(1975) 07 CAL CK 0041

In the Calcutta High Court

Case No : Criminal Revision Cases No''s. 616 and 838 of 1970

Panchanan Pal, Dr. APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 03-07-1975

Acts Referred:

Companies Act, 1956 — Section 617
Criminal Procedure Code, 1973 (CrPC) — Section 173, 207A, 439, 561A
Evidence Act, 1872 — Section 47
Insurance Act, 1938 — Section 45
Life Insurance Corporation Act, 1956 — Section 43
Penal Code, 1860 (IPC) — Section 120A, 120B, 21, 34, 420
Prevention of Corruption Act, 1988 — Section 6
West Bengal Criminal Law Amendment (Special Courts) Act, 1949 — Section 2, 4

Citation : (1976) 1 ILR (Cal) 435

Hon'ble Judges : K.J. Sen Gupta, J

Bench : Single Bench

Advocate : N.C. Banerjee and Chaitan Dutt, for the Appellant;P. Burman, Prasun Chandra Ghosh, Somendra Chandra Bose, D.P. Chowdhury and R.N. Chakraborty, for the Respondent

Judgement

K.J. Sen Gupta, J.—In both the rules the order dated June 17, 1970, passed by Sri S.S. Ganguly, Judge, Special Court, Hooghly, framing charges against the Petitioners in Special Court Case No. 1 of 1966 has been challenged. In Revision case No. 616 of 1970 one Dr. Panchanan Pal and his son Ranjit (Kumar Pal are the Petitioners. In Criminal Revision No. 838 of 1970 Dr. Uma Charan Kumar and one Bholanath Mukherjee are the Petitioners.

2. The background of the case out of which these two cases have arisen may, in short, be stated like this:

One Hrishikesh Ghosh, maternal uncle of the accused Panchanan Pal, got one policy No. 9062763 from the Life Insurance Corporation of India for the sum of Rs. 8,000, the said policy commenced from October 15, 1957. The Petitioner

Bholanath Mukherjee was the agent whose code No. is 551441 in the register of the said Corporation. Dr. Uma Charan Kumar was the medical officer who was to submit his report as to the personal statement of the insured. The proposal form thereafter consisting of personal statement, confidential report of the medical officer was sent to the Divisional Office of the Corporation through the medical examiner, i.e. Dr. Uma Charan Kumar. The verification of the age was to be made by reference to policy No. 746287 for Rs. 35,000 issued in 1956 by the National Insurance Company, one of the units of the Life Insurance Corporation on the life of Hrishikesh Ghosh.

3. The prosecution case is that Hrishikesh Ghosh was an asthmatic patient and that he was aged about 62 when the policy No. 9062763 for the sum of Rs. 8,000 was proposed to be made; moreover, he was a man practically of no substance; there was a conspiracy between the Petitioners of both the revision cases as well as with one Joydeb Pal, another son of Dr. Panchanan Pal, for cheating the Life Insurance Corporation of India for the sum of Rs. 8,000; in furtherance of that conspiracy, Hrishikesh Ghosh, the insured, was taken to the house of Dr. Panchanan Pal on the plea of his treatment; he caused the said policy to be assigned to the name of his two sons. The prosecution case, further, is that Hrishikesh Ghosh died on October 18, 1959, the conspirators thereafter wanted to get the money covered by the said policy; the conspiracy of all those Petitioners and joydeb Pal was detected and information, was lodged with the Police.

4. On completion of investigation the case was allotted to the Special Court, Hooghly. Dr. Panchanan Pal and Ranjit Kumar Pal raised a plea before the Special Court challenging the validity of the allotment made by the Government for trial of the case in the said Special Court. The Judge, Special Court, by his order dated November 24, 1966, turned down the said contention of the Petitioners. Against the said order Criminal Revision case No. 1340 of 1966 was preferred by them. It was contended on their behalf that neither of them was public servant nor agent dealing with the property belonging to the Government purporting to act as such public servant or agent. The said matter came up for hearing before Amaresh Roy and S.K. Chakraborty JJ. Their Lordships held that the offence alleged in that case was the offence in respect of property belonging to the Government and the conspiracy alleged being a conspiracy with the person who dealt with assets and liabilities concerning those properties, as such, it came within Clause (3) and (8) of Schedule in Act XXI of 1949 for the purpose of being tried by a Special Court under that Act. On the said finding their Lordships held that the allotment of the case by the State Government to be tried by Special Court was legally made. On the said finding that rule was discharged. Thereafter, the Special Judge examined 33 witnesses and framed the impugned charge.

5. The above charge shows that all the accused persons are called upon to answer the charges under Sections 120B/420 of the Indian Penal Code on the allegation that they entered into a criminal conspiracy during the period between

December 12, 1955 and March 1, 1960 and the accused Dr. Panchanan Pal and Ranjit Kumar Pal have further been charged under Sections 420/511/34 of the Indian Penal Code. Joydeb Pal has been shown as an absconding accused in the charges so framed.

6. After the above charge was framed Dr. Panchanan Pal and Ranjit Kumar Pal filed the Criminal Revision case No. 616 and the other two accused Dr. Uma Charan Kumar and Bholanath Mukherjee preferred Criminal Revision case No. 838 of 1970. As both the cases arise out of the same facts and same questions of law are involved in both of them, they are being considered in one judgment. It may, however, be noted that in addition to the points raised by Mr. Banerjee in Revision case No. 616 of 1970, Mr. Balai Roy, learned Advocate for the Petitioners in Revision case No. 838 of 1970, challenged the vires of the provisions of Section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 (W.B. XXI of 1949), hereinafter referred to as the Act. Mr. Roy, however, gave up that point at the time of hearing of these cases before us.

7. Mr. Banerjee, learned Advocate for the Petitioners in Revision case No. 616 of 1970 has attacked the order passed by the Special Court on June 17, 1970, framing charges under the two heads as indicated above on the following grounds; firstly, it has been -contended that none of the accused persons are public servants, as contemplated under Clause (12B) of Section 21 of the Indian Penal Code and accordingly, the allotment of the case for trial in the Special Court by the State Government is bad in law and in consequence, the trial of the case cannot be held in the said Special Court. The said contention of Mr. Banerjee is sought to be repelled by Mr. Burman, learned Advocate for the State. According to Mr. Burman, the accused Uma Charan (Kumar and Bholanath Mukherjee are public servants as contemplated u/s 21 of the Indian Penal Code. The Life Insurance Corporation Act, 1956 (XXXI of 1956) came into force on July 1, 1956. By Criminal Law Amendment Act (II of 1958) Clause (12) was added in Section 21 of the Indian Penal Code. It is as follows:

Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government company as defined in Section 617 of the Companies Act, 1956.

Explanation 4, attached to the said clause, runs as follows:

The expression ''corporation'' engaged in any trade or industry includes a banking, insurance or financial corporation, a river valley corporation for supplying power, light or water to the public.

8. The position and the functions which are to be performed by Mr. Uma Charan Kumar and Bholanath Mukherjee come within the definition of public officer in Clause (12) read with the explanation as given thereunder. The F.I.R. was lodged with Bhadreswar P.S. on September 2, 1960. It is further argued that when the case was started they were public servants as contemplated under the

Amendment Act II of 1958. With regard to the definition of public servant further amendment has been made by the Anti-Corruption Laws (Amendment) Act, 1964 (XL of 1964). The said definition also covers the persons like Dr. Kumar and Mukherjee within the category of public servant. The relevant provision of the said Act may be quoted here:

Section 2(iv)--for clause twelfth, the following clause shall be substituted, namely:

Twelfth--Every person--

(a) in the service or pay of the Government or remunerated by fees or commissions for the performance of any public duty by the Government.

(b) in the service or pay of a local authority or a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (I of 1956).

Dr. Kumar and Mukherjee, as disclosed in evidence, prima jade, show that they were engaged in doing some service of the Life Insurance Corporation, as such, they should be deemed as public servants.

9. As against this contention Mr. Roy submits that none of the accused persons can be said to be a public servant as defined in Section 21 of the Indian Penal Code at the relevant time. As such, the offence is not triable by the Special Court. His further contention is that the Life Insurance Corporation of India was a statutory body or a corporation having nothing to do with Government property and as such, at the relevant time, none of the accused can be said to be agent of the Government; that the money with which the Corporation was started though granted by the Government became its property and after its formation it became an independent body having nothing to do with the Government. Accordingly, at the relevant time when the offence is alleged to have been committed by Dr. Kumar and Bholanath Mukherjee, it could not be said that they were dealing with the property of the Government; the position of Dr. Kumar and Mukherjee was never that of an agent to deal with the property belonging to the Government, even if the Life Insurance Corporation can be said to be a part and parcel of the Government. Their duty was of special nature. Bholanath Mukherjee''s duty was to procure persons to be insured in lieu of commission. Dr. Kumar''s duty was to examine and give necessary certificates in lieu of his fees. The conditions of their service do not indicate that they ever worked as agents of the Government. On that submission Mr. Roy has contended that the judgment of Amaresh Roy and S.K. Chakraborty JJ. passed in Criminal Revision case No. 1340 of 1966 will not go against the accused whom he is representing. Moreover, that was a revision case started not by his client but by other accused and as such, the said judgment has got no binding effect on them.

10. To understand the first point raised by Mr. Roy the following facts are to be considered:

The date of the policy in question is September 20, 1957. It was accepted on October 15, 1957 and the said policy was assigned on January 28, 1958. The insured Hrishikesh Ghosh died on October 20, 1959, the Criminal Law Amendment Act II of 1958 came into operation on February 27, 1958. From the above facts, Mr. Roy contends that the conspiracy, if any, must have been made at a time prior to the date of the proposal, i.e. September 20, 1957, when the Criminal Law Amendment Act II of 1958 did not exist. Accordingly, none of the accused persons being in the service or pay of a local authority or of a corporation engaged in any trade or industry, can be said to be public servant at that point of time.

11. Mr. Prasun Ghosh, learned Advocate, who appears on behalf of the State in Revision case No. 838 of 1970 tried to repel the said argument of Mr. Roy, firstly, contending that the amendment made in Act II of 1958 was the an amendment on the procedural law and as such, it being not an amendment on the substantive 5 right of a person it has got the retrospective effect and as such, Dr. Kumar and Mukherjee should be considered to be public servants even from the time when the offence was alleged to have been committed. Secondly, it has been argued that the accused persons during the period, December 22, 1955 and March 1, 1960, entered into the criminal conspiracy to commit an offence, i.e. cheating the Life Insurance Corporation of India by proposing, submitting agent''s report, medically passing and causing a life insurance policy to be issued on the life of one Hrishikesh Ghosh since deceased aged about 62 years or more by falsely showing him as a man aged 42 years only and also by suppressing the fact that the proponent was suffering from asthma and thereafter, attempting to cheat the Life Insurance Corporation of a sum of Rs. 8,000 being the amount covered by that policy by means of forged assignment of the same in favour of accused No. 4 Ranjit Kumar Pal and Joydeb Pal, absconding, both sons of the accused No. 3 and by submitting the notice of claim. On the said allegation all the accused persons were charged under Sections 120B/420 of the Indian Penal Code. Our attention has been drawn to the definition of criminal conspiracy as laid down in Section 120A of the Indian Penal Code. One of the ingredients of the said Section is that there should be an agreement between the persons who are alleged to have conspired and the agreement should be for committing an illegal act. In the instant case, the charge as framed would show that the main object of that conspiracy was to cheat the Life Insurance Corporation of India of a sum of Rs. 8,000 and the overt act of the said conspiracy was the submission of notice of claim. According to Mr. Ghosh, the preference of the claim is a distinct offence and that is a part of a single integrated conspiracy started with an agreement with those accused persons to procure a policy of insurance in the name of the insured by giving false certificate as to the health and in other respects and that the same continued until it culminated into overt act by submission of the claim after assignment. Mr. Ghosh has drawn our attention to the fact that the Criminal Law Amendment Act II of 1958 came into operation on February 27, 1958, but the attempt to cheat the Life Insurance Corporation by

filing a claim on December 1, 1959, being a part of the conspiracy, was done after the said Amendment Act came into operation. In this view of the matter it has been submitted that whether the said Amendment Act has got the retrospective effect or not, part of the offence having been committed during the continuation of the conspiracy and after the Amendment Act came into force, the said offence must have been committed by Dr. Kumar and Mukherjee as public servants and accordingly, the Special Court has got the jurisdiction to take cognizance to proceed with the same.

12. Let us now consider whether the first point raised by Mr. Roy that the provision of the Amendment Act, 1958, has got no retrospective effect. In support of the said contention his submission is that by the amendment of a particular Section, the vested right of a person cannot be taken away particularly when it affects the substantive right of a person by applying the said amendment retrospectively. In support of the said contention, reference has been made to the case of Sardar and Others Vs. The State, wherein their Lordships Mukherjee and Bhattacharya JJ.) held that where the rights and procedure are dealt with together, the old rights are to be determined by the old procedure and the new rights under the substituted Section are to be dealt with the new procedure. The said point was considered in a peculiar circumstance of the case involved therein. A part of the investigation was started not under the Code of Criminal Procedure but under the provisions of the Calcutta Police Act, but when the charge-sheet was submitted, the investigating officers were vested with the power by the amending notification to investigate under the provisions of the Code of Criminal Procedure and therefore, they claimed that the report was u/s 173 which would attract the operation of Section 207A of the Code. The question raised therein was whether the amending notification had retrospective effect. In dealing with the said matter their Lordships observed:

Statutes are ordinarily prospective in their operation. It is an accepted rule of construction that no statute is to be construed as having retrospective operation unless such a construction appears to be clearly indicated by the terms of the statute itself or unless such interpretation is suggested by necessary implication.

In this context our attention has been drawn to some portion of Maxwell on the Interpretation of Statutes (16th ed., p. 225). Maxwell says:

The presumption against the retrospective construction has no application to enactments which affect only the procedure and practice of the Courts, even where the alteration which the statute makes has been disadvantageous to one of the parties...no person has a vested right in any course of procedure, he has only right of prosecution or defence in the manner prescribed for the time being by or for the Court in which he sues and if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode.

13. The question arises whether the Amendment Act of 1958 making changes in

the definition of ''Public Servant'' affects the status of a person or it merely lays down the changes in the procedure. Our attention has also been drawn to the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, wherein their Lordships held that a vested right of appeal can be taken away only by subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise, the right of appeal is a vested right and as such, the appeal is not a mere matter of procedure but is a substantive right. We are, however, of the view that the facts of that case and the decision arrived at on the said fact do not apply in the instant case. In this connection, our attention has been drawn to certain observations of his Lordship Mr. Talukdar in the case of Kanailal Ghosal and Others Vs. Ena Dutta, . His Lordship observed as follows:

As to the retrospective operation of statutes, it has been observed in Maxwell''s The Interpretation of Statutes (12th ed.) that upon the presumption that the Legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation.

The underlying principle is based on the well-known maxim ''Nova Constitution futures forman imponere debet non praetrtis'' (a new law ought to affect the future and not past). His Lordship further referred to the well-known observations of Lord Wright in Re Athlumnay : Ex parte Wilson (1998) 2 Q.B. 547 (551, 552) that--

Perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment.

A statute, therefore, cannot be construed to have a greater retrospective operation that its language renders necessary. It is a fundamental rule that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication.

14. Keeping that principle in view, we are to consider whether the amendment in the 12th clause of the definition of public servant in Section 21 of the Indian Penal Code should be construed to have a retrospective operation. The plain reading of the said Section does not show that the said provision would be applied retrospectively. The question raised, therefore is whether it is covered by procedural law or it is a substantive right of a particular person. The definition of public servant has got the far-reaching consequences in the matter of a trial for certain offences. We are of the view that, if the person alleged to have committed a certain offence, does not come in the category of the public servant as defined in the 12th clause of Section 21 of the Indian Penal Code at the time of the commission of the offence, he cannot be convicted as such when his status is changed by the amendment of the said clause after the commission of the said

offence. In the result, the first part of the argument of Mr. Roy prevails, but in spite of that we are of the view that the charge as framed against the accused persons cannot be quashed for the reasons that the facts as alleged tend to show that the offence is one single integrated conspiracy which continued from its start to the completion of the same by cheating the Life Insurance Corporation of the sum of Rs. 8,000.

As already noted, when the claim was preferred, that being a part of the conspiracy and that being a part of the overt act to translate the act of conspiracy into action it became a part of the offence of the conspiracy and accordingly, when the said part was played by Dr. Kumar and Mukherjee or by any one of the conspirators, they did the same as public servant as defined in Clause (12) of Section 21 of the Indian Penal Code. Accordingly, whether the said amendment has got retrospective effect or not, the accused came within the definition of the said amendment when the overt act for cheating the Life Insurance Corporation of India by preferring the claim was made. In this connection, we may over again refer to the provisions of Section 120A of the Indian Penal Code. In the case of Mohd. Husain Umar Kochra etc. Vs. K.S. Dalipsinghji and Another etc., the question of conspiracy constituted by a single general conspiracy has elaborately been dealt with by the Supreme Court. It has been held therein:

Criminal conspiracy, as defined in Section 120A, is an agreement by two or more persons to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.

On the materials it is seen that the claim application was filed after the amendment of Section 21 and that Dr. Kumar has certain part to play. For the reasons we are of the view that the case has rightly been allotted to the Special Court for being tried under the provisions of the West Bengal Act XXI of 1949.

15. Mr. Roy has seriously challenged the correctness of the decision made in Criminal Revision case No. 1340 of 1956. The said decision proceeded on the basis that some of the accused persons dealt with the property belonging to the Government as an agent of the Government while purporting to act as such public servant or agent. It has been contended that none of the ingredients as required to establish an offence under Clause (3) of the Schedule attached to Act XXI of 1949 was in existence at the time when the conspiracy was alleged to have been entered into. That is the decision of Division Bench of this Court. The correctness of that decision cannot be challenged in this proceeding. Mr. Banerjee submits that the correctness of the said decision can be challenged by

the accused again in this revision, as, according to Mr. Banerjee, the theory of res judicata or issue estoppel is not attracted in such cases.

16. Mr. Burman contends that the question as to the validity of the allotment of the case in the Court of Special Judge by the State Government cannot be re-agitated after the decision in Criminal Revision case No. 1340 of 1966. In the said case, Dr. Panchanan Pal and Ranjit Kumar Pal were the Petitioners. They alleged that as they were not public servants and as they did not deal with the property belonging to the Government purporting to act as public servants or agents, the allotment of the said case under the provisions of the Act in the Special Court cannot be said to be in accordance with law. The said contention was turned down by Amaresh Roy and S.K. Chakraborty JJ. While deciding the case their Lordships held that the facts as disclosed in the instant case are with regard to an offence in respect of property belonging to the Government and the conspiracy alleged being a conspiracy with persons who dealt with the assets and liabilities concerning those properties, came within the relevant clauses of the Schedule appended under the Act, Mr. Banerjee urged on behalf of the Petitioners that in such a case the question of res judicata or issue estoppel cannot arise and particularly against the accused. Accordingly, after the framing of the charge, while the same is being attached the Petitioners have got the right to challenge the same even on self-same ground as to the validity of allotment of the case in the Special Court. The said contention of Mr. Banerjee is not acceptable to us. The judgment in the earlier Division Bench of the High Court is binding in the subsequent proceeding of the same case. In this connection reference may be made to the decision in the case of Bhagat Ram Vs. State of Rajasthan, . In the fact of that case their Lordships held that the principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings or in some other subsequent proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. Mr. Banerjee''s contention in that respect is that though the theory of res judicata can be extended to the criminal proceedings, it must be confined for consideration in favour of the accused. Mr. Burman also referred to the above mentioned decision in support of the applicability of the theory of res judicata in a criminal proceeding. In that case an accused though acquitted on certain charges by Division Bench of the High Court was sought to be convicted on those charges again when the case against him was referred to the Third Judge. In the facts of that case the accused got the advantage of that theory of res judicata. From the above decision it has been contended by Mr. Banerjee that the theory of res judicata, if apply, must be applied in favour of the accused. But the said contention loses its force when we turn to the decision in the case of The State of Rajasthan Vs. Tarachand Jain, . The facts involved in that case stand pari pasu with the facts of this case. In the above mentioned case the Special Judge held that the Chief Minister had no authority to accord sanction and as such, cognizance of the case was taken by the Court wrongly and in consequence, proceedings were void. Against the said

order the State of Rajasthan went in revision and a Division Bench of the High Court set aside the said order and remanded the case for trial, holding that the sanction as accorded, was valid. Thereafter, the accused was convicted. Against the said order of conviction he preferred an appeal wherein their Lordships held that the order of conviction was bad as there was no proper sanction and the accused was acquitted. Against that order of acquittal an appeal was taken to the Supreme Court. Their Lordships held that the issue on the question of validity of the sanction was once decided by the High Court and as such, the said question could not be re-agitated. Their Lordships held that when the earlier Division Bench of the High Court in revision has accepted the position that the sanction u/s 6 of the Prevention of Corruption Act had, in fact, been accorded by the Chief Minister of the State and that he was competent to sanction for the prosecution of the accused and it remanded the case to the Special Judge for further hearing, the High Court in subsequent appeal against the order of conviction passed by the Special Judge after remand cannot enter into the question as to whether the sanction had been accorded by the Chief Minister; the judgment of the earlier Bench was binding on the High Court in disposing of the appeal. The finding of their Lordships was based on the theory of res judicata. The above facts clearly indicate that the said theory of res judicata can be applied even if it affects an accused. For the reasons stated, the contentions of Mr. Banerjee in that respect fail.

17. The next question arises whether the said findings of the Division Bench will also bind the Petitioners in the case No. 838 of 1970, in view of the fact that the Petitioners were not parties in the case wherein Amaresh Roy and S.K. Chakraborty JJ. held that the order of allotment was valid. Though these Petitioners were not parties in the proceedings before the High Court, the said judgment has got great effect on them as well, as the same finding was made in the same proceedings. Moreover, all these questions loses much of its force in view of our finding that those Petitioners were public servants at the relevant time. The cumulative effect of the discussion is that the instant case has rightly been allotted to the Special Court and that it has the jurisdiction to try the same.

18. Next, it has been urged that there had been a misjoinder of charges in this case. According to Mr. Banerjee, the offence of conspiracy, even if there was any, was completed as soon as the policy of insurance was issued in favour of Hrishikesh Ghosh and upto that stage there is no evidence to indicate even the complicity of Dr. Panchanan Pal and his two sons. In this background, it has been contended that the joinder of Dr. Panchanan Pal and his sons in these proceedings and particularly in the charge framed is bad in law. The said contention of Mr. Banerjee is also not acceptable to us. The charges as framed would indicate that there was a conspiracy, ultimate object of which was to cheat the Life Insurance Corporation of a sum of Rs. 8,000 by means of assignment of the said policy in favour of Ranjit Kumar Pal and his brother Joydeb Pal and by preferring claim in that respect. When the accused persons are charged with an offence of conspiracy and acts of cheating in pursuance of conspiracy, the charge

cannot be said to be bad and it is permissible for the prosecution to prove each act in order that from them the existence of conspiracy may be proved. In such a case, it is not incumbent to prove that every part of the same act of conspiracy must be done jointly by all the accused. If it is proved that one performing one part of the act and the other another part of the same act, as to complete it with a view to achieve the object which they were pursuing, the Court is at liberty to draw an inference that they conspired together to achieve that object. Such a question was raised in the case of Nitai Chandra Jana and Others Vs. Emperor, and found in the same line as found by us. As such, the said contention of Mr. Banerjee also is of no avail to the Petitioners.

19. It has further been contended by Mr. Banerjee that the allegation of the prosecution would indicate that Dr. Kumar and Bholanath Mukherjee became the agents of Hrishikesh Ghosh and they ceased to be the agents even if they were so of the Life Insurance Corporation of India and as such, they could not be said to have acted on behalf of the Life Insurance Corporation of India and in that view of the matter, they cannot be said to have acted as an agent of the said Corporation. In support of the said contention Mr. Banerjee has referred to the decision in the case of Mrs. Maniluxmi Patel and Anr. v. Hindustan Co-operative Insurance Society Ltd. and Anr. 66 C.W.N. 744. That was the judgment of S.P. Mitra J. (as he then was) delivered in the Original Civil Jurisdiction. The fact involved in that case is quite distinguishable from the facts involved in the instant case. In that case, on the death of the insured the heirs preferred claim which was not respected by the insurance company on the ground that the policy involved in that case was procured by committing fraud. An alternative argument was advanced by the Plaintiff in that case that the agent knew all the facts which the insured had to state and that no part of the statement was suppressed from him as such, the said knowledge on the part of the agent was to be construed to be the knowledge of the principal, i.e. the Insurance Society. The said contention was not accepted as his Lordship was of the view that the agent while filling in the proposal form was acting as an agent of the proposer and not of the company. As the agent was the party to the fraud, his knowledge even there was any as to the defects in the statements of the proposer, it should not be construed to be the knowledge of the principal. In that view of the matter, the claim of the heirs of the insured was dismissed.

The facts stated above would indicate that the question whether the agent''s knowledge should be construed to be the knowledge of principal arose in a different context and that too in a civil suit. In the instant case, however, a charge of conspiracy has been levelled against all the Petitioners. Accordingly, the decision of that case has got no application in the acts of this case.

20. It has next been contended on behalf of the Petitioners that provision of Section 45 of the Insurance Act (IV of 1938) is a bar against the prosecution of the accused persons. Section 45 of the said Act lays down that the policy once effected is not to be called in question on ground of misstatement after two

years. Mr. Banerjee has drawn our attention to the fact that long after two years of the issue of the policy to the insured these proceedings have been started; as such, the insurer was not competent to challenged the statements as made by the insured. The said rule is not inflexible. Under certain circumstances, the insurer can call in question the statement made by the insured. The said bar does not apply in case of a wrong statement, if made by the insured on a material matter or in case he suppressed certain facts which were material to disclose and that some statements, if fraudulently made by the policy-holder which facts were known to him at the time of making it, that the statements which he made were false or that what was suppressed was material to disclose. The provisions of Section 45 of the Insurance Act has also been made applicable by Section 43 of the Life Insurance Corporation Act, 1956. We have already discussed the provisions of Section 45 of the Insurance Act which clearly indicate that under certain circumstances the insurer can question the statements made by the insured in the proposal for insurance or in any report of the medical officer. The onus, of course, always lies on the insurer to prove the same. In the instant case, the question of fraud has been alleged and the charge of conspiracy has been levelled against all the accused persons; necessarily, therefore, subject to the conditions as laid down in Section 45 of the Insurance Act, the insurer can show that certain statements on material particulars were made with ulterior motive. In this view of the matter, the said contention of the Petitioners also has got no substance.

21. Lastly, it has strenuously been contended by Mr. Banerjee that as there was no legal evidence to indicate a prima facie case against any of the accused, the charge should be quashed. Our attention has been drawn to Section 561A of the Code of Criminal Procedure. It is in the following terms:

Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to-secure the ends of justice.

Mr. Banerjee''s contention is that in the instant case though the learned Special Judge has recorded evidence of 33 witnesses, there is no (sic) of evidence against any of the accused persons to implicate any of them with the charge in question. Accordingly, allowing the proceedings to proceed is merely to abuse the process of the Code and to secure the ends of justice, the Petitioner has the right to approach the High Court and the High Court under its inherent power u/s 561A of the Code should interfere with the proceedings and quash the charges as framed. This is the point which came for decision from time to time in the High Courts as well as in the Supreme Court. This matter has elaborately been dealt with by their Lordships in the case of R.P. Kapur Vs. The State of Punjab, . Their Lordships in that case have elaborately dealt with as to the scope of Section 561A of the Code of Criminal Procedure. Their Lordships observed that ordinarily criminal proceedings instituted against the accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at any interlocutory stage. Their Lordships were also of the view that it was not possible or desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. In that decision their Lordships indicated some of the cases where the inherent jurisdiction to quash proceedings could or should be exercised. Leaving aside two of such instances which are not material for our purpose, we refer to the third one on which Mr. Banerjee also relied. The same may be quoted here:

(iii) where the allegations made against the accused person do constitute an offence alleged, but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 561A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate and ordinarily it would not be open to any party to invoke the High Court''s inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

The said observation of their Lordships is comprehensive on the point at issue. We have gone through the evidence and we are satisfied that there is sufficient evidence to prove a prima facie case against the accused persons. It should be noted that this observation of ours is limited for the purpose of disposal of the points at issue in this case. The trying Magistrate will, however, see the evidence in details in order to see whether the order of the accused or any of them can be based on the evidence on record. The order framing the charges clearly indicated that the learned Magistrate framed them on the evidence so far recorded. Be that as it may, we have already indicated that the learned Magistrate cannot be said to have committed any error in framing the charges as the evidence before him was sufficient to raise the prima facie case against the accused persons.

22. Mr. Banerjee has drawn our attention to the fact that there was no evidence whatsoever to establish a connection of Dr. Kumar and Bholanath Mukherjee with any part of the crime in question; the proposal form could not be said to have contained any signature or writing of Dr. Kumar or Bholanath Mukherjee, the agent. From this it is submitted that there is no evidence whatsoever to prove a connection of Dr. Kumar or Bholanath Mukherjee with any part of the crime. Mr. Burman has drawn our attention to the evidence of the witnesses Nos. 32 and 33 examined on behalf of the prosecution in order to show that these witnesses had the occasion to come in contact with the writing and signature of Dr. Kumar and that of Bholanath Mukherjee in due course of their official business. That is also the evidence of those two witnesses. The explanation to Section 47 of the Indian

Evidence Act would clearly indicate that the evidence of this nature is admissible and the officers who proved those writings and the signatures were competent to do the same. For the reason stated, it cannot be said that there is no legal evidence as has been contended by Mr. Banerjee to involve the accused Dr. Kumar and Bholanath Mukherjee with any part of the crime. Prima facie there is legal evidence to show that one acted as a medical officer and another as the agent and in doing so they took part in recommending the proposal for the issue of the policy on the life of Hrishikesh Ghosh. It is too early to say what view the Magistrate will take regarding that evidence and particularly when other circumstances and materials are on record. Before we conclude we may also refer to one decision referred to Mr. Burman; that is a decision in the case of Almohan Das and Others Vs. State of West Bengal, . Their Lordships held:

Normally, the High Court in a revision application filed against the order of commitment u/s 207A will not enter upon a reappraisal of the evidence on which the order of commitment is made. The High Court would be justified in exercising its revisional jurisdiction where a substantial question of law arises on which the correctness of the order of commitment may be effectively challenged, where there is no evidence on which the order of commitment could be made, where there has been denial of a right to fair trial, where there is reason to think because of failure to comply with the rules of procedure or conditions precedent to initiation of criminal proceedings, whereby ignoring the substantive law which constitutes the offence or misconception of evidence on matters of importance grave injustice has resulted and on similar other grounds. But in other cases interference with the order of the Magistrate committing the accused for trial may not be justified and the trial before the Court of Session should be allowed to run its course.

Mr. Burman on the basis of the said decision argues that on the facts of this particular case there is enough material to show a prima facie case against the accused persons and that there is no substantial question of law on which the correctness of the order of framing of charge may be effectively challenged. Accordingly, the question of quashing the charges framed against them does not arise at all at this stage. Mr. Banerjee has also contended that these Petitioners have moved this High Court just after framing of charges against them. As such, the question of delay did not arise in the instant case. In support of the contention that at the earliest opportunity the parties should approach the High Court, our attention has been drawn to the case of Amar Chand Agarwalla Vs. Shanti Bose and Another, etc., . Their Lordships observed that in a case a party desires to invoke the inherent jurisdiction of the High Court should approach the High Court at the earliest opportunity, in case, however, there is proper case for the same. Their Lordships directed the Magistrate concerned to proceed with further trial. While dealing with that case their Lordships referred to the decision of R.P. Kapur v. State of Punjab Supra. We have exhaustively dealt with the said decision. From the facts and circumstances of the case, we are of the view that the decision in Amar Chand Agarwala v. Santi Bose and Anr. Supra does not help the Petitioners in any way.

23. For the reasons stated, the contention of the Petitioners that there is no legal evidence to indicate a prima facie case for the purpose of framing a charge also fails.

24. Lastly, it is to be seen whether there is any materials on record for quashing the charges framed against the Petitioners u/s 439, Code of Criminal Procedure. The jurisdiction under that section is normally to be exercised only in exceptional cases, when there is glaring defect in the procedure or there is a manifest error of the point of law and in consequence whereof there has been flagment miscarriage of justice. We are convinced that the materials on record do not disclose any ground for which we may exercise our jurisdiction u/s 439, Code of Criminal Procedure.

25. For the reasons stated, the prayer for quashing the charges framed against the Petitioners are refused and the rules in question are discharged.

M.N. Roy J.

26. I agree.

