

(1958) 08 CAL CK 0029
In the Calcutta High Court
Case No : Criminal Revn. No. 732 of 1957

B.K. Gupta and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 14-08-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 155, 155(2), 213

Citation : AIR 1959 Cal 286 : (1959) CriLJ 582

Hon'ble Judges : J.P. Mitter, J;Bhattacharya, J

Bench : Division Bench

Advocate : Nalin Chandra Banerjee and Mukti Prasanna Mukherjee, for the Appellant; A.C. Roy, for the Respondent

Final Decision : Allowed

Judgement

J.P. Mitter, J.—This Rule is directed against an order of commitment upon charges under Sections 417, 466, 471 and 120B of the Indian Penal Code.

2. Two points have been taken in support of the Rule. The first concerns the basis of the order of commitment. According to Mr. Banerjee, the evidence concerned does not disclose any of the offences with which his client has been charged. We have examined the relative evidence and are of the view that the order of commitment is not without foundation. At this stage, we are not concerned with the weight or credibility of evidence nor are we concerned with the question whether or not the evidence of the accomplice is corroborated. It is said that the accomplice is dead. At this stage, it is not necessary for us to consider whether the deposition of the dead man will or will not be admissible u/s 33 of the Indian Evidence Act. The first point fails.

3. As to the second point, namely, that there has been no compliance with the provisions of Section 155 Cr. P. C., it appears that the order to investigate was sought for and obtained from a learned Presidency Magistrate in Calcutta. After investigation, the police submitted a report which the learned Committing

Magistrate, an Alipore-Magistrate, regarded as a complaint. It is common case that the offences concerned are triable by an appropriate court within the territorial limits of the district of 24-Parganas. That being the position, the question is whether the order to investigate obtained from a Presidency Magistrate under Sub-section (2) of Section 155 of the Code was a valid order entitling the Alipore Magistrate to take cognizance of the offences concerned. The police report in the case purported to be one u/s 173 Cr. P. C. In our view, the learned Magistrate was wrong in regarding it as a complaint.

4. Mr. Banerjee contends that under Sub-section (2) of Section 155, no police officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class or of a Presidency Magistrate having both territorial jurisdiction and a power to try such case. The learned Deputy-Legal Remembrancer, on the other hand, contends that the language of Sub-section (2) places no such limit and that a Presidency Magistrate can make an order to investigate any non-cognizable offence, wherever committed. In our view, Sub-section (2) requires a Magistrate of the first or second class or a Presidency Magistrate to have both territorial jurisdiction and a power to try the case, before he can make an order to investigate. Mr. Banerjee has also referred us to Sections 156 and 177 of the Code. Apart from the provisions of these sections, it seems clear to us that it was not the intention of the legislature to empower a Magistrate of the first or second class or a Presidency Magistrate in any part of India to accord leave to the police to investigate a non-cognizable offence committed in another part of the country. In that view of the matter, we must set aside the order of commitment and leave it to the police to seek an order under Sub-section (2) of Section 155 Cr. P. C. from an appropriate Magistrate,

5. In the result, this application succeeds and the Rule is made absolute.

Bhattacharya, J.

6. I agree.