
(1924) 12 CAL CK 0035
In the Calcutta High Court

Rash Behary Karury

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision : 02-12-1924

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 247

Citation : 87 Ind. Cas. 970

Hon'ble Judges : Mukerji, J; Babington Newbould, J

Bench : Division Bench

Judgement

Mukerji, J.

Revision No. 858 of 1924.

1. This Rule has been issued to show cause why the proceedings mentioned in the petition should not be quashed.

2. The proceedings against the petitioner are u/s 495A of Act III (B. C.) of 1892, as amended by the Calcutta Municipal Amendment Act of 1917. A study of the proceedings as they were had in the Court of the Municipal Magistrate of Calcutta is surprisingly interesting.

3. The proceedings were started on the complaint of Dr. S.N. Ghose, Special Food Inspector, filed on the 2nd December 1923. The records do not indicate what happened till the 1st February 1924, which is the date which the first summons issued against the petitioner bears. The summons was signed by the Magistrate on the 13th, February 1924 and evidently was served on the petitioner, on whose behalf, it appears, appearance was entered on the 23rd February 1924. The order passed on that date runs as follows: "Pleader appears and would contest. To 8th March 1924 for evidence." On 8th March 1924 the order passed by the Magistrate was this: "Kunja Bihari Das for accused present. Prosecution not ready. To 15th March 1924 for evidence." On the last mentioned date the complainant was examined and partly cross-examined and then the case was adjourned with the following order: "For further cross-examination of the Food

Inspector (meaning the complainant) when certain documents called for by the defence are produced by the prosecution. To March 29th 1924." It appears that on the application of the defence a summons was issued to the Chairman, Corporation of Calcutta, for producing certain reports and correspondence. On March 29th 1924 the order recorded was in these words: "Papers wanted from Chairman not forthcoming. To 12th April 1924."

4. On the 12th April 1924 what happened is stated by the petitioner to be this, that the complainant was unwilling to proceed with the case on certain legal grounds. This is what the petitioner stated in a petition which he subsequently filed in the Court of the Magistrate and this again is what he has repeated in his petition to this Court. The learned Magistrate, however, in the explanation which he has submitted in answer to the Rule says that the prosecutor was unwilling to proceed with the case for the time being, as powers had not up to that time been delegated under the new Act. It did not mean that he wanted to abandon the case." I fully accept the statement of the learned Magistrate as to what transpired in his Court and I hold that nothing happened on that day which may be construed as, evincing a desire on the part of the pro-; section to drop or discontinue the proceedings. On this the learned Magistrate recorded an order in these words: "Accused's agent Kunja Bihari Das present, but the prosecution is unwilling to proceed with the case on legal grounds as no power under the new Act has been delegated yet to the officers. Proceedings stayed for two months." There is a controversy as to whether the complainant was present in Court on that day, it being alleged on behalf of the petitioner that he was not, and on behalf of the prosecution that he was. The matter is of no consequence, for the learned Magistrate thought fit to adjourn the case as he was perfectly entitled to do even in the absence of the complainant.

5. The order of the 12th April 1924 then, was a good and proper order adjourning the case for 2 months. The next order that is to be found on the record is an order dated 21st June 1924 a date more than 2 months after the 12th April. 1924s which runs in these words: "Proceedings revived. Summon accused for 5th July 1924." This order appears to have been passed on an application on a printed form which was worded thus: ""The prosecution " prays that Case No. 6895-B in which proceedings were stayed in this Court on the 12th April 1924 may be revived." The 12th of June was a holiday. This application was not filed on the 13th June 1924, the period of 2 months having expired on the 11th, but was filed on the 14th June 1924 and dealt with by the Magistrate on the 21st June 1924. On the 14th June 1924 the application being presented before the Magistrate he ordered the record to be put upon the 21st and on that date passed the order aforesaid..

6. The procedure that obtains in the trial of these cases, I take it, is regulated by the Cr. P.C. An application or order for revival can only be made on the supposition that the case was over and not pending, and it is difficult to imagine how a case which is pending may be revived. The period for which the

adjournment was granted having expired it: was the duty of the Court to take the case up and pass some orders on it. On the 13th June 1924 the complainant was admittedly absent. The course left open to the Court was to proceed u/s 247, Cr. P.C., unless it chose to act u/s 344, Cr. P.C. If it acted u/s 344, Cr. P.C., it could for a reasonable cause adjourn the trial if it thought fit to do so, by making an order in writing and stating the reasons for the order. Admittedly it did not do so. The only other section under which the Court could act is Section 247, Cr. P.C. That section lays down that if the summons has been issued on complaint (as it was in the present case) and upon a day to which the hearing may be adjourned (which in the present case was the 12th June 1924 and the Court being closed on that day it was the 13th June 1924) the complainant does not appear (as he did not in the present case) the Magistrate shall acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some, other day (which he did not in the present case). The proviso to the section need not be considered as admittedly the learned Magistrate did not proceed with the Case. If the Court had taken the case up and did not think fit to adjourn the case it would have been bound to acquit the accused under the law. The question is what is the legal consequence of the case not having been taken up on that day at all.

7. At one time I was inclined to take the view that as the law secures to the accused an indefeasible right to an order of acquittal the provisions of Section 247, Cr. P.C., being mandatory unless an order of adjournment is made, that right could not be defeated by the omission on the part of the Court to take the case up and pass an order. On a mature consideration, however, I have come to the conclusion that that view is not correct. The right to an order of acquittal accrues to the accused upon two conditions, and is dependent, firstly on the absence of the complainant and secondly on the Court not adjourning the case. If a case is not taken up at all, it cannot be said that the second condition is fulfilled, for there is no knowing in what way the Court's discretion would have been exercised if it had been taken up. To adopt the other view would result in unnecessary harshness to the complainant and undue leniency to the accused, which would be apparent if we take an extreme case like this, namely, where the Court is not sitting owing to, illness or other engagements of the presiding officer and the complainant absents himself, believing that no useful purpose would be served by his appearance. I am, therefore, of opinion that on the failure of the complainant to appear on the 13th June 1924, and on the omission of the Magistrate to take the case up, the petitioner" was not entitled to an order of acquittal. This view has been taken by my learned brother Suhrawardy, J., in the case of *Sher Mull v. The Corporation of Calcutta* 77 Ind. Cas. 892 : AIR(1923) (C.) 725 : 25 Cri. L.J. 492.

8. In that case this Court while finding no illegality which would justify its interference expressed its strong disapproval of the procedure followed by the Magistrate, and pointedly drew his attention to the provisions of Section 344, Cr. P.C. The printed form of application for revival such as has been used in the

present case was also used in that case, and in spite of the condemnation it received, the procedure seems, to have been more established than before. No notice appears to have been taken of the observations contained in the judgment in that case, and on the other hand it has been cited in the explanation submitted in the. present case, as an authority warranting the procedure. This disregard, in my opinion, is nothing less than contumacious.

9. In the case of *Sher Mall v. The Corporation of Calcutta* 77 Ind. Cas. 892 : AIR (1923) (C.) 725 : 25 Cri. L.J. 492 the statement of the Magistrate u/s 441, Cr. P.C., showed that the Corporation had instituted a large number of prosecutions for adulteration of ghee, and as the cases are usually strongly contested, and as the evidence in the majority of cases is more or less similar it is inconvenient for the Corporation and the accused as also for the Court for the cases to go on aft one and the same time, and consequently some of the cases, including the said case, had been stayed consistently with a procedure prevailing in the Court for the last 20 years. This Court pointed out that the procedure adopted could not be justified even by 20 years" prevalence,, but it is of opinion that the convenience of parties would have been sufficient for adjourning the case and the circumstances of the. case would have rendered remands for lengthy periods reasonable.

10. So far as the present case is concerned no question of convenience of the accused" or of the Court appears to have arisen. The prosecutor did not appear on the 13th June 1924. Even after the revival the prosecution again took time twice, once on the 2nd and again on the 23rd August 1924 the grounds for which do not appear on the order-sheet or any where on the record. To my mind it is clear that the prosecution has, in the present case, been cherishing an idea that it is at the sweet will of the prosecution to go on with a case or get it adjourned, and the orders of the Court have tended to foster that idea. It must be remembered that the case had been partly gone into and then stood adjourned, for further examination of the complainant and for production of certain papers and also to enable the officers to have the necessary delegation of powers under the new Act. It may be presumed that the last mentioned defect was remedied before the application for revival was made. The offence for which the trial is to take place is now more than a year old, and the difficulty of an accused person to meet a charge in respect of an offence committed long ago is obvious.

11. If there is an impression any where that proceedings of this nature can be tolerated it is time that such impression should be removed. I am, therefore, of opinion that these proceedings should be quashed.

12. I would accordingly make the Rule absolute and quash the proceedings.

Revision No. 857, of 1924.

13. The facts of this case are similar to those of Revision Case No. 858 of 1924. The noticeable points of difference are these: on 8th December 1923 the case was adjourned to 15th December 1923 for defence. On 15th December 1923 the

case was adjourned with the following order: "Corporation is looking afresh into the matter,. Proceedings stayed for one month." The next order on the order sheet is dated 8th. March 1924 on which date the case was revived, and then it was adjourned to the 29th March 1924 on which date it was ordered to be tried with the other case and since then it shared in the vicissitudes of the latter.

14. The same order is passed in this case as in Rule No. 858 of 1924.

Newbould, J.

15. I agree.