

(1966) 05 CAL CK 0019

**Calcutta High Court****Case No:** Criminal Revision Case No. 426 of 1966

S.K. Banerjee

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** May 12, 1966**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 190(1)(c), 439
- West Bengal Cattle Licensing Act, 1959 - Section 12(1)

**Citation:** 70 CWN 779**Hon'ble Judges:** A.K. Das, J**Bench:** Single Bench**Advocate:** J.P. Mitter, Salil Kumar Dutta and Parimal Chatterjee, for the Appellant; Ajit Kumar Dutta, Ajoy Kumar Basu and P. Roy for the State, for the Respondent

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**Judgement**

A.K. Das, J.

1 This is an application u/s 439 of the Code of Criminal Procedure for quashing the proceeding pending in the court of the learned Additional Chief Presidency Magistrate, Calcutta. The facts of the case in a nutshell are as follows : The petitioner Shri S. K. Banerji, a member of the Indian Administrative Service, now holding the post of Development Commissioner and Ex-Officio Secretary to the Government of West Bengal lives on the first floor of 8, Camac Street, Calcutta, the ground floor of which is in the occupation of Mr. Justice D. Basu. On the 23rd of February, 1966 Mr. Justice D. Basu addressed a letter to the Commissioner of Police, Calcutta making a complaint about a cow with a calf being kept tethered in the open space between his office room and his orderly's quarters by one Suraj Prasad Singh. This was causing inconvenience and disturbance to Mr. Justice Basu and he therefore requested the Commissioner of Police, Calcutta to take action under the Cattle Licensing Act. Mr. Basu's letter referred to other matters viz., some disturbance created by the said Suraj Prasad Singh and others. He wanted and desired that

suitable steps might be taken for protection of himself and the members of his family. A copy of this letter was forwarded to the Chief Presidency Magistrate, Calcutta for taking all steps necessary for his protection and for giving necessary directions to the police and other authorities. The records do not disclose as to what steps were taken by the Commissioner of Police, Calcutta but the learned Chief Presidency Magistrate, Calcutta on receipt of a copy of this letter, took cognizance u/s 190(1) (c) of the Criminal Procedure Code of the offence u/s 12(1) of the Cattle Licensing Act, 1959 and also under other sections of the Indian Penal Code by his order dated 23rd day of February, 1966. He also passed an order for the seizure of the cow. Suraj Prosad Singh surrendered in court on the 28th day of February, 1966 and on that date, the learned Chief Presidency Magistrate, Calcutta, transferred the case to Shri G. C. Chatterjee, Additional Chief Presidency Magistrate (II), for trial. On the 8th of March, 1966 the officer-in-charge, Park Street Police Station submitted a report to the learned Presidency Magistrate, Calcutta with a letter dated 6.3.1966 from the petitioner Shri S. K. Banerjee addressed to him. This letter disclosed that Suraj Prosad Singh resided with Shri Banerjee's permission in one of the rooms in the servants' quarters and he was neither the owner of the cattle nor did he possess or control any cattle. Mr. Banerjee further stated in that letter that he had procured a milch cow about 20 days ago before the date of his letter i.e., 15.2.1966, and that he kept it till 26.2.1966 when it was removed to another Government premises by personnel of the Public Works Department. Mr. Banerjee's letter further disclosed that he had no license for keeping such cattle under the Cattle Licensing Act, 1959, and that he had applied for an "A" class license under the Act on 1.3.1966. Mr. Banerjee further intimated his desire to bring the cow back on the morning of the day. Thereafter, the learned Additional Chief Presidency Magistrate re-issued a search warrant which was infructuous earlier and the cow was seized and sent to Government pound. He also issued a notice on Mr. Banerjee to show cause why he should not be summoned in this case also u/s 12(1) of the Cattle Licensing Act for violation of Section 3 of the said Act. Subsequently Mr. Banerjee appeared and showed cause and the learned Additional Chief Presidency Magistrate, Calcutta by his order dated 22.3.1966 issued summons on him in connection with the offence u/s 12(1) of the Cattle Licensing Act and also split up this case.

2. This application is against the order of the learned Chief Presidency Magistrate, Calcutta taking cognizance u/s 190(1) (c) of the Code of Criminal Procedure and also that of the Additional Chief Presidency Magistrate's order summoning Mr. Banerjee as an accused in the Cattle Licensing Act case.

3. Mr. J. P. Mitter, learned Counsel for the petitioner, has urged various points for quashing the proceeding now pending before the Additional Chief Presidency Magistrate, including the issue of summons on Mr. Banerjee as an accused and these may be summarised as follows:-- (1) The learned Chief Presidency Magistrate having taken cognizance on the complaint of Mr. Justice D. Basu on the basis of his letter dated 23.2.66, he ought to have taken cognizance under clause (a) of section

190(1), Criminal Procedure Code and should have examined Mr. Justice Basu before taking cognizance ; (2) The learned Chief Presidency Magistrate could not take cognizance of the offence on the letter of Mr. Justice D. Basu, in view of section 11 of the Cattle Licensing Act; (3) After transfer of the case, the Additional Chief Presidency Magistrate as a transferee court, could not summon petitioner Mr. Banerjee and in any case, there was no material before him for so doing.

4. Point. No. 1--The learned Chief Presidency Magistrate's order disclosed that he took cognizance u/s 190(1) (c) of the Criminal Procedure Code, that is, upon information received from any person other than a police officer or upon his own knowledge or suspicion that an offence has been committed. Mr. Mitter has argued that Justice Basu sent a copy of this letter to the Chief Presidency Magistrate which was in the nature of a complaint and the learned Magistrate really took cognizance upon receiving a complaint of facts which constitute an offence and therefore cognizance should have been taken under clause (a) of section 190(1) and Mr. Justice Basu should therefore have been examined before cognizance was taken. He has argued that it is essential for taking cognizance u/s 190 (i) (a) to examine the complainant and in support, he has referred to a decision of this Court reported in 17 C.W.N. 448 Khetro Mohan Mitra v. Emperor. In the reported decision, the letter in question came within the definition of "complaint" as given in section 4 of the Criminal Procedure Code, as the petitioner by his letter wanted the learned Magistrate to take action and the learned Magistrate on receipt of that letter, issued process against the petitioner without examining the complainant. The crux of the whole question therefore is whether a copy of Mr. Justice D. Basu's letter to the Commissioner of Police was a complaint within the meaning of section 4, Criminal Procedure Code and whether he wanted the learned Magistrate to take cognizance on the basis of that complaint. The letter was addressed to the Commissioner of Police with a request to take action for removal of the cow and for arranging for the security of Mr. Justice Basu and members of his family in view of certain other acts alleged to have been committed by the said Suraj Prosad Singh. Endorsement below the copy of this letter sent to the Chief Presidency Magistrate requested the Chief Presidency Magistrate to take "all steps necessary for my protection and for giving necessary direction to the Police and other authorities." The endorsement clearly shows that the letter was not intended to be treated as a complaint but was intended for giving necessary directions by the Chief Presidency Magistrate as the Magistrate or the police in the town of Calcutta for protection of himself and members of the family. It is clearly not a complaint to the Chief Presidency Magistrate and Mr. Justice D. Basu never desired the Magistrate to take cognizance on the basis of this letter, nor did the Chief Presidency Magistrate himself take cognizance upon that letter which is apparent from the order taking cognizance under subsection (c) of section 190(i). This argument therefore in my view is misconceived. In this connection I may refer to a decision of this Court by Chief Justice Harries, sitting with Blank, J. : and reported in AIR 1949 Cal 55, Subodh

Chandra v. Jamser Mondal, where the learned Chief Justice in delivering the judgment of the Bench held that "to amount to a complaint the allegation must be made with a view to the recipient" taking action under the Code charging some person with a particular offence." It was pointed out that where in a petition to a Magistrate it was alleged that the opposite party had removed a sluice box from a canal and as a result the lands of the petitioners were seriously affected, and the petitioner had prayed that the learned Magistrate should call upon the opposite party to replace the sluice box and to make such repairs as would enable the work of cultivation by the tenants to be carried on, the petition was not presented with a view to the Magistrate's taking action under the Criminal Procedure Code and therefore was not a "complaint." In the present case also, the forwarding portion was a request to the Chief Presidency Magistrate to direct police to take necessary steps for his protection and this letter was not therefore a complaint by Mr. Justice D. Basu to the Chief Presidency Magistrate nor was it with the intention that the Chief Presidency Magistrate should take cognizance but merely an intimation to the Chief Presidency Magistrate to direct the police to take necessary steps for his protection. In that view of the matter, the learned Chief Presidency Magistrate was right in not treating it as a complaint and taking cognizance under clause (c) of section 190(1) upon receiving information from Mr. Justice D. Basu.

5. It is interesting in this connection to refer to grounds Nos. 1 and 3 of the petition filed before this Court, where the stand taken by the petitioner is that there was no complaint before the learned Chief Presidency Magistrate and therefore the cognizance taken by him was bad. Mr. Mitter in his argument has taken up a stand contrary to the position taken up when he obtained a Rule on the basis of this petition and there was no amendment to the petition by giving up that stand at any time. Without going into the propriety of taking up a new stand, I may say that I agree that there was really no complaint before the learned Chief Presidency Magistrate nor was there any reason for taking cognizance upon the copy of the letter and therefore the question of taking cognizance under clause (a) or of examination of Mr. Justice D. Basu did not arise. This disposes of the first part of Mr. Mitter's argument.

6. Point No. 2--Mr. Mitter's argument is that in any case the learned Chief Presidency Magistrate could not take cognizance of the offence in view of section 11 of the Cattle Licensing Act. The relevant portion of the sec reads as follows :

Section 11--

(2) On such seizure the police officer shall arrange for the custody and the maintenance of the cattle in the prescribed manner and forthwith submit a report of the seizure and a complaint in writing against the person who appears to have committed the offence to a Magistrate having jurisdiction over the area.

Mr. Mitter's argument is that this Cattle Licensing Act which is a special Act makes a special provision for taking cognizance upon complaint in writing of a police officer and therefore the general provision u/s 190 of the Criminal Procedure Code has been superseded and cognizance taken under that provision is therefore bad and should be quashed. Section 11 of the Cattle Licensing Act deals with the seizure of the cattle and it gives power to the police officer without the order of a Magistrate to seize cattle and arrange for the custody and maintenance of the cattle in the prescribed manner. As the seizure is made without the order of Magistrate and presumably outside his supervision, this section provides for submission of a report of the seizure and a complaint in writing against the person who appears to have committed the offence to a Magistrate having jurisdiction over the area. The provision is necessary in view of the circumstances in which the seizure is made and the legislature never intended by this provision to supersede the general provision for taking cognizance u/s 190 of the Criminal Procedure Code. Section 5(2) of the Criminal Procedure Code provides that all offences under any other law shall be investigated, enquired into, tried or otherwise dealt with according to the same provision but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences. The provisions of the Criminal Procedure Code will therefore apply, unless any special law regulates the procedure otherwise. It is now well settled that the procedure prescribed by the Code of Criminal Procedure are not abrogated or superseded, by implication and if it is to be abrogated and superseded it must be expressly done by the special Act. This has not been done in the present case and if the legislature so intended it would have clearly stated that no Magistrate shall take cognizance under the Cattle Licensing Act, 1959, except on the complaint in writing of the person mentioned in sec. 11 of the Act. It may be incidentally pointed out that a provision expressly superseding the procedure or some part of the Criminal Procedure Code has been inserted in some of the recent Acts. Thus, Rule 154 of the Defence of India Rules, 1952 provides for the mode of cognizance of contravention of Rules etc. and sub-rule (1) reads as follows : --  
No Court or Tribunal shall take cognizance of any alleged contravention of these Rules, or of any order made thereunder except on a report in writing of the facts constituting such contravention made by a police servant.

The wording of the Rule clearly shows that the provision regarding taking cognizance under the Criminal Procedure Code has been superseded expressly. Instances may be multiplied but it is not necessary for our purpose. The wording in the relevant provision in the Cattle Licensing Act however does not expressly supersede the provision under the Criminal Procedure Code and therefore the cognizance taken by the learned Chief Presidency Magistrate is perfectly valid. This disposes of the second objection.

7. Point No. 3--Mr. Mitter then argued that the Additional Chief Presidency Magistrate as a transferee court could not summon Mr. Banerjee as a fresh accused. There is no force in this contention as the transferee court had all the powers of the transferring court and on the point of issuing fresh summons, the learned Additional Chief Presidency Magistrate has every power to issue summons. Indeed, cognizance is taken of the offence and not of the accused and if the situation and the evidence justify, the trial court at all stages has not only a right but a duty to summon persons who are found to be involved in the commission of the offence.

8. Mr. Mitter next argued that in any case there was no material before the learned Chief Presidency Magistrate for summoning Mr. Banerjee and he could not do so before going into the evidence and taking into consideration such evidence to justify his summoning of Mr. Banerjee. Mr. Mitter argues that the letter from Mr. Banerjee to the officer-in-charge, Park Street Police Station which was placed on the record of the case by the officer-in-charge and upon which the learned Additional Chief Presidency Magistrate issued the summons on Mr. Banerjee, was inadmissible in evidence and the learned Magistrate therefore acted illegally in summoning Mr. Banerjee. His point seems to be that the letter in any case was in the nature of a confession before the police officer and therefore the learned Magistrate could not look to it for purposes of summoning him. It is not necessary to go into any detailed consideration of this letter on the question of admissibility as it might eventually prejudice the accused. But on the face of it it is not a confession and Mr. Banerjee was asserting that no offence was committed under the law and he has maintained that stand even now. All admissions are not confessions and the point has been clarified by a pronouncement of the Judicial Committee in *Pakale Narayana v. Rex*, reported in 43 C.W.N. 473, where Lord Atkin delivering the judgment said "No statement that contains an exculpatory matter can amount to a confession..... An admission of a gravely incriminating fact, even a consequential incriminating fact, is not of itself a confession." Prima facie therefore the learned Additional Chief Presidency Magistrate was right in taking that letter into consideration and issuing summons on Mr. Banerjee.

9. Mr. Mitter next argued that there was no prima facie case as Mr. Banerjee had applied for a license and that from the scheme of the Act and the Rules, some time must elapse before the purchase of the cow and the granting of the license. This is a matter which may fairly be agitated during the trial and any expression of opinion at this stage may ultimately prejudice the accused during trial before the Magistrate. I may however point out that section 3 of the Act clearly lays down that "no person shall keep any cow in any area except under a valid license." Mr. Mitter has extensively referred to Rules which, according to him, make it essential for the acquisition of a cattle before applying for a license. I do not see the difficulty and in any case, even if there is any rule derogatory to the main provision of the Act, the rules will be ultra vires the Act. Mr. Mitter has also drawn my attention to section 16 of the Act but it does not effect the provisions in the Criminal Procedure Code

regarding cognizance nor are such provisions contrary to the provisions of the Act. This objection therefore is also overruled.

10. In the result, I hold that there is no ground for quashing the proceedings now pending before the learned Additional Chief Presidency Magistrate, Calcutta nor for cancelling the order summoning Mr. Banerjee and the Rule should therefore be discharged. Before I conclude, I must refer to the point pressed by Mr. Ajit Kumar Dutta, learned Advocate for the State. He has drawn my attention to the fact that Mr. Justice D. Basu was made a party but no notice was issued on him and in a proceeding for quashing, he is not a necessary party and his name should therefore be expunged. Although Mr. Justice D. Basu was made a party, no notice was issued on him as it was unnecessary in connection with the petition for quashing the order of the Chief Presidency Magistrate and Mr. Mitter, learned Counsel for the petitioner also mentioned that he himself did not press for a notice on Justice Basu. In that view of the matter, it is unnecessary to have Justice D. Basu on record and I direct that his name be expunged from the cause title.

In the result, the Rule is discharged.