

(1986) 08 CAL CK 0024

Calcutta High Court

Case No: None

Amulya Pal

APPELLANT

Vs

Bhupen Sarkar

RESPONDENT

Date of Decision: Aug. 13, 1986

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 250, 397, 399, 401, 482

Citation: (1988) CriLJ 85 : (1987) 2 RCR(Criminal) 1

Hon'ble Judges: M.R. Mallick, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M.R. Mallick, J.

This is an application under Article 227 of the Constitution read with Sections 401 and 482 of the Cr. P.C. The facts are briefly (as) follows:

The petitioner filed a petition of complaint against the opposite parties before the Sub-Divisional Judicial Magistrate, Barrackpore, and on the basis of which complaint case No. 2217/75/T1455/75 was initiated. After trial Sri N. Ghosh learned Sub-Divisional Judicial Magistrate, Barrackpore, by his judgment and order dt. 19-12-79 acquitted the accused persons and on being prima facie satisfied that the case has been falsely instituted issued a notice u/s 250 of Cr. P.C. against the present petitioner to show cause why he should not pay compensation to the accused persons. The petitioner had shown (cause) to the aforesaid notice. Sri S. R. Banerjee, learned Judicial Magistrate, who succeeded Sri N. Ghosh, by his order dt. 11th Aug., 1980 directed the present petitioner to pay a sum of Rs. 200/- each to each of the accused persons for filing a false case and in default the petitioner was directed to suffer simple imprisonment for 20 days.

2. Being aggrieved the petitioner moved the learned Sessions Judge, Alipore in revision. Sri N. K. Banerjee learned Additional Sessions Judge, 7th Court, Alipore, by the order dt. 29-11-80 in Cr. Motion No. 207/80 dismissed the revision petition. Being aggrieved the present petition under Article 227 of the Constitution read with Sections 401 and 482 of the Cr. P.C. has been filed.

3. At the time of the hearing the learned "Advocate appearing for the petitioner has urged only one point. It is submitted by him that the impugned order awarding penalty of Rs. 200/- to each of the accused opposite parties is illegal and ultra vires because the magistrate who heard the case did not impose penalty. He has referred to the decision of our High Court reported in [Rajaram Majhi Vs. Panchanan Ghosh](#), . He has submitted that the words "magistrate by whom the case is heard" must be the magistrate who acquitted the accused and was of opinion that the compensation should be awarded subject to the complainant showing cause; but if the magistrate, who acquitted the accused and issued show cause notice was transferred before the passing of the final order and his successor awarded compensation, the order was bad as the successor had not heard the case. It is, therefore, contended that the impugned order not having been passed by Sri N. Ghosh, Sub-Divisional Judicial Magistrate who acquitted the accused opposite parties and issued the show cause notice but by his successor Sri S. R. Banerjee, the impugned order is ultra vires and without jurisdiction and this Court should invoke its inherent jurisdiction conferred u/s 482 Cr. P.C. to correct the palpable mistake committed by the magistrate and set aside the impugned order being without jurisdiction, ultra vires and illegal.

4. The petition is contested both by the accused opposite parties as well as by the State. It is submitted that the petitioner is not entitled to reagitate the same point by filing a second revision petition in the High Court when his first revision petition before the Sessions Judge, Alipore, has been dismissed and such revision petition before this High Court is expressly barred u/s 397(3) of the Cr. P.C. On behalf of the State a Division Bench decision reported in [Ajit Kumar Das Vs. Mathur Chandra Pal](#), has also been cited in which the Division Bench has held that when specific provision contained in Section 399(3) covers the field, there is no scope for invoking extraordinary inherent jurisdiction of the Court u/s 482 Cr. P.C.

5. The Supreme Court decisions reported in [Jagir Singh Vs. Ranbir Singh and Another](#), and [Madhu Limaye Vs. The State of Maharashtra](#), have also been cited by Miss Parul Banerjee, Advocate appearing for the State.

6. On perusing the decision of our High Court reported in [Rajaram Majhi Vs. Panchanan Ghosh](#), I have no doubt in my mind that our High Court has definitely held that the magistrate who acquitted the accused and who issued the show cause notice u/s 250(1) Cr. P.C. shall have to pass the final order and if his successor awards the compensation after his transfer such order is bad in law. The Punjab High Court in [Baini Parshad Vs. The State](#), has also expressed the similar opinion.

The relevant portion of Section 250(1) Cr. P.C. clearly indicates that the action u/s 250 has got to be initiated and disposed of by the magistrate by whom the case is heard. Though the decision of the Calcutta High Court is u/s 250 of the old Code, but the language used in Section 250 of the new Code is exactly similar. Therefore the interpretation given by our High Court in respect of the same expression used in the old Code would definitely apply while construing the similar provision of the new Code. In view of the above, I am convinced that Sri S. R. Banerjee, who ultimately awarded the compensation did not have the, legal authority to award the compensation. Consequently the award of compensation is illegal and ultra vires.

7. Let me now consider the objection raised by the accused opposite parties and the State as regards whether this Court would not enter into the legality or otherwise of the impugned order only because this is practically a second revision petition after the petitioner's earlier revision petition before the learned Sessions Judge, Alipore, has been dismissed. On perusing the order of the learned Additional Sessions Judge, I find that before the learned Additional Sessions Judge this matter was not at all agitated. It is a fact that for the first time in this petition under Article 227 of the Constitution read with Sections 401 and 482 Cr. P.C. this new point has been agitated by the petitioner. But when there is no doubt that the impugned order is clearly illegal, will it not be permissible for this Court to interfere with it in exercise of the inherent power u/s 482 Cr. P.C.? So far as the applicability of Article 227 of the Constitution and Section 401 Cr. P.C. I am of the view that neither Article 227 nor Section 401 Cr. P.C. can be invoked when the revision petition has already been disposed of by the learned Additional Sessions Judge against the present petitioner but whether this Court would not interfere with a manifest illegality in the impugned order by invoking Section 482 Cr. P.C. is a matter for consideration in this case. On behalf of the opposite party it is submitted that this cannot be done because the petitioner has lost his first chance. But in my view, the decision of the Supreme Court as given in [V.C. Shukla Vs. State through C.B.I.](#), answers this point clearly. The Supreme Court has clearly observed in that decision that Section 397(3) does not limit at all the inherent power of the High Court. It has also been clearly held in the decision that therefore the order which was revised by the Sessions Judge can further be revised u/s 482 Cr. P.C. if the conditions for the applicability of Section 482 Cr. P.C. are attracted. In [Raj Kapoor and Others Vs. State and Others](#), the Supreme Court has also clearly taken the view that it is wrong to say that the inherent power stands repelled when revisional power u/s 397 overlaps but the Supreme Court in that decision cautioned that even so a general principle pervades this branch of law that when specific provision is made, easy resort to inherent power is not right except under compelling circumstances. It is, therefore, observed that not that there is absence of jurisdiction but that inherent power should not invade the area set apart for specific power under the same Code. These two decisions clearly indicate as to in what circumstances even when the second revision petition is barred the High Court can invoke the inherent power. Section 482 Cr. P.C.

reads as follows:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

8. Therefore only under three circumstances namely, (1) to give effect to any order under the Code or (2) to prevent abuse of the process of any Court or (3) otherwise to secure ends of justice, the inherent power can be invoked. There is also no doubt that when a revision Court has completely considered the matter the High Court by invoking second revision should not interfere with it because in that case the High Court will be by invoking Section 482 Cr. P.C. entering into the matter which is expressly prohibited under Sections 397(3) and 399(3) of the Code. But even then the situation may arise when this extraordinary jurisdiction will be necessary. In the Division Bench of the Calcutta High Court referred to above, the Division Bench has clearly laid down that the point raised before the Division Bench was covered by the specific provision contained in Section 399(3) and therefore there is no scope for invoking extraordinary inherent power u/s 482 of the Code. The Division Bench has also noted that the sole criterion to be adopted by the Court in exercise of the power u/s 482 Cr. P.C. is whether demand of justice requires exercise of such power. In this particular case the demand of justice requires exercise of power u/s 482 Cr. P.C. because a palpable illegal order was passed by the magistrate and when this is brought to the notice of this Court even if in the revision petition before the learned Sessions Judge that point was not agitated, it is fit and proper that the impugned order being illegal and ultra vires should be set aside, by invoking the inherent power.

9. In the result, the impugned order be set aside and the rule be made absolute.