

(1962) 03 CAL CK 0011

In the Calcutta High Court

Case No : Criminal Revisional Case No. 1487 of 1961

Dhirendra Nath Roy

APPELLANT

Vs

Satya Saran Mitra and Others

RESPONDENT

Date of Decision : 15-03-1962

Acts Referred:

Constitution of India, 1950 — Article 227
Legal Practitioners Act, 1879 — Section 36

Citation : 66 CWN 694

Hon'ble Judges : Niyogi, J

Bench : Single Bench

Advocate : Dilip Kumar Dutt, for the Appellant; Jitendra Kumar Bhattacharjee and Rajendra Kumar Bhattacharjee, for the Respondent

Judgement

Niyogi, J.—This Rule is against the order of the learned Additional District Magistrate, 24-Parganas, purported to have been passed u/s 36 of the Legal Practitioners Act, sending back the records of cases in which the different opposite parties were involved to the Sub-Divisional Magistrate, Bongaon, for further enquiry.

2. It appears that on 22.11.58 the Muktear's Bar Association, Bongaon at a meeting convened specially for the purpose, considered the report of the Secretary, of the said Association and being satisfied thereby, unanimously passed a resolution declaring the seven opposite parties, amongst others, as touts. In pursuance of the said resolution a proceeding u/s 36 of the Legal Practitioners Act was drawn up against the opposite parties under the order of the Additional District Magistrate, 24-Parganas, who sent the matter to Sri S. K. Chakravarti, Magistrate, 1st class, for holding enquiries under sub-section (2A) of Section 36 of the Legal Practitioners Act. In connection with the said enquiry several witnesses were examined by the said Magistrate and being satisfied with the evidence produced before him in the enquiry, he recommended that the names of the opposite parties be included in the list of touts and in due course

he sent the report of the enquiry to the Additional District Magistrate.

3. The learned Additional District Magistrate previously dropped the proceedings on 14.3.60 on the ground that the said resolution of the Bar Association was not a valid resolution, not having been confirmed in subsequent meetings. Against the said order of the Additional District Magistrate this Court was moved under Article 227 of the Constitution of India and a Division Bench of this Court consisting of Mitter and Sen, JJ., made the rule absolute holding that the resolution, even though not confirmed by subsequent resolutions, was a good resolution and further holding that the learned Additional District Magistrate was in error in rejecting the prayer of the petitioner and in dropping the proceedings. He was, therefore, directed by this Court to proceed further in the matter in accordance with law.

4. The matter remained pending before the Additional District Magistrate for nearly 14 months and on 8.8.61 Mr. A. K. Banerjee, Additional District Magistrate, 24-Parganas, passed the following order :

"Defence case is, mainly, that the witnesses examined by the enquiring Magistrate are either local Muktears or persons closely associated with them. The resolution passed by the Bongaon Mukhteers" Nar although admissible as evidence, is no conclusive proof. I feel that the enquiry could have been more broad-based. The records are, accordingly sent to the S.D.M. Bongaon under sub-section 2A of Section 36 of the Legal Practitioners Act for eliciting evidence also of witnesses not prima facie interested in this issue and submitting a report based on as such evidence * * * *"

5. It has been urged by Mr. Dilip Kumar Dutt, appearing for the petitioner, that such a direction as given by the learned Additional District Magistrate, is not contemplated under the law. Sub-section (1) of Section 36 empowers, amongst others, the Collector of a district to frame and publish list of persons proved to his satisfaction or to the satisfaction of a subordinate Court as provided in sub-section 2A, by evidence of general repute or otherwise, habitually to act as touts. Under sub-section 2A any Authority who is so empowered under sub-section (1) to frame and publish a list of such touts, may send to any Court subordinate to such Authority the names of such persons alleged or suspected to be touts and order that Court to hold an enquiry in regard to such persons. After holding such enquiry as directed, a subordinate Court after giving the person affected an opportunity of showing cause, is required to report to the Authority which has so ordered the enquiry, the names of each such person who has been proved to the satisfaction of the subordinate Court to be a tout. On receipt of such report, the Authority may include the name of any such person in the list of touts framed and published by that Authority. There is an important proviso to sub-section 2A under which such Authority is required to hear any such person who before his name has been so included appears before it and desires to be heard.

6. The subordinate Court concerned, that is, the Sub-Divisional Magistrate,

Bongaon, enquired into the matter by taking evidence of several persons and being satisfied from such evidence, including the resolution of the Bar Association, that the present opposite parties were touts, made his recommendation accordingly to the Additional District Magistrate. On receipt of that report, the Additional District Magistrate could do either of two things. He, after considering the report and the evidence on which it is based and giving hearing to the person affected by the report, could have rejected the report, or on being satisfied, include their names in the list of touts frame and published by that Authority. There is no provision in Section 36 or any other section which empowers the Authority to thus send back the record with such directions as given by the learned Additional District Magistrate.

7. As contended by Mr. Dutt, ? it does not appear from the said order ..the learned Additional District Magistrate that he had at all applied his mind to the evidence on the record. Besides, it is difficult to follow the purport of the directions actually given by the learned Additional District Magistrate which speak of "eliciting evidence also of witnesses not prima facie interested in his issue". It cannot be gathered what class or classes of witnesses the learned Additional District Magistrate had really in mind.

8. The impugned order of the learned Additional District Magistrate must be set aside as not being in accordance with law.

9. The Rule is, therefore made absolute. The learned Additional District Magistrate should now proceed to dispose of the cases before him in accordance with law and in the light of the observations made above.