

(1982) 04 CAL CK 0026

Calcutta High Court

Case No: Criminal Rev. No. 229 of 1980

Sanat Kumar Mukherjee

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: April 19, 1982

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 239, 482
- Penal Code, 1860 (IPC) - Section 145, 146, 161, 323, 324

Citation: 86 CWN 769

Hon'ble Judges: Amitabha Datta, J

Bench: Single Bench

Advocate: Kishore Mukherjee and Suvre Ghosh, for the Appellant; Ashoke Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Amitabha Datta, J.

This Revisional application u/s 482 of the Code Criminal Procedure and Article 227 of the Constitution of India is directed against an order passed by the learned Judicial Magistrate, Purulia on 20th of June 1979 discharging the opposite party No. 2 Satish Chandra Banerjee u/s 239 of the Code In G.R. case No. 1812 of 1977 which has been affirmed by an order dated 18th January, 1979 by the learned Sessions Judge, Purulia In Criminal Revision Case No. 36 of 1879. The Prosecution Case is that on 29.9.77 at about 10.30 p.m. the petitioner Sanat Kumar Mukherjee was going to his house on a cycle and when he reached the end of his garden he kept the cycle and went to ease himself. All on a sudden, Swapan Chatterjee, Tapan Chatterjee, Satish Chandra Banerjee and his son Joyded Banerjee came there. Swapan struck him with a spear, Tapan then took the spear from Swapan and tried to give a blow to the petitioner who snatched it from Japan's hand. Joydeb under the direction of his

father Satish threw a big stone at the petitioner causing injuries on his person. The petitioner raised an alarm and on hearing the alarm, his father Dwijapada Mukherjee and one Balaram Mukherjee came (from the same house) to the spot. The petitioner narrated the whole incident to them. They also saw the accused persons fleeing away. The petitioner also informed the villagers who came there of the incident and showed the spear to them.

2. The petitioner made a First Information Report at 1.30 a.m. in the same night. The Police registered the case and took up the investigation. After completion of the investigation, the Police submitted charge sheet against the four accused persons including the opposite party No. 2 Satish Chandra Banerjee. The learned Magistrate took cognisance on the Police report and issued process against all the four accused. Thereafter the learned Magistrate after considering the materials submitted with the Police report has framed the charge u/s 326 of the Indian Penal Code against Swapan u/s 326/323 of the Indian Penal Code against Tapan and u/s 324 of the Indian Penal Code against Joydeb. The learned Magistrate has found that there is no prima facie case against the accused Satish Chandra Banerjee and in that view has discharged him. Against the order of discharge the petitioner moved the learned Sessions Judge, Purulia in revision who after considering the First Information Report and the statements recorded u/s 161 of the Code of Dwijapada, Balaram and Melaram and assessing them in the light of probabilities or improbabilities and the surrounding circumstances has found that the learned Magistrate has rightly discharged the opposite party No. 2.

3. Before this Court the learned Advocate for the petitioner has referred to the "First Information Report and the statements recorded u/s 161 of the Code of Dwijapada Mukherjee, Balaram Mukherjee and Helaram Majhi. He has submitted that in view of the aforesaid materials the impugned order of discharge of the opposite party No. 2 passed by the learned Magistrate has led to a failure of justice, and the learned Advocate appearing for the opposite party No. 2 has, on the other hand, submitted that on a close scrutiny of the aforesaid materials it cannot be said that the concurrent findings of the Courts below is unreasonable or perverse causing a miscarriage of justice. It is further submitted that in view of the decision of the Supreme Court in Madhu Limaya's case (AIR 1979 SC 47) and in [Raj Kapoor and Others Vs. State and Others](#), the inherent power of the High Court u/s 482 of the Code can be exercised in spite of the bar, of Section 397 only in exceptional circumstances and extraordinary situations and where it is absolutely necessary to prevent an abuse of the process of the Court or to secure the ends of justice and that the instant case does not fall in that category.

4. I have considered the submissions made by the learned Advocates for the parties. I have also carefully scrutinised the materials on record. It will not be appropriate to discuss in details such materials lest any prejudice should be caused to the parties during the trial. I find that the view taken by the Courts below is not unreasonable.

although another view could have been taken and that there is no exceptional circumstances for interference in the exercise of inherent powers of this Court u/s 482 of the Code, with the concurrent findings of the learned Magistrate and the learned Sessions Judge. In so far as the petitioner has invoked the powers of this Court under Article 227 of the Constitution. I come to the same conclusion. The learned Advocate for the petitioner has referred to the Bench decision of Orissa High Court In the case of Sashidhar vs- Gadaohar reported In 78 CrL. L. J. at page 1316 in support of his submissions that the High Court can interfere in second revision under Article 227 of the Constitution, with the order passed by the learned Magistrate, But In the reported case, the learned Magistrate passed the final orders in two proceedings u/s 145 of the Code, after he had attached the disputed lands and appointed the Receiver to take charge of such lands u/s 146 of the Code. The learned Sessions Judge in revision dismissed the revisional application against such final orders of the learned Magistrate in limine. The learned Judges of the Orissa High Court have found that the final orders of the learned Magistrate are without jurisdiction and in that view interfered with those orders relying on the observation of the Supreme Court in the case of Swapan Singh's case -vs- State of Punjab [AIR 1976 SC 2323] that the jurisdiction extends only to cases where orders are passed by inferior Courts or Tribunals In excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or acting illegally or improperly In exercise of their jurisdiction causing grave miscarriage of justice. It is therefore clear that the circumstances in which the learned Judges of the Orissa High Court exercised the supervisory jurisdiction under Article 227 of the Constitution in the aforesaid reported case are far removed from the circumstances of the present case.

5. It has been held by the Supreme Court in Jagir Singh -v- Ranvir Singh 1979 Cr. L.J 318 that where the code itself u/s 397(3) barred the exercise of revisional power by the High Court, it would require very exceptional circumstances to warrant Interference under Article 227 of the Constitution since the power of the judicial superintendence is not meant to circumvent the statutory law. That power is to be exercised to keep the Courts and Tribunals within the bounds of their authority and not to correct mere errors. As I have already found, this case does not come within the category of such exceptional cases find does not disclose any extraordinary situation warranting interference by the High Court in exercise of the power of judicial superintendence under Article 227 of the Constitution.

6. In the result, the application fails and is dismissed The Rule is discharged. Let the records be sent down to the Courts below expeditiously. Rule discharged. Let the records be sent down to the Courts below expeditiously.