

(1988) 01 CAL CK 0014**Calcutta High Court****Case No:** None

State of West Bengal

APPELLANT

Vs

Mohon Ghosh

RESPONDENT

Date of Decision: Jan. 18, 1988**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 190
- Penal Code, 1860 (IPC) - Section 409, 471

Citation: (1989) CriLJ 378**Hon'ble Judges:** Gobinda Chandra Chatterjee, J**Bench:** Single Bench**Judgement**

@JUDGMENTTAG-ORDER

Gobinda Chandra Chatterjee, J.

This revisional application is directed against the order No. 4 dated 15-9-81 passed by Sri N. N. Bhattacharjee, Judge, Special Court, Burdwan in Special Court case No. 2 of 81. What happened was that the Opposite Party Mohan Ghosh in his capacity as a Public servant was alleged to have committed an offence of criminal breach of trust for which G.R. Case No. 170 of 74 was started in the Court of the learned S.D.J.M., Burdwan. Subsequently, Sri Bhattacharya, the learned Special Court Judge refused to take cognizance of the case on the ground that in the instant case "no complaint of facts constituting the offence or a police report of facts has been filed before me.... The submission of the learned Public Prosecutor that the Special Court Judge can take cognizance on the basis of an allotment order is highly misconceived, for the allotment of the case by the Government only enables the Judge to assume jurisdiction and has got nothing to do whether cognizance of the alleged offence should be taken or not.... In such circumstances, it is clear that this Court cannot take cognizance of the offence and the learned P. P. for the State has declined to submit any complaint and I have so far failed to persuade him to submit a single

complaint....I decline to take cognizance of the offence". So saying, the learned Magistrate released the accused from the bail bond.

2. Being aggrieved thereby, the State of West Bengal has preferred the instant revisional application before this Court, inter alia, on the grounds that in a special Court case filing of complaint was not a necessity and that a mere allotment order was enough to empower the learned trial Judge to proceed on with the case.

3. Before me no one appeared on behalf of the accused/opposite party. Mr. Mondal, the learned Advocate appearing for the State has invited my attention to a Full Bench decision of this Court reported in Ajit Kumar Palit Vs. The State, , which states as per majority view.... "I, therefore, answer the first question before the Full Bench by holding that the Special Court under the West Bengal Criminal Law Amendment (Special Court) Act, 1949 does not need a petition of complaint for taking cognizance of the case and can take cognizance on receiving a Government order of distribution u/s 4(2) of the Act and on the record of the case from the Court of the Magistrate by applying his mind to the facts of the case for the purpose of trying the offence under the Act."

4. Mr. Mondal also draws my attention to the Supreme Court decision reported in Ajit Kumar Palit Vs. State of West Bengal, . In this connection, Mr. Mondal has referred me to the learned Special Judge's comments on Section 190, Cr. P.C. which run thus "Public Prosecutor files a petition praying for recalling the order directing filing of a complaint.... Section 5 of the West Bengal Criminal Law Amendment Act lays down the manner of taking cognizance of offence scheduled in the said Act by a Special Court Judge. The manner is as laid down in Clauses (a) and (b) of Sub-section (1) of Section 190, Cr. P.C. that is to say (a) upon receiving a complaint of facts which constitutes such offence and (b) upon a police report of such facts".

5. Mr. Mondal argues that the reference made to Section 190, Cr. P.C. by the Special Court Judge was altogether misconceived. Section 190, according to Mr. Mondal, does nowhere lay down specifically that a Judge or a Magistrate cannot take cognizance of a case otherwise than on a complaint in writing. In sessions triable case, for example, continues Mr. Mondal, the Judge goes on hearing the case on the basis of a mere commitment order. Even so argues Mr. Mondal in a special Court case, the Judge concerned may derive his jurisdiction on some extraneous materials other than the complaint spoken of in Section 190, Cr. P.C. Mr. Mondal is right in his submission. Mr. Mondal's submission is supported by the Full Bench decision referred to before and relied upon by Mr. Mondal. From the Full Bench decision, it would transpire that a written complaint is not at all a necessity for conferring the jurisdiction or cognizance upon the special Court Judge. The Full Bench is quite explicit on the point that a mere allotment order would remove the deficiency if, there be any. Mr. Mondal invites my attention to the chargesheet of the record which on its back portion lays down "I submit chargesheet No. 52 dated 12-8-80 u/s 409/471, I.P.C. after containing necessary sanction of prosecution from the

Superintendent of Post Offices, Burdwan and after receiving allotment orders for trial of this case in Special Court, Burdwan, vide Government of West Bengal, Judicial Department Notification No. 1101-J dated 28-7-78 to stand his trial at Burdwan Special Court". Mr. Mondal argues that the notification referred to above and made part of the chargesheet is enough 1.0 confer jurisdiction upon the special Court enabling it thereby to take cognizance of the case itself.

6. In Ajit Kumar Palit Vs. State of West Bengal, , the Full Bench case was referred, discussed and the principle enunciated therein was adopted and accepted by the Supreme Court. An allotment order, I venture to state even at the risk of repetition, may by itself according to the Supreme Court, empower the Special Court Judge to take cognizance of a Special Court case irrespective of the fact as to whether a formal complaint has or has not been filed by the prosecution. Mr. Mondal's citing the analogy has impressed me much. Mr. Mondal's analogy was that in a session's trial case, the Judge is empowered to deal with the case on the basis of a mere commitment order. A Special Court Judge according to Mr. Mondal even so can take cognizance of a case on certain factors other than the complaint spoken of in Section 190, Cr. P.C. Mr. Mondal effectively argues that even apart from the petition of complaint the Special Court Judge may if he so likes apply his mind to the facts and circumstances of each case. Mr. Mondal reminds me that there is on the record the report of the police officer as also the charge-sheet containing the notification number of the allotment order. The Special Court Judge, according to him could divert his attention to all these materials on record and he could if he chose, take cognizance of the case without cancelling the bail bond and discharging the accused.

7. Agreeing with the aforesaid submission of Mr. Mondal, I do hold that there is touch substance in the instant revisional application such that it should be and is hereby allowed. The impugned orders are set aside and the rule is made absolute.

8. The lower Court record be sent down expeditiously.