
(1953) 02 GAU CK 0009
In the Gauhati High Court

Nalini Kumar Dey and Another

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 03-02-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 200, 438

Citation : AIR 1953 Guw 4 : (1953) CriLJ 1490

Hon'ble Judges : Lakshmi Narain, J.C.

Bench : Single Bench

Judgement

Lakshmi Narain, J.C.

1. One Ali Asgar, a Forest guard produced two accused who are the present petitioners Nalini Kumar Dey and Nani Gopal Dey on 16.1.52 along with a report in writing before the Magistrate 1st Class, Belonia alleging that they were caught by him in the act of transporting 2 Bhars of paddy across the river towards Pakistan. On this a case u/s 3 of the Tripura Rice and Paddy Embargo Order 1949 was registered. The Magistrate proceeded with the case without examining the complainant on oath on the assumption that it was not required as the complainant was a public servant. The objection raised by the defence counsel that the complaint could not be proceeded with without examination of the complainant on oath who was not a Forest Officer and a public servant and as such could not be exempted from the examination as required by Section 200(aa), Cr.P.C. was also negated by the learned Magistrate on 21.3.52, holding "that the cognisance of the case has been regularly taken and the proceedings will continue." Against this order the two accused made a motion to the learned Sessions Judge by way of a revision petition who has recommended the case u/s 438, Cr.P.C. to this Court for setting aside the above order of the trial Magistrate and order that the complaint should be proceeded with after examination on oath of the complainant.

2. The proviso of Sub-section (aa) of Section 200, Cr.P.C. only relieves the Magistrate from the necessity of examination of complainant on oath in any case

in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties. In the present case, the complaint is made by a Forest Guard who may be a public servant but not while acting or purporting to act in the discharge of his official duties. He was only returning after his circuit duty on Balamukhi road when he saw the two accused petitioners at about 10 A. M. transporting 2 Bhars of paddy across the river towards-Pakistan whereon they were caught and brought before the Magistrate with the seized paddy. It was none of the official duties of the Forest Guard to look after any contravention of the provisions of the Tripura Rice and Paddy Embargo Order 1949 and to detect commission of any offence -thereunder. The report, therefore, made by him to the Magistrate cannot be deemed to be a complaint by a public servant acting or purporting to act in the discharge of official duties and as such, the learned Magistrate after taking cognisance of the offence, ought to have at once examined him on oath as a complainant as required by Section 200 of the Code.

3. Although omission to examine a complainant on oath can be taken as an irregularity and may not invalidate conviction in absence of any prejudice, as ordinarily the person prejudiced by such omission is the complainant and not the accused, still the procedure of the section ought to be strictly complied with which is a valuable safeguard and must be scrupulously observed. *Baldewa Vs. Emperor* and- *In Re: Ramjas Marwari*, relied on. In the present case objection was taken by the accused at an early stage. Action, therefore, should have been taken to set right the defect and to proceed with the case after the examination of the complainant. The attention of the Magistrate should also be drawn that there should be no disregard of the primary procedure in the Code which lends to so much waste of time of the higher Court and at the same time harassment of the parties.

4. The recommendation made in this reference by the learned Sessions Judge is accepted and it is ordered that the Magistrate should proceed with the case after the examination of the complainant as required by Section 200 of the Code.