
(1939) 02 CAL CK 0007
In the Calcutta High Court

Jnanendra Nath Pramanik

APPELLANT

Vs

Nilmony Dey

RESPONDENT

Date of Decision : 20-02-1939

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 203, 253(2)
Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1939 Cal 701

Hon'ble Judges : Rau, J;Khundkar, J

Bench : Full Bench

Judgement

Rau, J.—In this rule we are invited to set aside an order of the Third Presidency Magistrate of Calcutta dismissing u/s 203, Criminal P.C., a complaint made by the petitioner Jnanendra Nath Pramanik against Nilmony Dey on 14th July 1938 u/s 420, I.P.C. The complaint was that on 22nd December 1937 Nilmony Dey obtained a loan of Rupees 500 (subsequently increased by further advances) from the petitioner, secured uncertain property, namely 2 talkie machines, 400 seats, 4 tables, and 12 chairs, which Nilmony Dey falsely represented to be the unencumbered property of the Talkie Show House of which he (Nilmony Dey) was then receiver. In fact, it was alleged, the entire stock-in-trade and assets of the Show House, including some of the hypothecated articles, were at that time under attachment to the receiver's knowledge. There was a police inquiry, and as the result, a warrant was issued against him on 26th July 1938. He surrendered next day. Before examining any witnesses, the Third Presidency Magistrate (to whom the case had been transferred) heard the parties on a preliminary point of law and on 10th September 1938, dismissed the complaint u/s 203, Criminal P.C., on the ground that the case being against a receiver appointed by the High Court in respect of property forming part of the assets of the estate for which he had been appointed receiver, the previous permission of the High Court was necessary before he could be proceeded against in a Criminal Court. It is conceded by the learned Magistrate and is now common ground that the order should have been one of discharge u/s 253(2), Criminal P.C., the

accused having already appeared in Court after the issue of process. This is however a formal defect and we do not think it necessary to set aside the order merely on that account. The question is whether there are any other grounds for interfering with the order. It appears from para. 12 of the petition before us that prior to the institution of these proceedings, the petitioner moved the High Court in its ordinary original civil jurisdiction praying for leave to file civil and criminal cases against the receiver, and that the Court on 31st May 1938, granted leave to file a civil suit, the order being silent as to the criminal case. We are informed by learned Counsel appearing for the petitioner that no civil suit has yet been instituted, although the Court, in granting leave, had ordered that the suit should be instituted on or before 15th August 1938.

2. For the purpose of disposing of this rule, it is unnecessary to enter into any detailed discussion of the question whether, in the absence of leave from the High Court by whom the receiver had been appointed, the criminal Courts had or had not jurisdiction to entertain the complaint. There is a great deal of force in the argument that Section 190(1)(a), Criminal P.C., which states that "except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, and any other Magistrate empowered in this behalf, may take cognizance of any offence upon receiving a complaint of facts which constitute such offence" is conclusive on the question of jurisdiction and that save as provided in the Code itself (or in any other law such as is referred to in Section 1(2) of the Code, there is no warrant for denying or limiting the power to take cognizance of offences upon complaint. For the purposes of this rule, we shall assume that the Additional Chief Presidency Magistrate, who took cognizance of the offence alleged in the present case had jurisdiction to do so, even in the absence of leave from the High Court such leave not being required by any provision of the Code (or any other law; and we shall also make the consequential assumption that the Third Presidency Magistrate, to whom the case was subsequently transferred, had jurisdiction to go on with it, if he had chosen to do so. We may observe at this stage that we have seen no reported decision which actually conflicts with these assumptions. Even in *Santok Chand v., Emperor* 6 AIR (1919) Cal. 647, which comes nearest to a conflict, the learned Judges did not go quite so far as to deny jurisdiction to the criminal Courts. It is true that in one place of their judgment they did say that it was "not open" to the complainant to commence proceedings against the accused with out previous leave; but this was more fully explained in a later passage, where they said:

We think that the criminal proceedings against Santok Chand were improperly instituted against him, because the complainant was not the person then directly interested in the property and because the leave of this Court was not first obtained.

3. Thus the decision was rested on the impropriety of the complaint rather than any lack of jurisdiction in the Court. But even assuming that the Magistrate had

jurisdiction to proceed with the present complaint, the question still remains whether it would have been proper for him to do so. We have no doubt that it would not. In the first place, there was no specific leave from the High Court for the institution of a criminal case, although leave had been specifically asked for. As we have already said, this may not be a bar to jurisdiction but it is certainly relevant on the question of the propriety or desirability of criminal proceedings. Secondly, a vital point in the criminal case was whether the sum of Rs. 500 said to have been lent by the petitioner on the hypothecation deed of 22nd December 1937 had in fact been so lent; the same issue would have arisen in a civil suit to enforce the deed. Now, the petitioner actually obtained the High Court's leave to bring a civil suit before 15th August 1938, but curiously enough, he did not choose to bring one. In these circumstances we think that this is not a proper case for interference and the rule must therefore be discharged.

Khundkar, J.

4. I agree.