
(1969) 12 CAL CK 0034

In the Calcutta High Court

Case No : Criminal Revisional Case No. 762 of 1969

Jyoti Prakash Sen

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 23-12-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 242
Penal Code, 1860 (IPC) — Section 323, 37, 392

Citation : 74 CWN 839

Hon'ble Judges : R.N. Dutta, J;B. Banerji, J

Bench : Division Bench

Advocate : Jitendra Nath Bose, for the Appellant;S.A.M. Habibullah for Opposite Parties Nos. 2 to 4 and J.M. Banerjee for the State, for the Respondent

Judgement

R.N. Dutta, J.—On a first information report lodged by the Petitioner on July 24, 1968 alleging offence under Sections 323 and 37 of I.P.C. the Bartolla Police made an investigation and submitted a charge-sheet against opposite parties Nos. 2, 3 and 4 u/s 323 of the Indian Penal Code. The case was transferred to Shri M.K. Mukherjee, Presidency Magistrate, for disposal. Mr. Mukherjee took the plea of the opposite parties u/s 242 of the Code of Criminal Procedure and then proceeded to take evidence. Subsequently, he ceased to be a Presidency Magistrate and Shri N. Batabyal succeeded him. The prosecution was being conducted before him by one Saroj Kumar Dutta, a Sub-Inspector of Police. Shri Batabyal on examination of the evidence on record thought that a prima facie case has been made out against the opposite parties u/s 392 of the Indian Penal Code and as such he framed charge against the opposite parties under the said section and then directed that evidence should be taken afresh. The petitioner has thereafter obtained this Rule and Mr. Bose has canvassed two points before us. The first point concerns the procedure to be followed at the trial and the second point concerns the competence of Sub-Inspector Saroj Kumar Dutta to conduct the prosecution on behalf of the State before the Magistrate. Mr. Bose contends that the direction of the learned Magistrate for taking evidence of the

prosecution witnesses afresh is not in accordance with law. We have said that the Police submitted charge-sheet u/s 323 of the Indian Penal Code. This was an offence to be tried under the summons procedure and the learned Magistrate proceeded with the trial in accordance with the summons procedure but then on the evidence on record the learned Magistrate found that a charge u/s 392 of the Indian Penal Code should be framed and he framed that charge against the opposite parties. Thereafter he directed that the prosecution witnesses should be examined afresh. This means that the learned Magistrate proposes to follow the procedure as laid down in section 251A of the Code as if the charge was framed u/s 251A(3) of the Code. But here in this case the charge was not framed u/s 251A of the Code but the charge was framed on the evidence that was taken by the learned Magistrate while proceeding with the trial under the summons procedure. The learned Magistrate was competent to frame such a charge but then it was no more necessary for him to start anew from the stage of Section 251A(6) of the Code. The prosecution witnesses have already been examined but since charge has been framed against the accused on that evidence what the learned Magistrate was required to do was to allow the opposite parties an opportunity to further cross-examine the prosecution witnesses and with that view he should direct the prosecution witnesses to be produced for further cross-examination and thereafter he will examine the remaining witnesses and then proceed to hear the defence witnesses and all that. It is no more necessary in this case to examine the prosecution witnesses over again. The direction of the learned Magistrate for production of the prosecution witnesses for their examination over again should, therefore, be set aside.

2. Mr. Bose then contends that Sub-Inspector Saroj Kumar Dutta is not competent to conduct this prosecution on behalf of the State. This raises some interesting questions-Under Section 493 of the Code of Criminal Procedure the Public Prosecutor may appear and conduct the prosecution before any Court for the State. u/s 492(1) of the Code the State Government may appoint generally or in any case or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors. Mr. Banerjee who appears for the State in this case produces before us Notification No. 2507 P., dated July 6, 1907, and submits that in view of this notification Sub-Inspectors of Police who are appointed to prosecute cases before the Courts of Magistrates are Public Prosecutors generally for all cases in such Courts. This notification states that in exercise of the power conferred upon him by section 492(1) of the Code, the Lieutenant Governor is pleased to appoint every Inspector and Sub-Inspector of Police who has been appointed to prosecute cases before the Courts of Magistrates to be Public Prosecutors generally for all such cases in such Courts. Mr. Banerjee argues that Sub-Inspector Saroj Kumar Dutta was appointed to prosecute cases before the Courts of the Presidency Magistrates and so under this notification he is a Public Prosecutor. Firstly, as we have said, this notification is dated July 6, 1907 and the notification says that the Lieutenant Governor "is pleased to appoint every Inspector and Sub-Inspector of Police who has been

appointed to prosecute cases". On a literal interpretation this should mean every Inspector and Sub-Inspector of Police who had already been appointed to prosecute cases, or, in other words, it seems that this notification covers those Inspectors and Sub-Inspectors of Police who were appointed to prosecute cases before this notification. But even if it be assumed that this notification covers Inspectors and Sub-Inspectors of Police who are appointed to prosecute cases even subsequent to this notification, we do not find any such appointment in the case of Sub-Inspector Saroj Kumar Dutta. Mr. Banerjee produces a notification in the Calcutta Police Gazette to this effect: "The following postings are ordered in the ranks of Sub-Inspector or Reserve Force with effect from the 9th March, 1967: - (1) Saroj Kumar Dutta-to South Court, Vice Sub-Inspector Sudhir Kumar Sikdar, transferred....."" This notification only states that Saroj Kumar Dutta was posted to South Court, which, let us assume, means the Courts of the Presidency Magistrates. But then this is no appointment to prosecute cases before the Courts of the Presidency Magistrates. When a Sub-Inspector is meant to conduct prosecution on behalf of the State before the Courts of Magistrates there should be a regular appointment, or, in other words, there should be an appropriate order formally appointing him to prosecute cases before such Courts. In the notification produced before us, there is no such appointment and this cannot be deemed to authorise Sub-Inspector Saroj Kumar Dutta to prosecute cases before the Courts of Presidency Magistrates. We may in this connection refer to Chapter VI of the Police Regulations Calcutta 1968. These regulations indicate how State cases are to be prosecuted in the Courts of the Presidency Magistrates. Some Officers designated as Police Prosecutors conduct State cases before such Magistrates. Such Police Prosecutors have been appointed to be Public Prosecutors under notification No. 4960P1. dated December 1, 1955. It will appear from regulation 2(b) of this Chapter that in addition to such Prosecuting Officers, there shall be Court Police Officers in charge of an Inspector or a Sub-Inspector in each division. He will be responsible for remands and other administrative matters and will be assisted in his work by other Police Officers. It would thus appear that the idea is to entrust the conduct of State cases with the Police Prosecutors but the Inspectors and Sub-Inspectors posted to those Courts will remain in charge of remands and other administrative matters. The mere fact that Sub-Inspector Saroj Kumar Dutta was "posted" to South Court, obviously, the Presidency Magistrates Courts, does not indicate that he was posted there to prosecute cases before the Courts of Presidency Magistrates. As we have seen in the regulations he might be there for administrative purposes too and so unless there is a specific appointment saying that the particular Sub-Inspector is appointed to prosecute cases before the Courts of Magistrates he cannot possibly come under this notification of 1907 and so Sub-Inspector Saroj Kumar Dutta is not competent to conduct State cases before the Presidency Magistrates Courts on the basis of this notification and of the aforesaid notification No. 775, contained in the Calcutta Police Gazette. The learned Magistrate before whom this question was raised has said that Sub-Inspector Saroj Kumar Dutt is competent to conduct the prosecution u/s 495 of the Code.

Here in this case there is no permission granted by the Magistrate concerned in favour of Sub-Inspector Saroj Kumar Dutta to conduct this prosecution before him. Mr. Banerjee produces before us notification No. 3436p., dated December 24, 1924, which says that in exercise of the power conferred by Section 495 of the Code the Governor-in-Council is pleased to direct that no officer of Police below the rank of Sub-Inspector shall be permitted to conduct prosecution. Under this notification a trying Magistrate may permit a Sub-Inspector of Police to conduct prosecution of a particular case but, as we have said, in this case there is no such permission. Since there is no such permission and since Sub-Inspector Saroj Kumar Dutta is not a Public Prosecutor, as we have seen, and, is also not an Officer who is either generally or specially empowered by the State Government to conduct such prosecution we have to find that Sub Inspector Saroj Kumar Dutta is not competent to conduct this prosecution on behalf of the State before the Presidency Magistrate. In the result, the Rule is made absolute. The order of the learned Magistrate directing that the evidence of the prosecution witnesses should be taken afresh is set aside and he will now proceed with the trial of the opposite parties in accordance with law in the light of the observations made above. We further direct that Sub-Inspector Saroj Kumar Dutta shall not conduct the prosecution on behalf of the State in this case.

B. Banerji, J.

I agree.