
(1973) 03 CAL CK 0009
In the Calcutta High Court

Rukmani Debi Kashuka

APPELLANT

Vs

Jadu Nath Misra and Others

RESPONDENT

Date of Decision : 30-03-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 160

Citation : (1974) CriLJ 1139 : 77 CWN 570

Hon'ble Judges : Anil Kumar Sen, J

Bench : Single Bench

Judgement

Anil Kumar Sen, J.—This rule was issued on a writ petition. The petitioner is a woman who being served with a requisition dated June 4. 1970 by respondent No. 1 an Investigating Officer belonging to the Orissa Criminal Investigation Department for production of six items of documents at his office at Cuttack has taken out this Rule on the above writ petition disputing the legality and competency of such a requisition.

2. New General Trading and Transport Corporation carries on transport business. On November 30. 1969 this firm entrusted certain Aluminium Ingots to a Truck Driver namely Ram Singh for carrying those Ingots from Hirakud to the office of the Indian Aluminium Company at Belur. Entrustment was made at Hirakud. It is alleged that the said Driver along with the cleaner misappropriated those ingots and sold them off somewhere either at Howrah or at Calcutta. Unfortunately, two first information reports were lodged over the same incident on behalf of the Transport Corporation -- one at the Jorasanko Police Station at Calcutta and the other at Hirakud. In course of the investigation started at Calcutta certain aluminium ingots and certain documents were seized by the police over which certain proceedings were started before the Additional Chief Presidency Magistrate. A concurrent investigation was started at Hirakud and a dispute also arose whether the two investigations should be allowed to continue. Such dispute has since been dissolved by this Court by directing that the police should be given an option to continue with one of the investigations according to their own

decision and discretion.

3. In the meantime however the respondent No. 1 who is the investigating officers of Orissa in course of his investigation at Calcutta served the impugned notice u/s 160 of the Code of Criminal Procedure directing the petitioner to produce the six sets of documents at his office at Cuttack which according to him would be necessary for the purpose of investigation of the case started by the Hirakud Police Station. The petitioner in this writ petition is disputing the jurisdiction of the respondent No. 1 to issue such a requisition u/s 160 of the Code.

4. I have heard Mr. Dutt in support of this Rule. I have heard Mr. Mukherjee who is appearing for the respondent Nos. 1 and 2. I am grateful to Mr. S.M. Sanval whom I have heard *amicus curiae* as I had doubt as to the legality of the notice impugned in this Rule as also the authority of an Investigating Officer to issue such a requisition.

5. Having heard the learned Advocates I have come to the conclusion that the impugned notice and the requisition are without jurisdiction. First of all. it must be made clear that Section 160 of the Criminal P.C. merely authorises an Investigating Officer to enforce attendance of witnesses who can furnish relevant information regarding the case. This provision furnishes no authority for requisition of documents for which elaborate provisions have been made by the Code itself. Therefore, It is clear that the respondent No. 1 acted wholly beyond jurisdiction in requisitioning production of documents in colourable exercise of his powers u/s 160 but not taking recourse to the appropriate provision of the Code, on this ground alone this application is bound to succeed.

6. That apart some meaning has to be given to the limitation imposed by Section 160 when it says that the power under this provision can be exercised only in respect of persons being within the limits of the jurisdiction of the Investigating Officer or any adjoining station. Certainly this provision furnishes no authority for an Investigating Officer of Orissa to send a requisition to a person at Calcutta more so when the proviso to this section further enjoins that no woman shall be required to attend any place other than the place where she resides. Infringement of these statutory limitations in my opinion, does not only render the requisition illegal but with-out jurisdiction too.

7. For reasons aforesaid this application succeeds and the Rule is made absolute.

8. Let a writ of certiorari issue quashing impugned requisition made Annexure "B" dated 4-6-1970 issued by Jadunath Misra Sub-Inspector, C.I.D. C. B. Orissa Cuttack.

9. Let a Writ of Mandamus also issue directing the respondents not to give any further effect to the aforesaid requisition.

10. Nothing said in this order would prevent the respondents to exercise their power as under the Law and in furtherance of the investigation started on the

first information.

11. There will be no order as to costs.