code although in the charge-sheet they were not sent up as accused. The facts are briefly as

follows:

2. Opposite party No. 2, Biswanath Lai, tiled a petition of complaint against the three petitioners and against Tarapada Sadhukhan alias Nona. The

learned Sub-divisional Magistrate, Barrackpore, instead of taking cognizance of the case on the complaint, directed the Officer-in-charge of

Noapara police station to treat the petition of complaint as a first information report and to investigate the case. Accordingly, the police took up the

investigation of the, case and ultimately submitted a charge-sheet on 26th. March 1960 against one of the accused, Tarapada Hanukah. The case

was then transferred by the learned Sub-divisional Officer to Shri D. K. Banerjee, Magistrate, first Class, for disposal. Before the. transferee

Magistrate a petition was filed on behalf of the complainant that the statements of the witnesses as recorded by the Investigating Officer would

show a prima facie case against the petitioners, Paresh Chandra Nath, Bishwanath Singh and Bhupendra Mohan Base, and that they might also be

summoned u/s 420/120B of the Indian Penal Code. The learned .Magistrate thereupon perused the police diary and held that there was a prima

facie case against these petitioners also, and directed the issue of summons against them Under Sections 420/120B of the Indian Penal Code.

3. Mr. N. C. Banerjee appearing for the petitioner has urged that the learned transferee Magistrate had no jurisdiction to summon the accused not

sent up by the police along with the charge-sheet. He has urged that if the evidence had been recorded In Court and a case was disclosed against

the non-summoned accused or against the accused not sent up by the police, the learned Magistrate might at a supplementary trial try them after

summoning them, but he could not summon them before such evidence had been recorded in Court.

4. In view of the altered procedure introduced by the amendment of the Criminal Procedure Code, however, and the introduction of Section 251-

A and other Sections in the Criminal Procedure Code, it must be held that even before a Magistrate has recorded the evidence In Court, he may

look into the statements of the witnesses as recorded by the police, of which copies have been submitted, to the Court and to the accused; and he

may, in his discretion, summon other people not sent up by the investigating Officer, if he thinks that there is a prima facie case on the evidence

against them. This view was adapted in the case of Saifar and Others Vs. State of West Bengal, , in which the relevant law was discussed at some

length, and we see no reason to revise the opinion which we then expressed. In our opinion, therefore, it was within the competence of the

Magistrate to summon the accused who were not sent up by the Investigating Officer.

5. Mr. Banerjee has submitted that the Sub-divisional Magistrate could possibly have exercised such a Jurisdiction, but the Magistrate to whom the

case was transferred for disposal could not do the same. But the transferee Magistrate in seisin of the case is clothed with the jurisdiction of the

Magistrate who takes cognizance of the case. In the circumstances, it must be held that the transferee Magistrate also could summon as accused

the three petitioners, against whom he considered, on perusal of the statements recorded by the police, that there was a prima facie case. This Rule

is, therefore, discharged.

K.C. Sen, J.

6. I agree.