
(1960) 12 CAL CK 0012
In the Calcutta High Court

Ranjit Kumar Maitra

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 19-12-1960

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1961) CriLJ 218 : (1961) 2 ILR (Cal) 764

Hon'ble Judges : S.K. Sen, J;K.C. Sen, J

Bench : Division Bench

Judgement

S.K. Sen, J.—The appellant Ranjit Kumar Maitra who was a laboratory technician of Kanchrapara T. B. Hospital has been convicted in respect of three counts u/s 420 I.P.C. and sentenced to suffer rigorous imprisonment for two years in respect of each count, the sentences being made to run concurrently.

2. The prosecution case is briefly as follows: As a laboratory technician of Kanchrapara T. B. Hospital it was the duty of the appellant Ranjit Kumar Maitra to purchase blood from the Blood Bank, Medical College, Calcutta for the use of patients of Kanchrapara T. B. Hospital for the purpose of transfusion, as advised by the medical attendant of the Hospital, and for this purpose the appellant used to go to Calcutta Medical College frequently. One Prativa Rani Chandra, wife of Kanai Lal Chandra, was a patient of the Kanchrapara T. B. Hospital and the medical attendant advised blood transfusion, and for this purpose about the middle of December, 1954, Kanai Lal Chandra paid Rs. 50/-to the appellant on his representation that the price of one bottle of about 300 c. c, of panel donors' blood obtained through the Blood Bank, Medical College, Calcutta was Rs. 50/-. Actually, however, it was found on enquiry after several months that Instead of obtaining panel doner's blood and paying Rs. 50/- for the same the appellant had obtained one bottle of stored blood from the Blood Bank, Medical College, Calcutta for Rs. 25/- only and had misappropriated the balance of Rs. 25/-, but he had fabricated a receipt purporting to have been granted by a panel donor for Rs. 50/- and given the same to Kanai Lal Chandra. On 9th December, 1954, from

Ram Nath Ojha who was a patient of Kanchrapara T. B. Hospital the appellant similarly took Rs. 50/- for obtaining one bottle of about 300 c. c. panel donors' blood from the Blood Bank, Calcutta Medical College Hospital. In that case also he obtained a bottle of stored blood at Rs. 25/- and misappropriated the balance of Rs. 25/-. In another case, namely, in the case of a patient named Tarak Nath Ghosh, about the first week of February, 1955, the appellant took Rs. 50/- for obtaining one bottle of panel donors' blood but obtained a bottle of stored blood for Rs. 25/- and misappropriated the balance. These cases and other cases of fraud on the part of the appellant Ranjit Kumar Maitra were detected when a new Superintendent of the Kanchrapara T, B. Hospital, namely, Dr. Nilmadhab Sinha took charge on 15th July, 1955. His attention was directed to the matter by some complaint made by the paying patients of the Hospital, and in the course of enquiry he detected these and other cases of fraud, and he sent a letter to the Deputy Commissioner of Police, Enforcement Branch at 9/1, Hungerford Street, Calcutta, on 1,8th October, 1955. The matter was then enquired into by a Sub-Inspector of Police Anti-corruption Department and thereafter an Inspector of Police, Anti-corruption Department, lodged a first information report on 8th December, 1956, with the Officer-in-charge, Chakdah P. S. in which three cases of the appellant having misappropriated Rs. 25/- out of Rs. 50/- given to him by three patients Were mentioned, namely, by Ghogoo Majhi, about the middle of December, 1954; by Ram Nath Ojha about the beginning of December, 1954; and by Kanai Lal Chandra, husband of Prativa Rani Chandra about the middle of December, 1954. After further enquiry, charge-sheet was submitted. It should be mentioned that the case was recorded as Case No. 13 of 8th December, 1956 of Chakdah P. S. After the charge-sheet had been submitted, the case being one triable by a Judge of the Special Court constituted under the West Bengal Criminal Law Amendment Special Courts Act, 1949, the Government of West Bengal by a notification No. 7204-J dated 25th October, 1957, allotted the case, namely, the Chakdah Police Case No. 13 of 8th December, 1956, to the Judge Nadia Special Court, Krishnagar. Thereafter the Public Prosecutor, Nadia, filed a complaint before the learned Judge, Special Court, Nadia, on 3rd December, 1957, and the learned Judge thereupon took cognizance and started the trial following the procedure for the trial of warrant cases instituted otherwise than on a Police report, as required by the provisions of the West Bengal Criminal Law Amendment Special Courts Act, 1949.

3. The accused took the defence that he used to bring blood from the Blood Bank, Calcutta, as a carrier and used to make over the blood to the Pathologist of the Kanchrapara T. B. Hospital and further returned all the surplus money, if any, with him, to the Pathologist of the Hospital together with the receipt for the money spent by him for purchase of blood; and that the receipt and the surplus money, if any, were sent through the peon book in due course to the patient concerned, and that he had nothing to do with the misappropriation of any surplus amount out of the money taken for purchase of blood from any of the patients. He further suggested that a false case had been started against him at

the instance of Dr. Nilmadhab Sinha, the new Superintendent of the Hospital because after he joined the Hospital there was a strike directed against him by a section of the paying patients in the Hospital, and Dr. Sinha suspected that the appellant was concerned in creating the trouble against him. "

4. The learned Judge of the Special. Court however, held that there was. no substance in the defence, and that the appellant had cheated the three persons, Kanai Lal Chandra, Ram Nath Ojha and Tarak Nath Ghosh in respect of Rs. 25/- each on the three separate occasions. The learned Judge therefore", convicted the appellant in respect of the three counts of. Section 420 I.P.C. and sentenced him to suffer rigorous imprisonment for two years under each count, the sentences being made to run concurrently.

5. Mr. Ajit Kumar Datta, appearing for the appellant, has urged firstly, that the cognizance of the case, was not taken in accordance with the law by the learned Judge of the Special Court, Nadia, and that therefore, the whole proceeding was bad. Section 5 of the Criminal Law Amendment Special Courts Act, 1949, provides that the Special Court may take cognizance of the scheduled offences without the accused being committed to his court for trial. Sub-section (2) of Section 5 provides that the Special Court shall be, deemed to be a Court of Sessions trying, cases without a Jury; but under Sub-section (1), the procedure he has to follow is the procedure for trial of warrant cases instituted otherwise: than on a Police report. As to the point how the Special Court may take cognizance, there are conflicting decisions of different Benches of the Court; the latest decision is that there should be a: complaint filed before the Special Court "after the case has been allotted to the Court by an order of the State Government. In the present case, accordingly, the Public Prosecutor, Nadia, filed a petition of complaint on 3rd December, 1957, after the case had been allotted by the notification of the Government D/- the 25th October, 1957. Therein the facts of the case against the appellant were not stated in detail. It was stated briefly that the appellant was a laboratory technician at the Kanchrapara T.B. Hospital and that in his capacity as a public servant he had committed an offence of cheating and also forgery, criminal misconduct, etc, in respect of purchasing blood for several T.B. patients from the Blood Bank at Calcutta. The details of the patients for whom the appellant had been deputed to purchase blood and in respect of whom the appellant committed cheating were not given in the petition of complaint; but the first information report and the charge-sheet were filed as annexures to the petition of complaint, and the details appear in them.

6. Mr. Datta has urged that as the details had to be obtained from the first information report and charge-sheet submitted by the Police, it might be said that the learned Judge practically took cognizance from the charge-sheet, and that according to the latest ruling of this Court the learned Judge could not take cognizance on a charge-sheet, and that, therefore, the cognizance was not legal. We must hold however, that the cognizance was | Dot taken on the charge-sheet. The cognizance was taken on the petition of complaint which was filed by the

Public Prosecutor, Nadia. It was open to the Public Prosecutor to detail all the facts in his petition of complaint, or to submit the first information report and the charge-sheet in which the details had already been written out as annexures to the petition of complaint. A complainant may indicate some of the facts of his complaint by way of annexures, and that does not invalidate the petition of complaint. We must, therefore, hold that cognizance was taken correctly on a petition of complaint and not on the first information report and that, therefore, there was no illegality.

7. Mr. Datta has pointed out that the order-sheet shows that the learned Judge on taking cognizance ordered that copies of the statements u/s 161 Cr. P.C. and other relevant papers should be supplied to the accused; the learned Judge was taking steps as for the trial of warrant case Started on a Police report, and from this it has been argued that the learned Judge practically took cognizance on the Police report. It is true that the learned Judge need not have ordered that the copies of the statements u/s 161 Cr. P.C. and other papers, if any, should be supplied to the accused. Section 5 of the Special Courts Act expressly provides that the procedure to be followed by the Special Court- shall be the procedure for the trial of warrant cases instituted otherwise than on Police report. Accordingly, the accused was not entitled to copies of the Police statements and of other documents. That was an extra privilege allowed by the learned Judge. This by itself does not bow that the learned Judge was taking cognizance on the police report or charge-sheet.

8. Mr. Datta has next urged that an offence u/s 420 I.P.C. is a scheduled offence under the Special Courts Act only when the offence is committed by a public servant while purporting to act as a public servant, and that in the present, case the appellant Ranjit Kumar Maitra when he took the monies from Kanai Lal Chandra, Ram, Nath Ojha and Tarak Nath Ghosh for obtaining, supply of blood from the Blood Bank, Calcutta Medical College, was not acting as a public servant, but was doing a private errand for them, because it was the duty of the private patients to obtain blood required by them for transfusion and it was not the duty of the laboratory technician to do so. It appears, however, from the evidence in the case that this was always treated as part of the duty of the appellant or the laboratory technician. In this-connection, reference may be made to the evidence of P. W. 6, Amulya Ranjan Dutta, the Pathologist of Kanchrapara T. B. Hospital, who stated that the accused who was a laboratory technician used to bring blood for the patients from the Blood Bank, Calcutta Medical College, and also used to carry samples of blood to Calcutta for W.R. examination and to bring reports, and that he used to take money from the paying patients for the purchase of blood, and doctors used to give requisition for the requisite blood. He further stated that the accused used to-draw travelling allowances for going to and coming from Calcutta in connection with the business of the Hospital; and some travelling allowance bills were proved in the case, being marked as Exts. 28, 29 and 30 showing that for going to the Medical College, Calcutta, from Kanchrapara. T.B. Hospital "and back again, on numerous

occasions the appellant drew travelling allowance from the Government by submitting travelling allowance bills. P. W. 7, Dr. Nilmadhab Sinha, Superintendent of the Kanchrapara T.B. Hospital also spoke on the point that as a laboratory technician it was part of the duty of the appellant to carry samples of blood to Calcutta for matching and then obtain blood from the Blood Bank for transfusion into the bodies of the patients, whether the patients were paying or non-paying. Mr. Dutta has pointed out that in all the three cases with which we are concerned, namely, Kanai Lal Chandra, Ram Nath Ojha and Tarak Nath Ghosh, there is evidence that these people paid the money direct to the accused; and Mr. Datta has urged that if it was done as part of his public duty as a Government servant, it would have been proper for the parties to deposit the money into the Treasury or into the account of the Hospital, and then to have the money drawn out by the Pathologist or the accused for purchase of the blood. Even more so, Mr. Datta has urged, these witnesses said that they had given Rs. 5/- to cover travelling expenses of the appellant on each of these occasions. Mr. Datta has urged that this extra money for expenses would not have been given by the parties if it was really the duty of the appellant to purchase blood for them. Now, it would appear that the money for the blood was paid direct to the appellant for the sake of convenience in order to avoid a lot of accounting. As regards the payment of Rs. 5/- on each occasion by the party to the appellant to cover the expenses, these payments were not really necessary when the appellant was drawing travelling allowance bills for his visit to Calcutta. There being a rule that the paying patients might obtain the blood direct, when they wanted to avail of the services of the laboratory technician, they paid him money for executing the particular jobs. This payment by itself does not indicate that the job was carried out as private commission agent by the appellant. According to the evidence of P. Ws. 8 and 7 already referred to, the appellant was officially permitted to go to Calcutta to obtain blood from the Blood Bank, Calcutta Medical College both for paying and non-paying patients, and used to draw travelling allowance for such visits. If in addition the paying patients paid a tip to the appellant for obtaining such blood, that does not indicate that the job fell outside the public duty of the appellant. We must, therefore, agree with the learned Judge in holding that in bringing the blood for the paying patients from the Blood Bank of the Calcutta Medical College, the accused was working in his capacity as a public servant and not as a private commission agent for the individual parties.

9. Next, it has been urged on behalf of the appellant that the case of Tarak Nath Ghosh was not allotted by the notification of the Government for trial to the learned Judge of the Special Court, Nadia, In the Notification of allotment, namely, 7204-J of the 25th October, 1957, reference was made only to the case u/s 420 I.P.C. and Section 5 of the Prevention of Corruption Act, namely, Chakdah P. S. Case No. 13 of 8th December, 1956. Now the first information report of that case, Ext.18, contains reference to the cases of Kanai Lal Chandra, Ram Nath Ojha and another person Ghogoo Majhi and not the case of

Tarak Nath Ghosh. The charge-sheet also describes the cases of three persons who are named in the first information-report, but not the case of Tarak Nath Ghosh. It appears that during the course of investigation, apart from the three cases mentioned in the first information report and charge-sheet, other cases where the appellant had similarly misappropriated the sum of Rs. 25/-, were found out. There was not only the case of Tarak Nath Ghose, but the evidence of P. Ws. 11 and 12? Khagendra Nath Ghosh and Keshab Ranjan Das, shows that when they were indoor patients at the Kanchrapara T.B. Hospital they also paid Rs. 50/- each as the cost of donors' blood to the laboratory technician and that the appellant did not give them any receipt. At the trial evidence was given as to the cases of Kanailal Chandra, Ramnath Ojha and Tarak Nath Ghosh, but "sufficient evidence as to the case of Ghagoo Majhi was not given. That appears to be the reason why the learned Judge framed charges relating to Kanai Lal Chandra, Ram Nath Ojha and Tarak Nath Ghosh. But the Jurisdiction of the Judge of the Special Court to try a case only arises on an allotment by the State Government, "Sirica the case of Tarak Nath Ghosh was not specifically allotted to the learned Judge, it must be held that he had no jurisdiction to try that case and, therefore, so far as that case is concerned, the proceeding must be deemed to be without jurisdiction and the appellant must be acquitted,

10. Mr. R.N. Chakrabarty, appearing for the State, has urged in this connection that even though the case of Tarak Nath Ghosh was not specifically allotted to the learned Judge of the Special Court, still u/s 4(1) proviso of the Special Courts Act, when trying the case a Special Court may also try any offence other than an offence specified in the schedule with which the accused may under the Criminal Procedure Code be charged at the same trial; and according to Mr. Chakrabarty, as three charges for similar offences could be framed at the same trial under the provisions of the Criminal Procedure Code, a charge could be framed in respect of the case of Tarak Nath Ghosh, even though that case was not specifically allotted, because that charge was framed along with the two other charges in respect of Kanai Lal Chandra and Ram Nath Ojha whose cases had been specifically allotted by the State Government. In our opinion, however, Section 4(1) proviso to the Special Court's Act does not justify the framing of a charge in respect of a scheduled offence committed on a different occasion, that is, an offence which was not a part of the same transaction as the offences specifically allotted for trial to the Special Court. The case of Tarak Nath Ghosh was included in the charges framed, not as a part of the same transaction but as a case of a third offence of a similar nature committed within a course of a year. Such a case could not be included for trial without specific allotment and, therefore, it must be held that the trial was without jurisdiction so far as the trial in respect of Tarak Nath Ghosh was concerned,

11. Mr. Datta has urged that since the trial was without jurisdiction in respect of charge relating to Tarak Nath Ghosh, the entire trial must be held to be without jurisdiction. We must reject this contention. The cases relating to Kanai Lal Chandra and Ram Nath Ojha were specifically allotted by the State Government,

and cognizance was taken in respect of them on the complaint of (the Public Prosecutor; so far as these cases are concerned there was no illegality at all in the matter of taking cognizance or in the matter of jurisdiction. The fact that after taking cognizance, a charge was framed subsequently in relation to the third case which had not been specifically allotted to the learned Judge, would not affect the jurisdiction of the learned Judge in respect of the specific cases which had been allotted to him and in respect of which he had taken cognizance.

12-13. Mr. Datta has finally urged on the merits that the charges u/s 420 I.P.C., were not made out in the two cases of Kanai Lal Chandra and Ram Nath Ojha. It appears, however, to us that there was sufficient evidence in respect of the two charges against the accused, After considering the evidence his Lordship concluded: It is clear, therefore, that the appellant forged false receipts for the purpose of defrauding the parties to the extent of Rs. 25/- on each occasion, and it must be held that the offence amounted to cheating because the representation was made, according to the witness, that, blood or panel donor's blood would be obtained for which Rs. 50/- would be required, but actually in order to substantiate that representation, receipts Purporting to be granted by panel donors were given to these parties but actually the panel donors were non-existent and the receipts were fabricated.

14. As regards the sentence, in view of the fact that the appellant appears to have been concerned in several such cases of cheating and he pursued a systematic course of fraud, we do not think that the sentence of two years" rigorous imprisonment in respect of each charge is excessive; the sentences, of course, were made concurrent by the learned Judge and they will remain concurrent. The conviction of the appellant, however, in respect of the third charge relating to Tarak Nath Ghosh must be set aside on the ground that the jurisdiction in respect of that case was wrongly assumed by the learned Judge,

15. Reference was also made briefly by Mr. Dutt relating to the admission of Dr. Sinha that there was a strike in the Kanchrapara T. B. Hospital by a section of the patients shortly after he joined; but Dr. Sinha denied that he suspected Ranjit Kumar Maitra to be connected with the strike or that the case was falsely engineered by him with the help of police officers. The receipts, exhibits V and VI, were not certainly engineered by the police but they were given by the appellant to the respective parties, Kanailal Chandra and Ramnath Ojha. Dr. Sinha might have taken an initiative in the detection of the fraud which he found being carried on in the hospital from before his time. That does not indicate that he had any personal bias against Ranjit Kumar Maitra, the appellant, or that he engineered anything against him.

16. Accordingly, this appeal is allowed in part So far as the third charge is concerned; the conviction of appellant, Ranjit Kumar Maitra, in respect of the third charge relating to Tarak Nath Ghosh and the sentence passed thereunder are set aside; but the conviction of the appellant in respect of the other two charges relating to Kanailal and Ramnath Ojha and the sentences passed there

under are affirmed. The sentences will be concurrent.

17. The appellant will now surrender and serve out the rest of his sentence.

K.C. Sen, J.

18. I agree.