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**(1974) 09 CAL CK 0021**

**Calcutta High Court**

**Case No:** Criminal of Appeal No. 591 of 1974

Dhruba Pradhan

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Sept. 2, 1974

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 155(2)
- Railway Property (Unlawful Possession) Act, 1966 - Section 3, 5, 6, 7, 8(1)

**Citation:** (1976) 1 ILR (Cal) 341

**Hon'ble Judges:** P.C. Borooah, J

**Bench:** Single Bench

**Advocate:** Anil Bandhu Ray, for the Appellant; Ajay Nath Mukherjee, for the Respondent

**Final Decision:** Dismissed

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### Judgement

P.C. Borooah, J.

This Rule is directed against an order dated April 24, 1974, passed by Sri S.K. Bose, Judicial Magistrate, First Class, Jalpaiguri, rejecting a petition filed by the accused Petitioners praying that a case pending against them before the learned Magistrate u/s 3(a) of the Railway Property (Unlawful Possession) Act, 1966, (hereinafter referred to as the Act) may be quashed.

2. The facts out of which this Rule arises may briefly be stated as follows:

On March 15, 1973, a Sub-Inspector of the Railway Protection Force, New Mai, on the basis of certain information, searched the premises on both sides of the Railway tracks of Dum Dum Railway Station and seized some steel rods from the premises belonging to the accused Petitioners which were suspected to have been stolen from the Railway wagons which had stopped at the said Railway station. On the said allegation the Sub-Inspector, R.P.F., New Mai Junction camp at Dum Dum, lodged an information with the Officer-in charge, R.P.F., New Mai Junction, on March 14, 1973

and New Mai Jn. R.P.F. case No. 2(3) of 1973 was started and was taken up for investigation. After the completion of investigation the prosecution report was submitted against a number of accused persons including the Petitioners for an alleged offence u/s 3(a) of the Act and the learned Sub-Divisional Judicial Magistrate, Jalpaiguri, by an order dated June 2, 1973, took cognizance and transferred the case to Sri S.K. Bose, Judicial Magistrate, First Class, for disposal. Thereafter, on April 24, 1974, when the case was fixed for evidence, a petition was moved on behalf of the accused Petitioners praying for quashing of the proceedings on the ground that the investigation was in violation of Section 155(2) of the Code of Criminal Procedure, 1898 and as such the entire proceedings were without jurisdiction.

3. Mr. Anil Bandhu Ray, learned Advocate appearing on behalf of the Petitioners, has submitted that u/s 5 of the Act offences under the Act are non-cognizable offences and as such, Section 155(2) of the Code of Criminal Procedure, 1898, is attracted and a Police officer is not empowered to investigate without having previously obtained an order of a Magistrate. In the instant case, no such order having been obtained the entire investigation and the prosecution report submitted on the conclusion of investigation and the cognizance taken by the learned Magistrate on the basis of such report is wholly without jurisdiction.

4. Although Section 5 of the Act declares offences under the Act to be non-cognizable, but Section 6 of the Act gives power to any superior officer or member of the Force without an order from a Magistrate and without a warrant to arrest any person who has been concerned in an offence punishable under the Act or against whom a reasonable suspicion exists of his having been so concerned. Section 8(1) of the Act lays down that when any person is arrested by an officer of the Force for an offence punishable under the Act or is forwarded to him u/s 7 of the Act, he shall proceed to enquire into the charge against such person. Sub-section (2) of the said section gives such officer of the Force the same powers as given to an Officer-in-charge of a Police station when investigating a cognizable case. Therefore, it is clear that when an officer of the Force, namely, an officer above the rank of Assistant Sub-Inspector appointed to the Railway Protection Force constituted u/s 3 of the Act arrests any person for an offence punishable under the Act, he has the power to enquire into the charge against such person without obtaining any orders of a Magistrate. Section 155(2) of the Code of Criminal Procedure, 1898, is clearly not applicable when an offence under the Act is being enquired into by an officer of the Force. Such restriction would apply if a person is arrested for an offence under the Act by a member of the ordinary Police Force who cannot investigate an offence triable under the Act without an order of a Magistrate.

5. In view of what has been stated above, I do not find any illegality in the investigation conducted by the officer of the Railway Protection Force or in the cognizance taken by the learned Magistrate on June 2, 1973, on the basis of the prosecution report submitted after the conclusion of the investigation.

6. The application, accordingly, fails and is dismissed. The Rule is discharged.