

Bejoy Kumar Bose Vs State

Court: Calcutta High Court

Date of Decision: May 28, 1975

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 190(1), 200
Penal Code, 1860 (IPC) â€” Section 109, 34, 409

Citation: (1975) 1 ILR (Cal) 455

Hon'ble Judges: Talukdar, J; A.N. Banerjee, J

Bench: Division Bench

Advocate: Biswanath Sanyal and Sasanka Ghosh, in Cr. Rev. No. 304 of 1975, Dilip Kumar Dutta and Meera Mallick, in Cr. Rev. No. 318 of 1975 and Sasthi Charan Roy, in Cr. Rev. No. 371 of 1975, for the Appellant; Benoyendra Nath Mukherjee, for the Respondent

Judgement

A.N. Banerjee, J.

These three applications arise but of the same case. It appears that the three Petitioners along with others are being prosecuted before the Third Additional Special Court, Calcutta. On September 11, 1970, the learned Judge, Special Court, took cognizance of

the offence under Sections 409/109 and 409/34 of the Indian Penal Code against the Petitioners and others and directed issue of process against

them. Such cognizance was taken on the basis of a complaint filed by S.I. Ranajit Roy of Police Training School, Calcutta, on deputation. Mr.

Dilip Kumar Dutta, Advocate, with Miss Meera Mallick, Advocate, appearing on behalf of the Petitioner in Cr. Rev. Case No. 318 of 1975

raised before us one point only and contended that the proceedings pending before the Judge, Special Court, should be quashed. Mr. Dutta

contended that the learned Judge was wrong and acted illegally without jurisdiction in taking cognizance of the offence on the petition of complaint

filed by Sub-Inspector Ranajit Roy without examining him. The learned Judge, according to Mr. Dutta, did not comply with the mandatory

provisions of Section 200 of the Code of Criminal Procedure, 1898. Sub-Inspector Ranajit Roy was the investigating officer of the case and after

completion of the investigation no charge-sheet was submitted, but he filed a petition of complaint before the learned Judge, Special Court, who on

the basis of such complaint took cognizance of the offence. Mr. Dutta submitted that in filing such a petition of complaint by an investigating officer

the latter was not filing it as a Public servant in discharge of his official duties, but as a Police officer who had investigated the case and was

required to submit charge-sheet in discharge of his official duties. Accordingly, the cognizance was to be taken u/s 190(1)(a) of the Code of

Criminal Procedure and process was to be issued only after the examination of the complainant u/s 200 of the Code of Criminal Procedure. The

learned Judge having not adopted such a procedure, the taking of cognizance was bad, illegal and without jurisdiction and it had affected the entire

proceedings. Thus, Mr. Dutta contended that the whole proceeding before the learned Judge, Special Court, should be quashed. In support of his

contention Mr. Dutta relied on two unreported Division Bench decisions of this Court in Sudhir Chandra Bhattacharjee v. State Unreported

Criminal App. Nos. 23 to 26 of 1961 decided on March 29, 1967, by P.B. Mukharji and Bagchi JJ. and Shyama Charan Das Gupta v. State

Unreported Criminal App. Nos. 434 to 1967 decided on April 11, 1975, by N.C. Talukdar and A.N. Banerjee JJ. Mr. Biswanath Sanyal,

Advocate, with Mr. Sasanka Ghosh, Advocate, appearing for the Petitioner in Cr. Rev. Case No. 304 of 1975 and Mr. Sasthi Charan Roy,

Advocate, appearing for the Petitioner in Cr. Rev. Case No. 371 of 1975 supported the contentions of Mr. Dutta. Mr. Benoyendra Nath

Mukherjee, Advocate, appearing for the State, submitted that having regard to the principle of law as enunciated by this Court he could not

possibly resist the contention of the learned Advocates appearing for the Petitioners.

2. Having heard the learned Advocate of the respective parties we hold that the entire proceedings pending before the learned Judge, Special

Court, should be quashed inasmuch as the investigating officer who filed the complaint before him was required to be examined by the learned

Judge before process could be issued after taking cognizance of the offence. In taking this view we have respectfully agreed with the principle of

law as enunciated in the aforesaid two cases of this Court. In the circumstances as stated above, we cannot but hold that no legal and valid

cognizance of the offence was taken and that, as such, the entire proceedings become vitiated and must be quashed.

3. In the result, the Rules are made absolute. The case before the learned Judge, Third Bench, Special Court, Calcutta, is hereby quashed and the

Petitioners be discharged from their respective bail bonds.

Talukdar J.

4. I agree.