

(1973) 06 CAL CK 0016

Calcutta High Court

Case No: Criminal Ref. No. 30 of 1973

State and Another

APPELLANT

Vs

Gurdeep Singh

RESPONDENT

Date of Decision: June 29, 1973**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 116, 438, 439(5), 439(6)
- Penal Code, 1860 (IPC) - Section 307, 326

Citation: 78 CWN 220**Hon'ble Judges:** N.C. Talukdar, J**Bench:** Single Bench

Advocate: Mr. Gobinda Chandra Pal for Accused Gurdeep Singh and Benoyendra Nath Mukherjee for Amarjit Singh, for the Appellant; Sanat Kumar Rakshit for the State and Jyotish Chandra Bose Amicus Curiae, for the Respondent

Judgement

N.C. Talukdar, J.

This is a Reference u/s 438 of the Criminal Procedure Code made by Shri K.C. Roy, Sessions Judge, Burdwan, recommending that the order dated 3.1.73 passed by Shri R.K. Ghatak, Sub-divisional Judicial Magistrate, Burdwan, in G.R. Case No. 2012 of 1972, issuing search-warrant and forfeiting the surety's bond for a non-compliance of an earlier order passed on 13.12.72, is bad in law and as such should be set aside; and that the learned Sub-divisional Judicial Magistrate, Burdwan should be directed to dispose of the truck in question, after hearing both the parties on their different petitions, in accordance with law. The facts leading on to the Reference can be put in a short compass. One Haripujan Singh lodged a F.I.R. at the Burdwan Police Station, which was registered as Burdwan P.S. Case No. 55(11)72, under Sections 307 and 326 Indian Penal Code against the accused Gurdeep Singh and three others. An investigation followed and in course thereof the I.O. seized a truck, being No. WGA 3340. Papers relating to the purchase of the Truck were produced by the aforesaid Gurdeep Singh before the I.O. and he prayed for a return of the truck. The learned

Magistrate by his order dated 30.11.72 released the truck to the owners on a Jimma-nama for Rs. 20,000/-, and by a further order dated 1.12.72, he further directed the said Gurdeep Singh to file a Jimma-nama on behalf of his partner Amarjit Singh also. In the meanwhile, one Harbhajan Singh, describing himself as the father of Amarjit Singh, filed an application praying that the surety may be directed to produce the vehicle in Court. The learned lawyer for Gurdeep Singh submitted thereupon that the said applicant, Amarjit Singh, is not his partner, Amarjit Singh and ultimately on 9.12.72 the learned Magistrate rejected the said application holding that Harbhajan Singh has no locus standi.

On 12.12.72 Amarjit Singh filed an application, basing his claim as a partner and praying that Gurdeep Singh may be directed to produce the vehicle before the Court and the learned Magistrate by his order dated 13.12.72, directed Gurdeep Singh to produce the vehicle at once for the purpose of the hearing of the application. Gurdeep thereupon filed an application on 14.12.72 stating, inter alia, that the real Amarjit Singh, who is his partner, did not file the application or any other application in the case and the application filed on 12.12.72 is in the name of one Amarjit Singh, who is a boy aged about 4 or 5 years. Gurdeep Singh filed a further application on the same date praying for the hearing of the matter, after going through relevant materials relating to the purchase of the vehicle. Both the applications were put up for hearing on 15.12.72. Gurdeep Singh had in the meanwhile filed another application on 20.12.72, praying for staying the earlier order passed by the learned Magistrate on 13.12.72 and for a disposal of the matter on a consideration of the previous two applications filed by him on 14.12.72. The learned Sub-Divisional Judicial Magistrate thereupon fixed 22.1.73 for orders. Amarjit Singh filed an application on 23.12.72 praying for a search-warrant and taking the lorry back in custody alleging that the petitioner was by-passing the directions given by the learned Magistrate on flimsy grounds. The petition was directed to be put up on 28.12.72 and ultimately on 3.1.73 an order was passed to this effect: "Issue search warrant forfeiting the surety's bond since he has not complied with my order dated 13.12.72". Being aggrieved by the said order Gurdeep Singh filed a revisional application before the Sessions Judge, Burdwan and this Reference was made u/s 438 Criminal Procedure Code recommending that the impugned order should be set aside and the matter should be disposed of after hearing both the parties on the basis of the different applications filed.

2. Mr. Gobinda Chandra Pal, Advocate appearing on behalf of the accused, Gurdeep Singh supported the Reference; Mr. Benoyendra Nath Mukherjee, Advocate appeared on behalf of Amarjit Singh and opposed the Reference; and Mr. Sanat Kumar Rakshit, Advocate appearing on behalf of the State supported the Reference. After the matter was heard in part Mr. Benoyendranath Mukherjee appearing on behalf of Amarjit Singh, raised a point of law that u/s 515 Criminal Procedure Code an appeal lies in the first instance to the learned Sessions Judge and as such the revisional application filed before him was incompetent vitiating the ultimate

Reference made u/s 438 Criminal Procedure Code. During the arguments, an interesting point of law cropped up as to whether Section 515 Code of Criminal Procedure enjoins only an appeal or also a revisional application to the District Magistrate or to be more precise to the Sessions Judge, in view of Section 116 of the West Bengal Separation of Judicial and Executive Functions Act, 1970 (West Bengal Act VIII of 1970) whereby the words "or District Magistrate shall be appealable to the District Magistrate" were substituted by the words "shall be appealable to the Sessions Judge". As there was some cloud on the point, this Court requested Mr. Jyotish Chandra Bose, Advocate, to appear as Amicus curiae to assist the Court and Mr. Bose readily agreed to do so. After an adjournment the matter came up for final hearing today.

3. Mr. Gobinda Chandra Pal appearing on behalf of Gurdeep Singh submitted that Section 515 Cr. P.C. provides for an appeal or a revision, when no such appeal is filed. In this case no appeal was filed from the impugned order passed u/s 514 Cr. P.C. but a revisional application was preferred before the learned Sessions Judge, Burdwan. The Reference, therefore, made in course of such a Revision is quite competent. On merits Mr. Pal submitted that, as borne out by the materials on the record, the order dated 3.1.73 was passed by the learned Sub-divisional Judicial Magistrate without giving Gurdeep Singh an opportunity of being heard and without taking into consideration the material applications filed on his behalf from time to time. Mr. Pal accordingly submitted that there has been a resultant contravention of the principles of natural justice and the letter of Reference therefore rightly recommended that the matter should go back to the Court below for being disposed of in accordance with law and in the light of the applications filed on behalf of the applicant. Mr. Benoyendra Nath Mukherjee appearing on behalf of Amarjit Singh, the other applicant, joined issue and contended that the provisions of Section 515 Cr. P.C. are mandatory and no appeal as provided for therein having been filed, the Revisional application before the learned Sessions Judge did not lie and the ultimate reference made, in course thereof, also is not maintainable. In this context, he referred to the language of Section 515, as amended by West Bengal Act VIII of 1970 and also the provisions of Section 439 (6) Cr. P.C. to the effect that "where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed" and submitted that the present Reference made in course of such a Revision does not lie and should be rejected. Mr. Sanat Kumar Rakshit appearing on behalf of the State submitted that the Reference is quite in order, both in law and on merits. He contended in this context that the provisions of Section 515 Cr. P.C. only enjoin that an appeal would lie in the first instance but if the same was not filed being time-barred or otherwise, a Revisional application would lie against the impugned order u/s 514 Criminal Procedure Code before the learned Sessions Judge. In this context, he relied on the case of *Emperor-Prosecutor v. Pandhi Khan-Opposite Party*, reported in AIR 1934, Sind 152, decided by Ferrers, J.C. and

O'Sullivan, A.J.C. On merits Mr. Rakshit submitted that there has been a clear contravention of the principles of natural justice as no opportunity was given to the accused Gurdeep Singh of being heard in support of his contentions as incorporated in the several applications filed by him.

4. Mr. Jyotish Chandra Bose, the learned Amicus Curiae, made a two-fold submission. Mr. Bose contended that in view of the clear provisions of the statute, the exercise of the Revisional jurisdiction on the part of the learned Sessions Judge is not ruled out and, in this case, the impugned order u/s 514 Criminal Procedure Code, having not been appealed from, the same may be revised by the learned Sessions Judge. In this context, the learned Amicus Curiae further submitted that Section 515 Cr. P.C. is a special provision and the analogy of Section 439(5) Cr. P.C. would not hold good because specific powers have been conferred upon the learned Sessions Judge to proceed by way of an appeal or a revision as the exigency of the circumstances permitted. The second dimension of Mr. Bose's contention is that when exercising such Revisional jurisdiction, the Revisional Court can pass final orders without proceeding to refer the matter u/s 438 Criminal Procedure Code.

5. Having heard the learned Advocates appearing on behalf of the respective parties, including the learned Amicus Curiae, and on going through the letter of Reference, I hold that there is a considerable force behind the submissions of Mr. Pal and Mr. Rakshit, lent assurance to by the submissions made by the learned Amicus Curiae. It is necessary, in the first instance, to refer to the provisions of Section 515 which are as follows : --

All orders passed u/s 514 by any magistrate other than a Presidency Magistrate or District Magistrate, shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

6. The provisions of Section 515 Code of Criminal Procedure have since been amended by the West Bengal Separation of Judicial and Executive Functions Act, 1970 (West Bengal Act VIII of 1970) and Section 116 thereof provides as follows: --

In Section 515, for the words "or District Magistrate shall be appealable to the District Magistrate", the words "shall be appealable to the Sessions Judge" shall be substituted.

7. It is abundantly clear therefore that the legislature in its wisdom has enjoined that all orders passed u/s 514 Criminal Procedure Code by a magistrate, other than a Presidency magistrate, shall be appealable to the Sessions Judge or "if not so appealed, may be revised by him." It is material to take into consideration the impact of the word "or" instead of "and". To be more precise, the two clauses are disjunctive or in the alternative and not conjunctive. On an interpretation therefore of the provisions of Section 515 Criminal Procedure Code, as amended by the West Bengal Separation of Judicial and Executive Function; Act, 1970 (West Bengal Act VIII of 1970), by "the principles of intent and that of meaning", the intention of the

legislature appears to be not to rule out a Revisional application altogether in such cases, in circumstances provided for under the relevant provisions. The provisions of Section 439(5) of Criminal Procedure Code would not stand in the way of such a Revisional application because, as the learned Amicus Curiae rightly submitted, when specific provisions are made in the Statute in respect of specific cases, such specific provisions should be given effect to in preference to the general provisions. Moreover, the provision contained in Section 515 Criminal Procedure Code itself, clearly enjoins that in certain contingencies, such a Revisional application would lie and therefore it is not, in any way, in conflict with the provisions of Section 439(5) Criminal Procedure Code, laying down that "no proceedings by way of revision shall be entertained at the instance of the party who could have appealed". Some meaning and effect must be given to the words used by the Statute, reflecting the intention of the legislature as otherwise it would give rise to redundancy. It is to be remembered in this context that the principles of interpretation of Statute rule out redundancy. As was observed by Lord Sumner in the case of (6) Quebec Railway Light, Heat and Power Co. Ltd. v. Vandry reported in AIR 1920 PC 181 at pp. 186 that "Effect must be given if possible to all the words used, for the legislature is deemed not to waste its words or to say anything in vain". I respectfully agree with the aforesaid observations and I hold that on the principles of interpretation of Statute and applying the principles of intent and that of meaning the submissions made by Mr. Mukherjee are untenable as the same would attribute redundancy to the provisions of Section 515 Criminal Procedure Code. I accordingly hold that, in the facts and circumstances of the case, the Revisional application filed before the learned Sessions Judge, Burdwan, has been quite in order.

8. It was urged at one stage that the aforesaid point raised in this Court, having not been taken before the learned Sessions Judge and not forming the subject-matter of the letter of Reference, should not be considered. It is true that ordinarily a party to a reference u/s 438 Criminal Procedure Code should not be allowed to travel beyond the bounds of the same but in view of the importance of the point involved and the conflicting decisions thereon, I have proceeded to consider the same in the interests of justice.

9. The next point raised is whether in exercising his revisional jurisdiction the learned Sessions Judge could himself, in his discretion, pass final orders on the impugned order without forwarding his recommendations for consideration by the High Court u/s 438 Criminal Procedure Code. The learned Amicus Curiae and Mr. Rakshit contended so and in support of this contention, Mr. Rakshit relied on the case of (2) Emperor-Prosecutor T. Pandhi Khan-Opposite Party reported in AIR 1934, Sind 152. Ferrers, J.C. and O'Sullivan, A.J.C. observed therein that

This is a reference with which we need not have been troubled. S. 515, Criminal P.C., provides that all orders passed under S. 514 by any Magistrate other than a Presidency Magistrate or District Magistrate, shall be appealable to the District

Magistrate, or, if not so appealed, may be revised by him. Since in the present case no appeal was admitted, the revision proposed by the District Magistrate appears to be within his own competence.

The learned Judicial Commissioner and the learned Additional Judicial Commissioner however proceeded to hold further that "As the matter has however come to our knowledge, and we have heard it argued, we shall proceed to make such remarks as the case appears to require."

The point raised may be decided in a proper case but it is not necessary to do so in the context of the present case. A reference has been made to the High Court and on a consideration of the materials, the High Court has unfettered powers to pass proper orders, instead of delaying matters by a further remand. The well-settled principle of law is "Ubi jus, Ibi remedium" (where there is a right there is a remedy); and there is accordingly no bar to the disposal of the Reference under consideration by the High Court. The point raised is disposed of accordingly.

10. The last point for consideration is whether the Reference is acceptable on merits. On ultimate analysis I hold that it should be upheld on merits also. The point involved is one of natural justice and there has been a clear contravention of the same because no opportunity was given to Gurdeep Singh to be heard and there has been no consideration of the several applications filed by him in this behalf. The principle of audi alteram, partem lends assurance to the contention of Mr. Pal. The said principle goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority. At one time the Privy Council took a less expansive view in the case of (5) *Nakkuda Ali v. M.F. de. S. Jayarantno*, reported in 1951 A.C. 66 wherein the judgment was delivered by Lord Radcliffe but the bounds have since been made wider by the Privy Council itself in a series of later decisions starting with the observations made by Lord Reid in the case of (7) *Ridge v. Baldwin* reported in (1963) 2 All. E.R. pp. 66; Lord Upjohn in the case of (1) *Durayappah v. Fernando* reported in (1967) 2 All. E.R. pp. 152; and Lord Parker, C.J. in the case of (3) *In Re H.K.* reported in (1967) 2 W.L.R. pp. 962. A reference is also necessary to the well-known decision of the Supreme Court in the case of (4) [A.K. Kraipak and Others Vs. Union of India \(UOI\) and Others](#), . Mr. Justice Hegde delivering the judgment of the Supreme Court observed at pp. 156 that

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.....In other words they do not supplant the law of the land but supplement it

The Supreme Court further referred to the wind of change in the concept of natural justice in recent years and observed that at p. 157 :

Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just

decision is the aim of both quasi-judicial enquiries as well as administrative enquiries....". The principles therefore are now well-settled and by and large the principles of natural justice have been given effect to within the bounds of such statutes. Apart from the imprimatur of judicial decisions referred to above, it is pertinent in this context to refer to the case of (8) [State Bank of India Vs. Rajendra Kumar Singh and Others,](#) . The Supreme Court has unequivocally held that the principles of natural justice are applicable in an application u/s 517 or 520. This clearly supports the submissions of Mr. Pal and on merits also the Reference succeeds

11. Before I part with the case, I must place on record my appreciation of the able manner in which the case was placed before the Court by the learned Amicus Curiae, Mr. Jyotish Chandra Bose, who spared no pains to assist this Court to come to a proper conclusion. In the result, I accept the Reference; set aside the impugned order dated 3.1.73 passed by Shri R.K. Ghatak, Sub-divisional Judicial Magistrate, Burdwan in G.R. Case No. 2012 of 1972; and I direct that the matter shall go back to the Court below to some other learned Magistrate, to be selected by the learned Sessions Judge, Burdwan, for being disposed of expeditiously, and in accordance with law, on a consideration of the several applications filed and after giving due opportunity to the parties concerned of being heard.

The records shall go down as early as possible.