

(1984) 07 CAL CK 0021

Calcutta High Court

Case No: None

The Public Prosecutor

APPELLANT

Vs

Abhijit Bose

RESPONDENT

Date of Decision: July 12, 1984

Acts Referred:

- Customs Act, 1962 - Section 132, 135, 135A
- Penal Code, 1860 (IPC) - Section 120B, 420, 468, 471

Citation: (1984) CriLJ 1864

Hon'ble Judges: Sankari Prasad Das Ghosh, J; B.C. Chakrabarti, J

Bench: Division Bench

Judgement

B.C. Chakrabarti, J.

This revisional application at the instance of the Public Prosecutor, High Court, Calcutta, is directed against an order passed by the learned Chief Judge, City Sessions Court, Calcutta dated 28.8.1981 passed in Cri Revn. Case No. 33 of 1981 arising out of G.R. Case No. 1903 of 1978 pending before the learned Metropolitan Magistrate, 11th Court, Calcutta.

2. The opposite party Abhijit Bose is the Managing Director of M/s. Polymold (P) Ltd. The said firm is carrying on business as a trader and also engaged in export business. The Assistant Collector of Customs, Calcutta, filed a written complaint on 6.8.1977 on the basis of which a case was registered and the police ultimately submitted a charge-sheet against the opposite party Abhijit Bose and another u/s 120B/420/468/471, Penal Code, and u/s 132/135/135A Customs Act, 1962. The principal allegation was that the opposite party Abhijit Bose had used three forged blue-books in respect of 3 cars bearing Registration Nos. WBA 30, WBA9098 and RJA 603 as genuine knowing them to be forged and submitted them along with 3 shipping bills to the customs authorities for exporting the said cars to U.K. making declaration in the shipping bills knowing or having reasons to believe that such

declaration was false. Precisely the allegation was that there is a prohibition against the export of vintage cars manufactured prior to 1940 and that of the 3 said cars two were manufactured prior to 1940 but the blue-books and other documents were forged and fabricated in order that the vehicles may be exported. On the complaint being filed before the learned Chief Metropolitan Magistrate on 12.7.1978 on the allegation of commission of offences under the aforesaid sections, cognizance was taken and process was issued. The opposite party appeared before the learned Magistrate and was released on bail. On 3.11.1980 and 29.1.1981 the opposite party filed two applications before the learned Magistrate challenging the jurisdiction of the court in taking cognizance and prayed for dropping the said case.

3. The learned Metropolitan Magistrate initially fixed 2.3.1981 for hearing of the petitions filed by the accused opposite party. On 2.3.81 he again fixed 27.3.1981 for hearing and finally on 27.3.81 he passed an order fixing 6.4.1981 for orders on the petitions dated 29.1.81 and 3.11.80. On 6.4.1981 the learned Magistrate observed that this being a case instituted on a police report, the court had no power to drop the proceedings without considering the materials for framing of any charge and that if on a consideration of the materials it appeared that the charge against the accused was groundless then they would be entitled to an order of discharge u/s 239, Cr.P.C. That being the position, the learned Magistrate thought it proper to hear the two petitions along with the materials on record while considering the point as to framing of charge and accordingly fixed 28.4.1981 for consideration of charge along with the petitions of the accused (opposite party before us). Against the order passed on 6.4.1981 the opposite party 1 moved the learned Chief Judge, City Sessions Court at Calcutta in revision being Cri Revn. Case No. 33 of 1981 under Sections 397 and 399 Cr.P.C. By the order impugned in the present revisional application the learned Chief Judge overruled the objection of the complainant regarding the maintainability of the revisional application and upon a consideration of the materials held that the cognizance in the case has been improperly taken and that the proceeding was liable to be dropped. In that view of the matter, he allowed the revisional application and directed that the proceedings in G.R. Case No. 1903 of 1978 against the petitioner be dropped.

4. It is against this order that the present revisional application is directed.

5. Mr. Mukherjee appearing on behalf of the petitioner urged two points in support of his revisional application viz., that the learned Judge in the City Sessions Court assumed jurisdiction in dropping the proceedings not vested in him and that in any event the revisional application before the learned Chief Judge, City Sessions Court being directed against an interlocutory order was not maintainable.

6. Mr. Sankardas Banerjee in opposing the revisional application wanted to take us into the merits of the case and also argued that the articles which were sought to be exported, were not really cars within the meaning of the Motor Vehicles Act but were merely junks incapable of any valuation. He also contended that the opposite

party personally had nothing to do in the matter of preparation of the blue-books and other documents which were being done by his Clearing Agents (the other accused" in the case) and that the moment the opposite party came to know of the position, he withdrew the shipping bills. Therefore, Mr. Banerjee contended that the opposite party could not have violated any provisions of the Customs Act so as to be liable to be prosecuted u/s 132, 135 or 135A, Customs Act. We need not for reasons we shall presently discuss go into the merits of the prosecution allegation in the case at this stage. It is not necessary for us to consider whether the shipping bills were eventually withdrawn or not because the prosecution alleged commission of offences not only under the Customs Act but also under the Penal Code as well. Therefore, even if there was no offence under the provisions of the Customs Act, the question whether offences under the Penal Code under Sections 420 : 468 and 471, Penal Code, were made out or not, was yet to be considered. But these are matters which are awaiting consideration before the learned Metropolitan Magistrate. At this stage we are concerned with the question whether the order passed by the learned Chief Judge, City Sessions Court is sustainable or not. In our view, it was not a proper order for two reasons viz., that he had no jurisdiction to make the order viz., dropping the proceedings as against the opposite party, and secondly he had no jurisdiction to entertain an application in revision u/s 397 Cr.P.C. against an interlocutory order. To take the second point first it may be pointed out that the learned Metropolitan Magistrate, 11th Court had merely fixed a date for consideration of the two applications of the opposite party along with framing of charge, if any. The question whether a charge, if framed, is an interlocutory order or not may be an arguable or a debatable question. But there can be no dispute that, merely fixing a date for consideration of an application and for consideration of charge is nothing but an interlocutory order. Therefore, the learned Chief Judge, City Sessions Court could not entertain the application u/s 397, Cr.P.C.

7. As regards the other point, the order of the learned Chief Judge virtually has the effect of quashing the proceedings-so far as the opposite party is concerned. The Sessions Judge has no powers u/s 397 to quash a proceeding. That is a power vested in the High Court u/s 401 read with Section 482, Cr.P.C. Therefore, in passing the kind of order as has been passed in this case, the learned Chief Judge assumed a jurisdiction not vested in him. The mere fact that he did not use the expression "quashing the proceedings" does not alter the position. The effect of the order is the same. Therefore, we are of the view that the order that has been passed by the learned Chief Judge, City Sessions Court, was beyond his jurisdiction and that the application that was filed before him was not otherwise maintainable in law in view of the bar imposed by Sub-section (2), Section 397, Cr.P.C. That being the position in law, the order of the learned Chief Judge, City Sessions Court, must be set aside and we direct accordingly.

8. The revisional application, accordingly, succeeds. The order impugned is set aside and the matter be sent back to the learned Metropolitan Magistrate, Eleventh Court,

before whom the G.R. Case is pending, with a direction to consider the two applications filed by the opposite party before the framing of charge, if any, and then proceed with the case according to law.

9. The Rule is thus made absolute.

10. The records be sent down to the court below forthwith.

Sankari Prasad Das Ghose, J.

11. I agree.