

Arun Sankar Chatterjee Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: June 10, 1996

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 173(2), 173(5), 251
Penal Code, 1860 (IPC) â€” Section 120B, 420

Citation: (1996) 2 ILR (Cal) 368

Hon'ble Judges: Ashis Baran Mukherjee, J

Bench: Single Bench

Advocate: Sekhar Bose and Debabrata Ganguly, for the Appellant; Amit Talukdar and Madhuri Das for Opposite Party No. 2 and R.P. Bhattacharjee, for State, for the Respondent

Final Decision: Allowed

Judgement

Ashis Baran Mukherjee, J.

These two revisional applications were heard in analogous. The Petitioner in both the applications are the same

and the facts involved in both the cases are practically identical in nature.

2. In Criminal Revision No. 1425 of 1996, the Petitioners case is that he became a member of Malancha Co-operative Housing Society engaged

for construction of Housing Project for its members who are all Government Employees of their relatives and also acquired plots of land for the

same purpose. Proposed members are included in the Registrars of the Society, all receipt of requisite sums and the names are sent to the

Registrar of Societies, West Bengal for approval. The name of opposite party No. 2 was also sent in similar circumstance. But in the absence of

approval being given the amount given by those proposed members were returned to them by Account Payee Cheque with statutory interest. This

was also done in connection with the O.P. No. 2 and the Cheque was sent in the address which was earlier registered with the Society.

3. The O.P. No. 2 January 15, 1990 lodged a written complaint to the Inspector General of Police on the basis of which Jadavpur Police Station

Case No. 47 dated February 9, 1990 was started. It was urged in the said complaint that a sum of Rs. 30,225 was accepted from her by the

Society for allotment of a Flat which was subsequently not allotted and the amount given by her was not also refunded.

4. On the basis of the said complaint, charge sheet was submitted on September 25, 1991 and cognizance was taken by a Judicial Magistrate,

10th Court, Alipore being B.G.R. Case No. 3744 of 1990.

5. The present revisional application has been filed in order to quash the said proceeding on the ground that the Petitioner of complaint does not

satisfy the requirements of the offences alleged, that there was no conspiracy as alleged, that there was no dishonest or fraudulent intention, that the

cognizance of the case was taken in a mechanical manner without trying to ascertain whether there is any offence involved in the case.

6. In the revisional application No. 2426 of 1995, the allegation is practically the same where O.P. No. 2 is stated to have paid to the Society a

sum of Rs. 40,000 being the cost of a Flat to be allotted, but subsequently no allotment was made for circumstances behind the control of the

Petitioner. The O.P. No. 2 also lodged a complaint with the Inspector General of Police, giving rise to Jadavpur Police Station Case No. 46 dated

February 9, 1990. In this case also, it is the averment of the Petitioner that there were no element of cheating and the cognizance was taken by the

Ld. Magistrate without there being any element for the offence as alleged.

7. The O.P. No. 2 in both the revisional applications went un-represented but O.P. No. 1 being the State appeared.

8. I have heard the submissions made on behalf of the Petitioner and also the Learned Advocate appearing for the State. The Ld. Advocate

representing the Petitioner in both the cases has drawn my attention to the mechanical manner in which cognizance of the offence has been taken

by the Ld. S.D.J.M.. On a scrutiny of the B.G.R. Case No. 3744 of 1990, it appears that cognizance was taken on October 14, 1995. In the

B.G.R. Case No. 3753 of 1990 also cognizance appears to have been taken on the self-same date. A scrutiny of the order reveals that apart from

the charge sheet submitted u/s 173(2) Code of Criminal Procedure, there were no other materials before the Learned S.D."J.M. before he took

cognizance. A scrutiny of both the charge sheets were reveals that documents or statements u/s 161 Code of Criminal Procedure which are

required to be sent along with the charge sheet were not done in any of the cases. On the other hand, there are notes in the charge sheet to the

effect that documents would be sent later on and regarding the statements u/s 161 Code of Criminal Procedure, the charge sheet was absolutely

silent.

9. It is incumbent for the Magistrate taking cognizance to consider the documents and statements in accordance with the Section 173(5) Code of

Criminal Procedure. As a matter of fact such materials need be made a part of the charge sheet submitted u/s 173(2) Code of Criminal Procedure.

The orders reveal that there was no application of mind by the Magistrate but cognizance was taken in a mechanical manner.

10. The Ld. Advocate representing the State conceded the legal position in as much as he pleaded for a direction on the Lower Court to act in

accordance with the law in the matter of taking cognizance.

11. This is not all, the Ld. Advocate for the Petitioner has drawn, my attention to the order dated July 28, 1994 in B.G.R. Case No. 3744 of 1990

and also the order of the same date in B.G.R. Case No. 3753 of 1990. A scrutiny of the said orders reveal that both are identical in nature, that

there was no hearing on the point of charge even though the date was fixed for hearing regarding consideration of charge. Both the orders reveal

that the substance of accusation were explained to the accused and after the latter pleaded not guilty, the cases were fixed for evidence.

12. The offence in question with which the accused in both the cases have been charged are Section 420 read with Section 120B Indian Penal

Code. Obviously these cases are warrant procedure and as such charge need be framed after giving the Defence as also the prosecution and

opportunity of being heard as to whether there are prima facie materials for framing any charge or not. The orders on the face of it appears to be

one which are passed in connection with examination of the accused u/s 251 Code of Criminal Procedure when summon procedure is followed.

The most interesting feature of both the cases is that notwithstanding the averment of the impugned orders charges u/s 420 and 120-B Indian Penal

Code appears to have been framed in both the cases on the self-same date. A scrutiny of the charges in both the cases again reveals that it was

done in a most mechanical manner without any application of mind. In B.G.R. case No. 3744 of 1990 the date of the alleged offence has been

mentioned as February 18, 1981 or before but it will appear from the F.I.R. that the allegation of the informant is that she paid the sum of Rs.

30,225 in three different installments. Besides the averment of the charge under s.420 Indian Penal Code does not carry any clear meaning. The

same is also with the case in B.G.R. Case No. 3753 of 1990.

13. Another curious fact is in both the cases not only the order sheet but also the charges have been written by different person with a different ink

and the signatures appearing to be those of the Magistrate in both the order sheets and both the charge forms are in a different ink. This is also

revealed at that the Judicial Magistrate, 10th Court, as he then was on the date of framing of the charge that is July 28, 1994 not make out any

application of mind whatsoever, but was satisfied with lending his signatures in both the places. It is argued for the Petitioner in both the cases that

the Ld. Judicial Magistrate did not give any opportunity to the accused to have his say at this stage of the cases and the examination was absolutely

mechanical one. The Ld. Advocate appearing for the State also concedes and submits that the Ld. Magistrate neither followed the summons

procedure nor warrant procedure in dealing with these cases. This sort of mechanical approach must be deemed to have caused prejudice to the

defence specially when it is specifically the case of the Defence that the F.I.R. and other materials taken as a whole does not disclose any criminal

offence.

14. After giving my careful consideration to the submissions of both the sides, I come to the conclusion that the taking of cognizance as also the

examination of the accused at the stage of framing of charge are both the illegal and cannot sustain. In the circumstances, I am not inclined to go

into the merit of the case at this stage and for this reason I am not also inclined to quash the proceeding but the taking of cognizance on October

14, 1991 in both the cases and also the framing of the charge on July 28, 1994 in both the cases stand set aside. Accordingly the Ld. S.D.J.M.

Alipore is directed to consider the charge sheet as also the documents and statements in terms of Section 173(5) Code of Criminal Procedure and

thereafter to come to a decision regarding taking of cognizance. In the event of there being sufficient materials for taking of cognizance he shall

either try the cases himself or transfer it to some other Magistrate other than Shri S.K. Das, Judicial Magistrate, 10th Court, Alipore.

15. Before parting with the record it is necessary to make an observation regarding the performance of Shri S.K. Das who on July 28, 1994 was

posted as Judicial Magistrate, 10th Court at Alipore. The aforesaid discussion on the point of framing of the charge need not be recapitulated again

but this much is sufficient to state that the Ld. Magistrate did never apply his mind at all and delegated judicial work to some other authority or

person which will appear from the orders dated July 28, 1994 in both the cases as also the charges framed in both. He appended his signatures in

the order sheet and in the charge forms without given even a superficial look at the same. Had it been so, he would have certainly noticed that the

order sheets have not been written properly in as much as this is not the manner in which order sheet is to be written in a case at the time of framing

of the charge. On the face of the order sheet it appears that he did not give either the defence of the prosecution and hearing. Regarding the charge

forms they also appear to be written by a person other than the Judicial Magistrate and there is nothing to show on such forms that the charges

were either dictated or corrected by the Magistrate when it is clear that they were not written in his own hand. Here also he lend his signatures on

the charge forms without caring to go through the same as a whole. In the circumstances, it is absolutely essential that in the interest of justice the

Ld. Magistrate concerned should be made conscious and careful about his judicial duties and watch must be kept on his future performance by the

District and Sessions Judge or any other authority under whom Shri Das is at present working as a Judicial Officer in case he is not in the general

line. The Registrar, Appellate Side, of this Court is accordingly directed to send relevant portions of the judgment to the District and Sessions

Judge or any other authority under whom Shri S.K. Das, Judicial Magistrate was posted on July 28, 1994 and such authority be directed to keep

constant watch over the performance of Shri Das for a period of one(1) year and to send Quarterly Reports to the Registrar, Appellate Side about

his performance and such report be placed before the Administrative Committee.

16. Accordingly, the revisional applications stand allowed. Lower Court record to go down as early as possible for compliance of the directions

contained in the body of the judgment. Having regard to the age of the cases the Judicial Officer who shall deal with these cases is directed to

expedite disposal of the cases and in any case to dispose of the same within a period of one (1) year from the date of communication of the order.