(1970) 07 CAL CK 0021

Calcutta High Court

Case No: Criminal Revision Case No. 137 of 1969

Bimalendu Dastidar		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: July 8, 1970

Acts Referred:

- Adaptation of Laws Order, 1950 - Section 2(1)
- Constitution of India, 1950 - Article 372(2)
- Criminal Procedure Code, 1898 (CrPC) - Section 196A, 196A(2), 441
- Imports and Exports (Control) Act, 1947 - Section 6
- Industrial Disputes Act, 1947 - Section 24, 26, 27, 32, 34
- Penal Code, 1860 (IPC) - Section 120B, 120B(2), 339, 340, 341
- Trade Unions Act, 1926 - Section 15, 17

Citation: (1971) 2 ILR (Cal) 372

Hon'ble Judges: N.C. Talukdar, J

Bench: Single Bench

Advocate: Balai Chandra Roy, for the Appellant;Ajit Kumar Dutta, Mathura Banerjee and Shyam Sundar Pal and J.K. Bhattacharjee, for State, for the Respondent

Judgement

N.C. Talukdar, J.

This Rule is at the instance of the eleven accused Petitioners for quashing the proceedings pending against them, u/s 120B read with Sections 26 and 27 of the Industrial Disputes Act, 1947, before Sri P. C. Chakravarty, Presidency Magistrate, Fourth Court, Calcutta, in Case No. C2445 of 1968.

2. The facts leading on to the Rule are short and simple. An application was filed in the Court of the learned Chief Presidency Magistrate, Calcutta, by the complainant-opposite party No. 2 Anil Chandra Chatterjee, the Public Relations Officer and ex officio Additional Secretary, West Bengal State Electricity Board, on September 12, 1968, under Sections 26, 27 and 32 of the Industrial Disputes Act,

1947, and u/s 120B, Indian Penal Code, read with Sections 26 and 27 of the Industrial Disputes Act, 1947, against the eleven accused persons alleging inter alia that the accused persons are the office-bearers and persons concerned with the management of the workers'' union at the West Bengal State Electricity Board; that various disputes cropped up between the workmen of the State Electricity Board on one hand and the members on the other between 1966 to 1968 ; that on October 7, 1968, as a result of the conciliation proceedings, a settlement was arrived at between the parties and a memorandum of settlement was drawn up; that the workmen, however, without terminating the said settlement started various forms of agitation including gherao and other illegal acts; that on September 30, 1967, the Government of West Bengal referred the dispute to the Industrial Tribunal and by an order dated October 4, 1967, the Governor prohibited declarations or commencement of any strike from the mid-night of October 4, 1967, and the workers'' union of the said State Electricity Board was directed not to resort to strike on April 16, 1968, inasmuch as the same would be illegal u/s 24 of the Industrial Disputes Act, 1947 ; that while the said dispute was pending before the Industrial Tribunal, the workers of the Board in violation of the prohibition participated in some or other forms of pen-down strike or tool-down strike illegally; that such illegal strike or the excitement and commencement thereof are offences punishable under Sections 26 and 27 of the Industrial Disputes Act, 1947; that the accused persons had entered into a criminal conspiracy in between April 1967 and September 1968 at Calcutta and other places within West Bengal to continue, to instigate, to incite and otherwise act in furtherance of the illegal strike by the various thermal power stations under the Board and at the various branches and offices of the Board and in pursuance of the said conspiracy the accused persons had commenced and instigated others to take part in the illegal strike in utter disregard and flagrant contravention of the provisions of Sections 22, 23 and 24 of the Industrial Disputes Act, 1947 ; that pursuant to the said conspiracy the workers'' union referred to above had again threatened by a letter dated September 3, 1968, to go in for another spate of illegal strikes from September 19, 1968, onwards in breach of contract and in spite of the proceedings before the Industrial Tribunal; and that the complainant had obtained necessary consent u/s 34 of the Industrial Disputes Act, 1947, as also u/s 196A of the Code of Criminal Procedure for prosecuting the accused persons against whom processes under Sections 26 and 27 of Act XIV of 1947 read with Section 120B of the Indian Penal Code may accordingly be issued. The learned Chief Presidency Magistrate by his order dated September 12, 1968, accorded consent to the initiation of the proceedings u/s 120B of the Indian Penal Code read with Sections 26 and 27 of Act XIV of 1947. Cognizance was taken and processes were issued u/s 120B of the Indian Penal Code read with Sections 26 and 27 of the Industrial Disputes Act, 1947, as also u/s 27 of the said Act against all the accused persons and also u/s 26 of the Industrial Disputes Act, 1947, against accused Nos. 1, 3, 4, 6, 7, 8, 9, 10 and 11. The accused persons thereafter appeared and were released on bail. The case was then transferred by the learned Chief

Presidency Magistrate to the file of the present incumbent Sri P. C. Chakravarty; Presidency Magistrate, Fourth Court, Calcutta. This Rule was thereafter obtained by the accused persons for quashing the said proceedings as not maintainable in law.

3. Mr. Balai Chandra Roy, Advocate appearing in support of the Rule on behalf of the eleven accused Petitioners, has made a three-fold submission, two of which are points of law going to the very root of the case. Mr. Roy who argued the case ably submitted, in the first instance, that the present proceedings are bad and epigram because of a non-conformance to the mandatory provisions of Sub-section (2) to Section 196A of the Code of Criminal Procedure inasmuch as the records do not bring to light the factum of the learned Chief Presidency Magistrate having been empowered in this behalf by the State Government to consent to the initiation of the proceedings as enjoined u/s 196A(2) of the Code of Criminal Procedure. In this context, Mr. Roy made an ancillary submission based on the Adaptation of Laws Order, 1950, that the authorization u/s 196(A) 2 by the State Government being of the Governor in Council cannot do duty and the same would be bad in view of the provisions of Section 2(l)(b) of the Adaptation of Laws Order, 1950 Mr. Roy referred to some cases in support of his contention and the same will be considered in the proper context. Mr. Roy contended, in the second place, that the cognizance of the offence as taken by the learned Chief Presidency Magistrate, Calcutta, has been in nonconformance to the mandatory provisions of Section 34 of Act XIV of 1947 inasmuch as the authorization given u/s 34 of the said Act did not at all refer to the offence u/s 120B of the Indian Penal Code and, in the absence thereof, the present proceedings u/s 120B of the Indian Penal Code read with Sections 26 and 27 of Act XIV of 1947 are unwarranted and untenable and de hors the mandatory provisions of Section 34 of the said Special Act. The third and the last submission of Mr. Roy is that in view of Section 17 of the Trade Unions Act, 1926, the present proceedings are not maintainable because no officer or member of a registered trade union shall be liable to punishment u/s 17 read with Section 120B(2) of the Indian Penal Code in respect of any agreement made between parties for the purpose of furthering the object of the trade union as is specified in Section 15 of the said Act, unless the said agreement can be considered to be an agreement to commit an offence. Mr. Roy in this context submitted that Section 17 is a complete bar to the present proceedings in the facts and circumstances of the case and, as this objection goes to the very root of the case, it is taken in the first blush for the purpose of a proper determination. Mr. Ajit Kumar Dutta, Advocate, with Messrs Mathura Banerjee, counsel and Shyam Sundar Pal, Advocate appearing on behalf of the opposite party No. 2, Anil Chandra Chatterjee, Public Relations Officer and ex officio Additional Secretary, West Bengal State Electricity Board, joined issue. Mr. Dutta, in reply to the first contention of Mr. Roy, submitted that the form of the order that was passed by the learned Chief Presidency Magistrate on September 12, 1968, constitutes proper conformance to Sub-section (2) of Section 196A of the Code of Criminal Procedure, and in this context, he pinpointed the last part of the said order wherein the learned

Chief Presidency Magistrate observed as follows:

I do by this order u/s 196A (2), Cri.P.C, consent to the initiation of the proceeding u/s 120B, I.P.C., read with Sections 26 and 27 of the Industrial Disputes Act, 1947.

The second facet of Mr. Dutta''s contention in this connection is that in fact there is an order authorising the learned Chief Presidency Magistrate, Calcutta, to consent to the initiation of such proceeding within the ambit of Section 196A(2) of the Code of Criminal Procedure and the same is evident from the explanation submitted by the learned Chief Presidency Magistrate, Calcutta, u/s 441 of the Code of Criminal Procedure, annexed with a copy of the order dated May 24, 1913-, by the Governor in Council. As to the ancillary submission made by Mr. Roy in this behalf on the basis of the purported difference between the Governor in Council and the State Government on one hand and also the provisions of Section 2(l)(b) of the Adaptation of Laws Order, 1950. On the other, Mr. Dutta submitted that it is rather late in the day to take the said objection in view of the material fact that the law concerned is a Central Act and that the provisions of Article 372(2) of the Constitution of India as also Clause 20 of the Adaptation of Laws Order, would be a complete answer to the objection raised in this behalf by Mr. Roy. In this context, I would rely on the observations of Hegde J. delivering the judgment of the Court in the case of Dhian Singh Vs. Municipal Board, Saharanpur, . It is pertinent to refer to the observations of Hegde J. that-
Therefore if the complaint with which we are concerned in this case had been filed by the Food Inspector under the authority of the Local Board, the complaint must be held to have been instituted by the Local Board itself. The question whether that Food Inspector had authority to file the complaint on behalf of the Local Board is a question of fact. Official Acts must be deemed to have been done according to law.

Therefore, if the accused challenged the authority of the learned Chief Presidency Magistrate to consent to the initiation of the proceedings in respect of the primary onus to be discharged by the prosecution, that must abide determination in a trial on evidence.

4. With regard to the second contention of Mr. Roy relating to the non-inclusion of an offence u/s 120B of the Indian Penal Code along with Sections 26 and 27 of the Industrial Disputes Act, 1947, Mr. Dutta submitted that there is no reason why the same should be included because it is very much outside the ambit of a consent u/s 34 which enjoins that such a consent is required with regard to offences punishable under the said Act (XIV of 1947) and cannot extend beyond the limits thereof to a prosecution under the Indian Penal Code. An offence u/s 120B of the Indian Penal Code constitutes an independent offence within the bounds of the Indian Penal Code and not a doctrine of joint liability. The non inclusion of Section 120B of the Indian Penal Code in the body of the consent u/s 34 of the Industrial Disputes Act, 1947, therefore, did not constitute any illegality as alleged or at all and the

proceedings are in order and should be allowed to continue.

5. As to the third contention raised on behalf of the accused Petitioners by Mr. Roy, Mr. Dutta submitted, in the first instance, that apart from the fact that it is rather premature to raise such mixed questions of law and fact at this stage, it cannot also be overlooked that such averments made in the petition of complaint, clearly disclose an offence within the principles laid down by their Lordships of the Full Bench in the case of Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others, , and in this context Mr. Dutta pinpointed the observations of the Full Bench made in para. 28. A reference was made therein to the concessions made by the learned Advocate-General amongst others that if a person or a number of persons wrongfully restrain or wrongfully confine another person or persons, it is elementary that the matter comes under Sections 339 and 340 read with Sections 341 and 342 of the Indian Penal Code, as the case may be, and cannot be saved by Section 17 of the Trade Unions Act, 1926, or indeed any provision thereof. A combination of industrial workers cannot claim immunity from being charged with criminal conspiracy if they conspire to commit an offence. Mr. Dutta finally submitted that the question ultimately is one of fact that it would be premature at this stage to quash proceedings on this ground because quashing is an extraordinary remedy, to be resorted to in extraordinary circumstances, for ensuring justice. Mr. Dutta further referred to several decisions in support of his contention and the same will be considered in the proper context. Mr. Jitendra Kumar Bhattacharjee, Advocate appearing on behalf of the Date, opposed the Rule. Mr. Bhattacharjee adopted substantially the submissions made by Mr. Ajit Kumar Dutta on behalf of the complainant-opposite party No. 2 and he further submitted on his own that the Adaptation of Laws Order, 1950, does not lend assurance to the first objection taken by Mr. Roy inasmuch as the provisions of Article 372(2) of the Constitution of India are a complete answer to the same. Mr. Bhattacharjee further submitted that the government of Mr. Roy''s submissions being that Section 120B of the Indian Penal Code is not an independent offence'' but merely a doctrine of joint liability or mere rule of law, his further submissions based upon that hypothesis are wholly unwarranted and untenable in law as also on merits.

6. Having heard the learned Advocates appearing on behalf of the respective parties and on going through the materials on the record, I hold that the first submission of Mr. Roy, viz., that there has been a non-conformance to the mandatory provisions of Section 196A(2) of the Code of Criminal Procedure is not tenable. A reference in this context is pertinent to the order that was passed by the learned Magistrate on September 12, 1968. The last part of the order runs as follows:

I do by this order u/s 196A(2), Cr.P.C, consent to the initiation of the proceeding u/s 120B, I.P.C., read with Sections 26 and 27 of the Industrial Disputes Act, 1947, against the above noted accused persons.

Mr. Dutta has urged that this is good enough and constitutes sufficient conformance to the requirements of the Statute and really means that the learned Chief Presidency Magistrate, Calcutta, was exercising his powers u/s 196A(2) of the Code of Criminal Procedure on the basis of the authorization without specifically mentioning the same. The primary onus being thus discharged by the prosecution, it is for the defence to prove facts within their special knowledge as to whether there is a valid authorization. I have given this branch of Mr. Dutta''s submission my anxious consideration, but I am unable to agree with the same. Some meaning and effect must be given to the words used by the learned Chief Presidency Magistrate, Calcutta, in the order passed by him on September 12, 1968. In a fairly longish order the learned Chief Presidency Magistrate, Calcutta, referred to the sanction for initiation of the proceedings u/s 120B, whereby he meant really the consent for initiation. Be that as it may, whether this is consent or sanction, he has in fact referred to the same in the penultimate paragraph and there is no reason for him to reiterate it in the last paragraph, unless and until he wanted to refer to the exercise of such powers conferred u/s 196(2) of the Criminal Procedure Code, on the basis o! the authorization by the State Government to him in this behalf to consent to the initiation of the proceedings. One looks in vain to the said paragraph for a reference to any such authorization and merely because the learned Chief Presidency Magistrate, Calcutta proceeded to pass an order u/s 196A(2), it did not mean that he was acting on such authorization. The order on the face of it musk clearly disclose that there was such an authorization. A failure or the part of the learned Chief Presidency Magistrate to disclose the said authorization in the body of the pleader has, in my opinion resulted in a non-conformance to the said provisions. I uphold this part of the submissions made by Mr. Balai Chandra Roy, but this alone will not dispose of the point at issue. u/s 441 of the Code of Criminal Procedure, the explanation submitted by a Presidency Magistrate being a part of the order passed by him, such are explanation which has in fact been submitted in this case is pertinent and. on a consideration thereof, I find that tire learned Chief Presidency Magistrate, Calcutta, although he did not deem it necessary at the earlier stage to refer to the authorization, specifically has in fact disclosed the same by attaching the order dated May 24, 1913, along with an explanation. The wind is accordingly taken out of the sails of Mr. Roy''s submissions and there being in fact an order passed by the competent authority in this behalf authorising the learned Chief Presidency Magistrate, Calcutta, to give consent to the initiation of a proceeding within the ambit of Section 196A(2) of the Code of Criminal Procedure, I hold that there has been in fact a conformance to the requirements of law and the present proceedings shall not fail on that ground. This is not all the objection taken in this context by Mr. Roy, who has raised another intriguing point in support of this objection to the maintainability of the order. The steps of Mr. Roy''s reasoning in this behalf are that the order relied upon is an order by the Governor in Council; that it is not tantamount to an order passed by the State Government within the ambit of Section 196A(2) of the amended Code of Criminal Procedure; and that, in any event, the

provisions of cl.2(l)(b) of the Adaptation of Laws Order, 1950, cannot be overlooked and on the basis thereof the order dated May 24, 1913, cannot do duty and vest the impugned order or consent u/s 196A(2), given by the learned Chief Presidency Magistrate of Calcutta on March 12, 1968, with the trappings of a legal order within the bounds of the said section, Mr. Roy''s contention overlooks the provisions of Article 372(2) of the Constitution of India, and Clause 16, 17 and 20 of the Adaptation of Laws Order, 1950. It is necessary, therefore, to refer to Article 372(2) which reads as follows: For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made and any such adaptation or modification shall not be questioned in any Court of law. It is pertinent again to refer to the provisions of Clause 20 of the Adaptation of Laws Order, 1950, which are as follows:

Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any existing law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law. On a consideration of the said provisions it will be abundantly clear that the order dated May 24, 1913, is not bad arid can certainly be relied on for holding that there has been a valid authorization in conformance to the mandatory provisions of Section 196A(2) of the Code of Criminal Procedure. This branch of Mr. Roy''s contention also fails and I, accordingly, overrule the first submission made by Mr. Roy in support of the Rule.

7. The second contention of Mr. Roy based on Section 34 of the Industrial Disputes Act, 1947,- does not stand on a better footing. Section 34(1) runs as follows:

No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

The emphasis, therefore, is on ''any offence punishable under this Act''. That gives the answer to the point raised by Mr. Roy. Section 120B, Indian Penal Code, undoubtedly constitutes an independent offence under the Indian Penal Code and, therefore, the order dated September 10, 1968, by the Government of West Bengal, Labour Department, which. is annEx. D to the petition of complaint, need only refer to offences under Sections 26 and 27 of the Industrial Disputes Act, 1947, and it did refer to the said offences. Section 120B of the Indian Penal Code was not required to be referred to therein and &much non-mention did not rule out the said offence from the proceedings pending before the learned trying Magistrate. In this context, Mr. Dutta further submitted that a complaint u/s 34(1) of Act XIV of 1947, under the

authority of the appropriate Government, is not a sanction. In this context, he referred to several cases of this Court and also of the Supreme Court, and I will proceed to consider the same. A reference in the first place may be made to the case of Probhat Kumar Kar v. William Trevalyan Curtis Parker S3 C.W.N. 707 wherein Rqburgh J. delivering the judgment of the Division Bench observed that u/s 34 of the Industrial Disputes Act, the control of the proceedings as regards the actual complaint is to be held by the Government and the person authorised by it cannot claim to extend the authority given in a general form according to his own views of the particular offence which should be prosecuted. The emphasis is on a complaint and not on a sanction. A reference may also be made to the case of Ramdas and Others Vs. K.M. Sen, Manager, Oriental Gas Co. Ltd., Calcutta, wherein Guha Ray J. observed:

Section 34, Industrial Disputes Act, however does not speak of sanction at all. It provides that no Court shall take cognizance of any offence punishable under the Industrial Disputes Act or of the abetment of any such offence save on complaint made by or under the authority 6f the appropriate Government.

The difference therefore between a sanction and a complaint was therein emphasised. A further reference may be made to the case of Ram Naresh Kumar and Others Vs. The State and Another, wherein the Division Bench consisting of J. P. Mitter J. and S.N. Guha Roy J. held that it is certainly desirable that an authority given u/s 34(1) should, as far as practicable, be self-contained but the mere fact that it is not, will not invalidate it so long as evidence is available to link it up with the. offences for which the prosecution is instituted on the strength of it. A reference now may be made to the observations of the Supreme Court in the case of Electrical Manufacturing Co. Ltd. Vs. D.D. Bhargava, wherein Bhargava J. delivering the judgment of the Court observed clearly and categorically:

We are not inclined to accept the contentions of Mr. Sen, that the principles laid down in these decisions, which relate to the question of sanction, have any application to the filing of complaints u/s 6 of the Act. The Supreme Court was referring to Section 6 of the Import and Exports (Control) Act, 1947, and they have pinpointed the difference between a complaint and a sanction. It is abundantly clear, therefore, that a complaint in writing being made by or under the authority of the appropriate Government within the ambit of Section 34 of Act XIV of 1947 is not a sanction, and the analogy thereof cannot be drawn in this case for determining that there has been a conformance to the requirements thereof as laid down from time to time in different cases. The pith and substance of Mr. Roy''s contention in this behalf is that the ''sanction'' u/s 34 of Act XIV of 1947, being only for a prosecution under Sections 26 and 27 of the said Act and not for prosecuting the accused for conspiracy to commit the said offence, the present proceedings are liable to be quashed. Apart from the fact that a complaint is not a sanction it is difficult to travel beyond the ambit of Section 34(1) of the Industrial Disputes Act,

1947, the requirements whereof are confined to ''any offence punishable under this Act'' and the bounds of the section cannot be allowed to be expanded to include within the same offences under any other Act including the Indian Penal Code which enjoins an offence u/s 120B, Indian Penal Code, as an independent and substantive offence and not as a mere, doctrine of joint liability u/s 34 of the said Code. This being so, the basis of Mr. Roy''s contention is untenable and the second contention raised by him accordingly fails.

8. The third and the last contention of Mr. Roy is that in view of Section 17 of the Trade Unions Act (XVI of 1926) the proceedings are liable to be quashed. The steps of Mr. Roy''s reasoning in this context are, inter alia, that the said section enjoins that no officer or member of a registered Trade Union shall be liable to punishment u/s 120B, Indian Penal Code, in respect of any agreement if and when the same is for the purpose of furthering any of the objects specified in Section 15 of Act XVI of 1926; that the allegations made in the petition of complaint do not constitute an agreement de hors the object of the Trade Union as incorporated in Section 15 and, in any event, does not go beyond the ambit thereof; and that the agreement ex facie is not one to commit an offence. Therefore, Mr. Roy contended that the present proceedings are not maintainable inasmuch as the accused persons are fully protected u/s 17 of the Trade Unions Act, 1926, and a continuance of the present proceedings would be an abuse of the process of the Court. In support of his contention Mr. Roy referred to several paragraphs of the petition of complaint and also the observations of the Full Bench in the case of Jay Engineering Works Ltd. v. State of West Bengal (Supra para 31). He pinpointed in particular para. 31 of the said judgment. Mr. Dutta referred to para. 28 of the said decision and submitted that the petition of complaint does disclose an offence which is not ex facie protected u/s 17 of the Trade Unions Act, 1926. Mr. Roy, however, contended that the observations relied on by Mr. Dutta were not within the ambit of the points for decision by the said Full Bench and are in the nature of obiter. In any event, he submitted that an overall picture of the entire prosecution case as incorporated in the petition of. complaint should be taken into consideration at this stage and the same being not in conflict with the provisions of Section 17, a continuance of the present proceedings would be an abuse of the process of the Court. I have given the matter my anxious consideration and I find that it is difficult for me at this stage to hold that the allegations made in the petition of complaint do not amount to an offence because of the provision of Section 17 of the Trade Unions Act, 1926. The question is one of fact which must be decided by a trial on evidence. The third ground, therefore, raised by Mr. Roy is premature and accordingly fails.

9. Before I part with the case I must make it clear that I have disposed of the Rule on points of law only. I make no observations as to the merits of the respective cases and I leave the same wholly open for being determined in accordance with law by the'' learned Presidency Magistrate.

10. In the result, the Rule is discharged.