
Gour Mondal and Others Vs The State

Criminal Rev. No. 302 of 1981

Court: Calcutta High Court

Date of Decision: Feb. 15, 1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 202(2)#Penal Code, 1860 (IPC) " Section 147, 380, 436

Citation: 88 CWN 465

Hon'ble Judges: J.N. Chaudhuri, J

Bench: Single Bench

Advocate: Susanta Banerjee, Chandan Kr. Ghosh and Farook M. Rezzack, for the Appellant;B.P. Patranabis for the State, for the Respondent

Judgement

J.N. Chaudhuri, J.

In the present case arising out of Case No. 34C/81 pending in the Court of the S.D.J.M., Ghatal, the learned

S.D.J.M., in an exclusively Sessions triable case initiated on a complaint after taking cognizance, issued process against the accused under Sections

147 \ 380 \ 436 I.P.C. without examining on oath all the witnesses of the complainant or calling upon the complainant to produce all his witnesses

for such examination as was mandatory on him under the proviso to Section 202 (2) Cr.P.C. The offence u/s 436 I.P.C. is exclusively triable by

the Court of Sessions. The orders of the learned S.D.J.M. being order no. 1 dated 4. 2. 81 and order no. 2 dated 5. 2. 81 out of which the

present revisional application arises, make the same abundantly clear.Mr. Banerjee appearing on behalf of the petitioners relied on a Bench

decision of this Court reported in 81 CWN 976 (Kamal Krishna De and others vs. State and others). The said decision has relied on a decision of

the Supreme Court reported in Gurbachan Singh Vs. State of Punjab, . It is settled law that in an exclusively sessions triable case the proviso to

Section 202 (2) comes into operation and it is incumbent upon the learned Magistrate to act in accordance with the same. Learned Advocate

appearing on behalf of the State fairly concedes that from the records it will, in fact, appear that all the witnesses of the complainant were neither

examined on oath nor did the learned S.D.J.M. call upon the complainant to produce them.

2. Accordingly, both the orders of the learned Magistrate referred to above are set aside and the proceedings are quashed. The learned Magistrate

will begin from the stage prior to the issue of process and will proceed in accordance with law, in the light of the observations made above. The

Rule is made absolute.

Let the records be sent back forthwith with.