
(1988) 05 CAL CK 0032
In the Calcutta High Court
Case No : Criminal Revision No. 1457 of 1983

Ajit Kumar Chakraborty and Others

APPELLANT

Vs

Serampore Municipality

RESPONDENT

Date of Decision : 12-05-1988

Acts Referred:

Bengal Municipal Act, 1932 — Section 501
Criminal Procedure Code, 1973 (CrPC) — Section 205, 205(1)

Citation : (1988) 2 CALLT 154 : 93 CWN 45

Hon'ble Judges : Sankar Bhattacharyya, J;J.N. Hore, J

Bench : Division Bench

Advocate : B.C. Roy and S.L. Hazra, for the Appellant;P.R. Adak, for the Respondent

Judgement

Sankar Bhattacharyya, J.—The petitioners in this Rule are co-owners of premises No. 155, Netaji Subhas Avenue, Serampore. Sometime in 1981, they submitted to the Serampore Municipality for sanction a plan for carrying out certain additions and alterations in respect of the said building and the plan was duly sanctioned.

2. In September, 1981, however, the chairman of the Municipality informed petitioner No. 1 in writing that an enquiry would be held in connection with the building plan sanctioned by the Municipality. Accordingly, an enquiry was held and the report submitted disclosed certain deviations from the sanctioned plan.

3. Thereafter, petitioner No. 1 received a letter from the Chairman of the Municipality asking him to explain why certain portions of the building, as mentioned in the letter, would not be demolished. Pursuant to the said letter, petitioner No. 1 sent an explanation raising certain objections therein but, ignoring the explanation, a complaint u/s 501 of the Bengal Municipal Act, 1932 (Act for short) was lodged against the petitioners in the court of the learned Sub-Divisional Judicial Magistrate, Serampore. The learned Sub-Divisional Judicial Magistrate took cognizance on the basis of the complaint and issued summonses

for appearance of the petitioners.

4. After service of summons, petitioner Nos. 3, 4 and 6 filed before the learned Sub-Divisional Judicial Magistrate a joint petition u/s 205(1), Criminal Procedure Code, praying for exemption from personal attendance on the ground that they are Pardanashin ladies and the prayers were allowed. Later on, petitioner No. 5 filed a similar petition praying for exemption from personal attendance and her prayer was also allowed.

5. After summons was served upon petitioner No. 2 Biswanath Chakraborty, he too, filed a petition praying for exemption from personal attendance on the ground that he is a member of the West Bengal Higher Judicial Service and has to perform important public duties for which, it might not be possible for him to attend court on the dates fixed. The learned Sub-Divisional Judicial Magistrate Sri P. K. Basu Mallick did not, however, pass any final order on the petition, observing that the petition would be considered only after the personal appearance of petitioner No. 2 and by his order, dated 15-6-83, fixed 19-7-83 for the purpose. Thereafter, the petitioners moved this court in revision and obtained the present Rule for quashing the impugned proceedings against them in case No. C/130 of 1982 u/s 501 of the Act and for setting aside the order, dated 15-6-83, referred to above.

6. Mr. Roy, learned Advocate appearing in support of the Rule, submits at the very outset that he will not press the prayer for quashing of the impugned proceedings and will confine himself only to the impugned order, dated 15-6-83 whereby petitioner No. 2 was directed to appear personally in court on 19-7-83. In view of the above submission of Mr. Roy, the only point that falls for our consideration is whether the learned Sub-Divisional Judicial Magistrate was justified in directing petitioner No. 2 to appear personally in Court.

7. Sub-section (1) of Section 205 of the Code of Criminal Procedure which deals with the subject under consideration, reads as under :

"205 Magistrate may dispense with personal attendance of accused

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader."

8. Sub-section (1) undoubtedly gives a discretion to the Magistrate issuing a summons to decide as to whether the accused should appear in person or should be permitted to appear through a lawyer but the discretion must be judicially exercised. The Magistrate is to see whether there is any justification for refusing the accused's prayer for exemption from personal attendance and must indicate convincing reasons for rejecting the prayer.

9. Let us now see what are the grounds which prompted the learned Sub Divisional Magistrate to reject the prayer of petitioner No. 2. According to the learned Sub-Divisional Judicial Magistrate, petitioner No. 2 is a member of the

West Bengal Higher Judicial Service and this fact alone, entitles him to be represented by his duly appointed agent in course of the trial. Notwithstanding the above view taken by the learned Sub-Divisional Judicial Magistrate, he proceeded to set out the reasons why he was not inclined to consider the prayer of petitioner No. 2 unless he appeared in court in person. The relevant portion of the order is extracted below :

"But in the instant case the accused No. 2 (petitioner No. 2) prays for an exemption from appearance in course of trial when appearing in the court. Ours is a country governed solely by the rule of law which is like death, is no respecter of persons. Keeping in view the general principles of the Criminal Procedure Code that an accused cannot be proceeded against ex parte, the question of dispensing with the personal attendance would arise, to my mind, after his personal appearance in court. As it has been held in AIR 1957 Assam 148 the accused must himself appear and ask for his attendance being dispensed with (vide S. C. Sarkar's Criminal Procedure Code, 4th Edn. at page 344). The instant petition invoking the provisions u/s 205(1), Criminal Procedure Code, can only be taken into judicious (sic) consideration after the appearance of accused No. 2 in person."

10. We fail to appreciate the reasons given by the learned Sub-Divisional Magistrate. While making the above observation, he appears to have become completely oblivious of the fact that it was he who allowed the prayers of petitioner Nos. 3 to 6 for exemption from personal attendance although, they did not appear in court at any point of time and permitted them to be represented by their agents. That apart, we find nothing in Sub-section (1) of Section 205, Criminal Procedure Code, to give even the remotest indication that in order to claim exemption from personal attendance the accused must, at the first instance, appear personally in, court. On the contrary, the Sub-section clearly goes to show that even at the stage of issuing summons the Magistrate may, if he sees reasons so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader. This discretion may be exercised by the Magistrate even in the absence of any prayer by the accused for exemption from personal attendance.

11. The fallacy of the view taken by the learned Sub-Divisional Judicial Magistrate may best be illustrated by citing an instance. Suppose a Pardanashin lady who, according to her custom, does not appear in public figures as an accused in a criminal case and on that ground, files a petition u/s 205(1) Criminal Procedure Code for exemption from personal attendance. If, in such a case, the Magistrate insists upon her personal appearance in court before considering her prayer, the very object of the prayer would be frustrated and Sub-section (1) would be rendered meaningless.

12. The learned Sub-Divisional Judicial Magistrate also fell into an error by assuming that the trial would proceed ex parte against petitioner No. 2 if his prayer for exemption from personal appearance was allowed because, petitioner

No. 2 prayed for being represented by his agent during the trial. As seen already, the learned Sub-Divisional Judicial Magistrate cited the single bench decision of the Assam High Court in Joy Sing Rajput v. Bachheraj Dugar (A.I.R. 1957 Assam 148) to fortify his order directing petitioner No. 2 to appear personally in court. It, however, appears from the impugned order itself that the learned Sub-Divisional Judicial Magistrate did not even care to have a look at the above decision. He simply quoted it from the notes appearing in Sarkar's Criminal Procedure Code (4th Edn.). Had he cared to go through the decision cited by him, he would have at once discovered that it has no manner of application to the facts of the present case.

13. In the case under reference, although a warrant had been issued for the personal attendance of the accused the court, in the mean time, accepted an application on behalf of the agent of the accused, allowing them not to appear in person but to be represented through their pleader on the assumption that the warrant of arrest issued against the accused could be treated as a summons. Upon these facts, it was held by the Assam High Court that in such a case, the accused must appear in pursuance of the warrant and he may then make an application to be represented by a lawyer. In that case, it would certainly be open to the Magistrate to dispense with their personal attendance and to allow them to be represented u/s 205, Criminal Procedure Code.

14. In the instant case, no warrant of arrest was issued against petitioner No. 2 and, that being the position, his personal appearance in court could never be a *sine qua non* for consideration of his application under Sub-section (1) of Section 205, Criminal Procedure Code. This shows the danger of relying upon a decision without going through it and such unhealthy practice cannot but be severely condemned.

15. Petitioner No. 2 is a member of the West Bengal Higher Judicial Service and, we are told, is at present posted as a judge of the City Civil and Sessions Court, Calcutta. It is needless to point out that he has to remain busy with the cases pending in his file and cannot afford to attend the court of the learned Sub-Divisional Judicial Magistrate at Serampore on the dates fixed without serious disruption of his official work and harassment of the litigant public whose cases are pending in his court.

16. The offence u/s 501 of the Act is of a technical nature for which, fine is the only punishment. We, therefore, fail to understand why the learned Sub-Divisional Judicial Magistrate insisted upon dragging a senior judicial officer to court specially when, the case rests primarily upon documentary evidence and petitioner No. 1 did not claim any such exemption.

17. In the result, we allow the revisional application in part. The prayer for quashing the impugned proceedings is rejected as not pressed. We, however, set aside the order, dated 15-6-83 passed by the learned Sub-Divisional Judicial Magistrate and allow the prayer of petitioner No. 2 for exemption from personal

attendance in court and permit him to be represented by his lawyer or agent, subject to the provisions of Sub-section (2) of Section 205 of the Criminal Procedure Code.

The Rule is disposed of accordingly.

J.N. Hore, J.

18. I agree.