
(1984) 07 CAL CK 0043
In the Calcutta High Court
Case No : Criminal Rev. No. 1099 of 1983

Manick Lal Khan

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-07-1984

Acts Referred:

Constitution of India, 1950 — Article 21, 227
Criminal Procedure Code, 1973 (CrPC) — Section 304, 482
Penal Code, 1860 (IPC) — Section 120B, 409

Citation : 88 CWN 986

Hon'ble Judges : N.G. Chaudhuri, J;G.C. Chatterjee, J

Bench : Division Bench

Advocate : Himansu De, Sushil Mahata and Tapan Dutta Gupta, for the Appellant;Dipti Mitra, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Chaudhuri, J.—In this application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure 1973 Mr. Himansu De, learned Advocate for the petitioner-accused, has raised a point of importance, namely, if the Special Court under the Bengal Criminal Law Amendment (Special Courts) Act 1949 is to appoint a lawyer for the defence of the accused in a case before him, at the costs of the State, in view of the provisions of Section 304 of the Code of Criminal Procedure on account of the poverty of the accused ? The point has arisen in this way. The accused petitioner is a Government servant. He is facing trial in Case No. 6 of 1982 before the 5th Additional Special Court, Calcutta, on charges under Sections 409 and 120B of the Indian Penal Code. Admittedly, the accused has been placed under suspension and is getting a subsistence allowance of Rs. 667/- per month. He prayed before the Special Court for engagement of an advocate for his defence at the costs of the State in view of the provisions of Section 304 of the Code of Criminal Procedure on the ground that he was unable to pay any advocate his/her reasonable remuneration because of the big family he had to maintain and

the poor subsistence allowance he was allowed per month. It was contended that Special Court was for all practical purposes a Sessions Court and there is no reason why the provisions of Section 304 of the Code should not be invoked. Mr. De, learned Advocate took such a plea before the Special Court, but the Special Court overruled his contention. Mr. De has therefore come up before us to raise the identical contention. Mr. De, first of all, placed before us the observations of the Supreme Court in the cases of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, and Khatri and Others Vs. State of Bihar and Others, and contends that in view of the provisions of Article 21 of the Constitution of India, it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him. He contends further that the right to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 of the Constitution of India. For clarification of the import and spirit of Article 21 of the Constitution of India, Mr. De, learned Advocate, relies on the observations of the Supreme Court in the two cases noted above. We should note immediately that in those cases the persons concerned were detained in jail. They were therefore handicapped in the matter of engaging lawyers of their choice. Their handicap aggravated because of their poverty arising out of their long detention in jail. In the case before us the accused has been enlarged on bail and he has been getting a subsistence allowance admittedly of Rs. 667/- per month. We are therefore satisfied that the observations of the Supreme Court relied on by Mr. De, the learned Advocate have little applicability to the facts and circumstances of the present case.

2. Mr. De, learned Advocate, place before us the provisions of Section 5(3) of the West Bengal Criminal Law Amendment (Special Courts) Act 1949 as amended by West Bengal Criminal Law Amendment (Special Courts) Amending Act 1982. The said sub section (3) reads as follows :--

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, in so far as they are not inconsistent with this Act, apply to the proceedings of a Special Court, and for the purposes of the said provisions, a Special Court shall be deemed to be a Court of Session trying cases without a Jury, and a person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

3. Mr. De, learned Advocate contends that the subsection, as quoted above, leaves, no room for doubt that for the purposes of the Act. a Special Court shall be deemed to be a court of sessions and all provisions of the Code of Criminal Procedure 1973 are applicable to the proceedings before a Special Court in so far as they are not inconsistent with the Act. In short, Mr. De's contention is that Special Court, for all practical purposes, functions as a sessions court and accordingly, it is the incumbent duty of the Special court to arrange for legal assistance to the accused in a case pending before it u/s 304 of the Code of

Criminal Procedure, when the accused prays for appointment of a lawyer at the costs of the State for his defence on account of his poverty. Learned court below over-ruled such contention of Mr. De for good reasons. We may point out that the case before the Special Court was started against the accused petitioner in the year 1982. The Act of 1982 amending the Act of 1949 came into "force only on 1.5.83. and Mr. De, learned Advocate concedes that. Now, Section 10 of the Act clearly provides : -

10-Savings-The provisions of this Act shall not apply to any proceedings pending before any Special Court on the date of coming into force of this Act and the provisions of the principal Act, as they stood before the date of coming into force of this Act, shall continue to apply to such pending proceedings as if this Act had not been passed.

There is thus no escape from the conclusion that the case against the petitioner being a pending one on the date of coming into force of the amending Act of 1982, the case was to be governed by the Act as it stood before the Amendment Act of 1982. The then Act did not clearly provide that the provisions of the Code of Criminal Procedure 1973 should. In so far as they were inconsistent with the provisions of the Act, apply to the proceedings of a Special Court and for the purposes of the said provisions a Special Court should be deemed to be a court of sessions. In view of the clear and express provisions of Section 10 of the Amending Act of 1982, the provisions of the said sub-section 5(3) of the Act as quoted earlier, could not be invoked in favour of the accused petitioner; and the Special Court, in view of the provisions of Section 304 of the Code of Criminal Procedure, could not appoint a lawyer at the costs of the State for the defence of the accused. We are therefore satisfied that the lower Court rightly refused the prayer of the accused petitioner.

4. One further point should not be missed. The point we are referring to is that the sub-section 5(3) of the Amendment Act as quoted above refers to the proceedings of a Special Court, such provisions may not be applied to the cases pending before the Special Court on the writ a sessions court applies them. We mean to say that the Special Court, according to the provisions of the Act as amended, shall follow the procedure as laid down in Chapter XVIII of the Code of Criminal Procedure relating to the trial before a court of sessions in so far as they are applicable to a case before the Special Court. Section 304 of the Code, on which Mr. Dey, learned Advocate relies on, does not occur in Chapter XVIII of the Code A Section 304 of the Code occurs In Chapter XXIV of the Code under the heading "General Provisions" as to Enquiries and Trials. So, there is no scope for invoking Section 304 of the Code in proceedings before a Court of Session.

5. For reasons given above, we are satisfied that the petition under consideration should be dismissed with answer to the question raised at the outset In the negative.

6. Accordingly, the petition is dismissed on contest.

All interim orders are vacated. Let the records go down immediately.

Gobinda Chandra Chatterjee, J.

I agree.