
(1964) 06 CAL CK 0008

In the Calcutta High Court

Case No : Criminal Revision No"s. 565 to 567 of 1964

Satish Chandra Chakrabarty

APPELLANT

Vs

Subrata Majumdar

RESPONDENT

Date of Decision : 24-06-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 231, 233
Penal Code, 1860 (IPC) — Section 234, 323, 504

Citation : AIR 1966 Cal 67 : (1966) CriLJ 142

Hon'ble Judges : Amaresh Roy, J

Bench : Single Bench

Advocate : Chintaharan Roy and Arun Kishore Das Gupta, for the Appellant; N.C. Talukdar, for the Respondent

Judgement

Amaresh Roy, J.—These three Rules arise out of an order governing three cases made by the Magistrate Sri A.K. Roy Choudhury by which he has directed that the three cases shall be tried in the same trial by amalgamating the other two with the remaining one. It appears that there were three cases instituted upon complaints made by three different complainants in respect of occurrences of three different dates against the same accused person named Subrata Majumdar alias Mantu Majumdar. In case No. C618 of 1963 the offences alleged are under Sections 323 and 504, Indian Penal Code and the date of occurrence is said to be July 18, 1963; in case No. C654 of 1964 the offence alleged is one u/s 323 I. P. C. and the date of occurrence is said to be July 26, 1963 and in case No. 652 of 1963 the offence alleged is one u/s 323 I. P. C. and the date of occurrence is said to be July 25, 1963. At a stage when witness action had not commenced in any of these cases, applications were made by the accused person for amalgamating the three cases and holding one trial in respect of all the offences alleged in all the three cases. To that application objections were raised on behalf of the complainants in each of the three cases. The learned Magistrate however overruled those objections and directed that the three cases shall be tried in the same trial although he has also said in that order that "that does not mean that

each of the three cases will lose its identity and will in any case be influenced or adversely affected by lack of adequate evidence in any of the remaining two cases, though there will be only one trial.

2. This order has been impugned in the three revisional applications in this Court. The learned Advocate for the petitioners Mr. Chintaharan Roy has contended that the order of the Magistrate is really creating an innovation unknown to Criminal Procedure Code in which statute amalgamation of cases is not at all contemplated. The learned Magistrate has discussed in his order Section 234 of the Code of Criminal Procedure but he has missed one essential requirement for application of that section, that the offences need have to be of the same nature which an offence u/s 323 and an offence u/s 504 of the Indian Penal Code are not.

3. The learned Advocate for the opposite party Mr. Talukdar has frankly said that amalgamation is unknown to Criminal Procedure Code but the learned advocate sought to defend the order of the learned Magistrate by referring to that part of his order where the learned Magistrate has shown his consciousness that the three cases will not lose identity.

4. In considering the able arguments of the learned advocates I find it difficult to contemplate what is the implication of the learned Magistrate's order that there shall be one trial but the three cases will not lose identity. If the learned Magistrate has implied thereby that he will keep the evidence in respect of the particular incidents of the particular dates separate in his mind for assessing them in considering the separate allegations by each of the complainants in the three cases, then it need be pointed out that the trial court in a criminal trial need not be the only court concerned, because the Code contemplates appeals from the order that the learned Magistrate may make at the end of the trial. When the kind of record that the learned Magistrate has contemplated in his order will come before the appellate court, if it so happens, then by all look evidence otherwise inadmissible in respect of any one of these cases will be on the record of the trial and that itself may vitiate the trial. There may be other grave difficulties as well brought about by events which are not difficult to contemplate as possible events in course of a criminal trial. The learned Magistrate need not have to think of an innovation outside the guiding provisions of the Criminal Procedure Code. Section 233 Cr. P. C. is the guiding section. Section 234 Cr. P. C. which is one of the exceptions to Section 233, is of no aid in the situation availing in respect of these three cases for the simple reason that at least there is one offence, that is u/s 504 I. P. C., which is an offence of a different kind than the offences u/s 323 I. P. C. which are offences alleged in the other two cases. There is no manner of doubt that beyond the ambit of Section 234 Cr. P. C. there is no provision in the Criminal Procedure Code for amalgamating cases. The sections relating to the joinder of charges and the joinder of persons nowhere permit a Magistrate to "amalgamate" cases that by strict adherence to the provisions of the Code need be separately tried. The Code

itself is the strongest and the best guide for that. If an authority is needed the learned Magistrate will do well to refer to the case of *Osman Mistri v. Atul Krishna Ghose* AIR 1949 Cal 632 which is a decision of this Court and the judgment was pronounced by Mr. Justice A.N. Sen pointing out the effect of the Criminal Procedure Code. The order for amalgamation must therefore be held to be illegal and without jurisdiction.

5. The reasons that impelled the learned Magistrate to make that sort of an order are well appreciated but those reasons can very well be met by having the three cases tried on the same date fixed for them at different stages one after the other. I make it clear that there must be three separate trials and evidence in the three cases must be separately recorded in each and the learned Magistrate may fix the three cases on same dates at different stages of the trial and may deal with each one of them separately one after the other at each of those stages.

6. With those observations I make the Rule absolute and set aside the order of amalgamation passed by the learned Magistrate.

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