
(1963) 05 CAL CK 0006
In the Calcutta High Court
Case No : Criminal Misc. Case No. 43 of 1963

Haridas Mundra	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 07-05-1963

Acts Referred:

Constitution of India, 1950 — Article 254(2)
Criminal Procedure Code, 1898 (CrPC) — Section 269(4)
West Bengal City Sessions Court Act, 1953 — Section 9

Citation : AIR 1964 Cal 30 : (1964) CriLJ 30

Hon'ble Judges : Debabrata Mookerjee, J; D.N. Das Gupta, J

Bench : Division Bench

Advocate : A.K. Dutta and Prasun Chandra Ghosh, for the Appellant; S.N. Banerjee, D.L.R, for the Respondent

Judgement

Debabrata Mookerjee, J.—This is a reference u/s 269(1) of the Code of Criminal Procedure by a Judge of the City Sessions Court, Calcutta, reporting that the case against the accused pending before that court is such as should be dealt with by the Judge alone and should not be tried with the aid of a jury.

2. It appears that one Haridas Mundra and his brother-in-law Remeshwar Daga have been committed to the City Sessions Court to answer charges of conspiracy to cheat, of forgery and cognate offences in respect of a large number of shares of the British India Corporation Ltd. The case is pending trial. The learned Judge reports that in view of the volume and complexity of evidence in the case which he thinks is of a highly technical nature, it is undesirable that the charges should be tried by a jury. It is also said that a number of witnesses from all over the country will have to be called and about 150 documents will require to be exhibited with the consequence that the trial cannot reasonably be expected to be concluded before three weeks. Accordingly, the learned Judge has reported to this Court for orders that the case be tried by the Judge himself without a jury.

3. Section 269 (4) provides for circumstances in which a trial by jury may be

dispensed with. The sub-section is in these words :

"When, in respect of a trial in which the accused is charged with an offence triable by jury, it appears to the High Court, on an application made to it or otherwise, that having regard to the volume or complexity of the evidence in the case, the trial is not likely to be concluded within two weeks from its commencement, or that the case would involve consideration of evidence of a highly technical nature, which renders it undesirable that it should be tried by a jury, the High Court may direct that that case shall be tried by the Judge himself without a jury and the Judge shall proceed to try the case accordingly."

4. If the law stood at that, the opinion of the learned Judge would have been of value in deciding as to whether the case should be allowed to be dealt with by the Judge alone; but we think in view of the amended provisions contained in the City Sessions Court Act itself, trial by jury by that court cannot be dispensed with.

5. It is to be recalled that Section 269 (4) of the Code which we have just read was introduced into the Code of Criminal Procedure by the Amendment Act 26 of 1955 which came into operation on the 1st of January, 1956. The City Sessions Court Act, 1953, had by its Section 9 provided that all trials before that court shall be by jury. Sub-section 4 of Section 269 of the Code having thereafter been introduced by the Amendment Act XXVI of 1955, Section 9 of the City Sessions Court Act could not escape the consequence and was affected or at least a doubt was caused as to the true legislative intent. Hence arose the necessity of amendment to keep alive the provision of trial by jury in all cases before the City Sessions Court. Accordingly the City Sessions Court Act has since been amended and the amendment of the Act has been carried out by the West Bengal Criminal Law Amendment Act (Act XXVI) of 1956 which came into operation on the 24th August, 1956. Section 3 of the last named Act is in these words :

"Notwithstanding anything contained in Sections 268 and 269 of the Code all trials before the City Sessions Court shall be by jury and such Court, if it is satisfied that the interests of justice so require, may, on application made to it or of its own motion, by order direct that any trial before it shall be by jurors summoned from a special jury list and may revoke or alter such order."

6. It is thus plain that Section 269 (4) of the Code, of Criminal Procedure has no application to a trial before the City Sessions Court by virtue of the amendment introduced by the West Bengal Criminal Law Amendment Act 1956. Indeed, the position was conceded on behalf of the State.

7. There is however no question of competition between a statute passed by Parliament and a statute passed by the State Legislature. It will be recalled that criminal law and criminal procedure are items appearing in the "concurrent list" in schedule VII of the Constitution which may be the subject of legislation either by Parliament or by the State. Therefore, in that sense the West Bengal Criminal Law Amendment Act, 1956 is competent legislation although it is state law and the Code is law made by Parliament. Article 254(2) of the Constitution makes it

plain that where a State legislation having been reserved for consideration of the President has received his assent, the statute passed by the State Legislature will prevail in the State. Sub-article (2) is the relevant constitutional provision which is in these words :

"Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

8. The Proviso is not material to the present purpose and is therefore left out of account.

9. The West Bengal Criminal Law Amendment Act, 1956 by which the relevant provision of the City Sessions Court Act has been amended was reserved for consideration of the President and received his assent in due course. This Act must, therefore, prevail and it has to be held that the provision contained in Section 269(4) of the Code of Criminal Procedure, a Central Act, stands to this extent modified by the State Act.

10. The result, therefore, is that Sub-section (4) of Section 269 of the Code has no application to a trial before the City Sessions Court which must always be held with the aid of a Jury.

11. If such is the position in law, it must be ruled that whatever the inconvenience and however great the complexity, the trial has to take place before a jury. The reference is, accordingly, rejected.

Das Gupta, J.

12. I agree.