
(1985) 02 CAL CK 0024
In the Calcutta High Court
Case No : Criminal Rev. No. 872 of 1982

Harjlal Shaw

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 22-02-1985

Acts Referred:

Bengal Criminal Law (Industrial Areas) Amendment Act, 1942 — Section 4(1)
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 155(2)

Citation : 89 CWN 557

Hon'ble Judges : J.N. Chaudhuri, J

Bench : Single Bench

Advocate : Dhrubajyoti Ghose, for the Appellant; Debi Prasad Sengupta, for the Respondent

Final Decision : Allowed

Judgement

Jitendra Nath Chaudhuri, J.—The present revisional application filed by Harilal Shaw arises out of proceedings u/s 4(1) of the Bengal Criminal Law Amendment Act, 1942. Two other accused are also being prosecuted under sections 113 and 114 of the Motor Vehicles Act respectively. All the said offences are non cognizable. Mr. Ghose, learned advocate appearing for the petitioner has submitted that the proceedings pending before the learned Additional Chief Judicial Magistrate, Asansol should be quashed, as the investigation in this case proceeded in violation of the mandatory provisions of section 155(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), since the present case is a non-cognizable case and no order, of any learned Magistrate was obtained for investigation into the case. Mr. Ghose has relied upon a decision of this Court reported in Subodh Singh Modak Vs. The State, wherein it has been held by N. C. Talukdar, J that non-compliance with the provisions of section 155(2) of the said Code is mandatory and noncompliance of the same will be in violation of the said section read with the provisions of Article 21 of the Constitution of India. Mr. Ghose has also cited before me an unreported decision

(a xerox copy of which has been kept in the records of the trial court) of Amitabha Dutta, J of this Court in Criminal Revision Cases Nos. 1255 and 1256 of 1980 (Laxmi Shaw Vs. State of West Bengal), judgment of which was delivered on 31st August, 1981, wherein the said case reported in 1974 Criminal Law Journal 185 was referred to and relied upon in coming to the same conclusion, viz., that non-compliance with the mandatory provisions of section 155(2) of the said Code will result in violation of Article 21 of the Constitution of India.

2. Mr. Sengupta, learned advocate appearing on behalf of the State, however, submits that the provisions of section 155(2) of the said Code are mandatory, but still curable.

3. I find no force in the contention of the learned advocate for the State, since once a provision of law is held to be mandatory, the question of the same being curable cannot arise. Once a provision of law is to be held mandatory any question of prejudice of the accused also cannot arise as the same is irrelevant for the purpose. If a mandatory provision of law is not complied with, then the act complained of has to be struck down irrespective of any question of prejudice.

4. I am clearly of the view, that there has been a violation of the mandatory provisions of section 155(2) of the said Code in this case and therefore, the entire proceedings against the present petitioner must be quashed. The application accordingly succeeds. The Rule is made absolute and the entire proceedings pending before the learned trial court against the present petitioner is quashed. The accused petitioner is discharged from his bail bond.

Let the records be sent below forthwith.