
(1973) 05 CAL CK 0022
In the Calcutta High Court

Subol Mondal and Another

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 07-05-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 13, 202, 203, 204, 90
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (1974) CriLJ 176

Hon'ble Judges : Sankar Prasad Mitra, C.J.;A.K. De, J

Bench : Division Bench

Judgement

A.K. De, J.—Opposite Party No. 2 filed a complaint before Shri R. K. Bhattacharyya, Sub-divisional Magistrate, Basirhat, on 15-1-72 against the petitioners and others. Shri R. K. Bhattacharyya took cognizance of the offence on that complaint, examined the complainant on oath; postponed issue of process, and u/s 202 of the Code of Criminal Procedure directed an inquiry to be made by Shri N. K. Saha, Magistrate, First Class, with report to him. Shri N. K. Saha held the inquiry, as directed, and submitted his report to the Sub-divisional Magistrate on 28-2-72 recommending issue of summons. On 8-3-72, the Subdivisional Magistrate was absent. Shri N. K. Saha, Magistrate, First Class, who held the inquiry, considered his own report and issued warrants of arrest against the petitioners under Sections 395/397 of the Indian Penal Code. He fixed 9-5-72 for appearance of the accused persons. One of them, one Ranjan Kumar Mondal, filed an application before the Sub-divisional Magistrate on 18-4-72 stating that the order of Shri N, K. Saha issuing process should be recalled. The Sub-divisional Magistrate, on that petition of Ranjan Mondal, stayed operation of the order of Shri N. K. Saha dated 8-3-72. After several adjournments, the record was put up on 30-8-72 before Shri N. G. Chakrabarti, another Magistrate. He by an order of that date vacated the Sub-divisional Magistrate's order dated 18-4-72 staying operation of the order dated 8-3-72 and directed issue of warrant of arrest as per order dated 8-3-72 fixing 30-10-72 for further orders. On 7-9-72 these two petitioners, who are two of the accused

in the case, appeared before the Magistrate and were enlarged on bail. They have moved this Court in this application for revision challenging the legality of the order dated 30-8-72 of Sri N. G. Chakrabarti vacating the order of the Sub-divisional Magistrate dated 18-4-72 and the order dated 8-3-72 of Sri N. K. Saha issuing warrant of arrest against the accused persons in this case.

2. A Magistrate who takes cognizance of an offence can alone issue process u/s 204 of the Code of Criminal Procedure. In this case, Shri R. K. Bhattacharyya, Sub-divisional Magistrate took cognizance of the offence on the complaint of opposite party No. 2, examined the complainant on oath and directed judicial inquiry u/s 202 of the Code of Criminal Procedure. He directed report of the inquiry to be made to him. On 8-3-72 he was not present. Shri N. K. Saha, who was taking general file in his absence, directed issue of process u/s 204 of the Code of Criminal Procedure. He was not the Magistrate who took cognizance of the offence. His order issuing process has, therefore, been wrong having been made in disregard of the provisions of Section 204 of the Code of Criminal Procedure.

3. The order dated 8-3-72 is again wrong for another reason. Sub-section (1A) of Section 204 lays down that no summons or warrant shall be issued against the accused under Sub-section (1) until a list of the prosecution witnesses has been filed. There is no note in the order dated 8-3-72 that the list of prosecution witnesses has been filed. u/s 90 of the Code of Criminal Procedure, a court may, in any case in which it is empowered by Criminal Procedure Code to issue summons for the appearance of any person, issue after recording its reasons in writing, a warrant for his arrest in lieu of or in addition to summons. In this case, the learned Magistrate issued warrant of arrest against the accused persons on 8-3-72 without recording his reasons in writing in accordance with Section 90 of the Code of Criminal Procedure. As provided in Section 204(2), the provisions of Section 90 are to be observed when issuing process u/s 204(1). The order dated 8-3-72 shall, therefore, be set aside. Necessarily, the order dated 30-8-72 vacating the Subdivisional Magistrate's order staying operation of that order shall also be set aside. The Subdivisional Magistrate Sri R. K. Bhattacharyya or his successor in office shall now consider the report of the inquiring Magistrate, together with the statements made on oath by the complainant and his witnesses, if any, and decide whether summons should issue or not. He will fix a date, hear the complainant and/or his lawyer and then make an order u/s 203 or Section 204 of the Code of Criminal Procedure.

4. In opposing the Rule, Mr. Das, Advocate, appearing for the opposite party No. 2-complainant, supported by the State Advocate Miss Uma Banerjee, submitted that Sri N. K. Saha "acted" as the Subdivisional Magistrate on 8-3-72 as evidenced by the fact that he took the "general file" of the Subdivisional Magistrate on that day, and, that as such he had jurisdiction to issue process u/s 204. The Subdivisional Magistrate Sri R. K. Bhattacharyya, appointed u/s 13 of the Code was temporarily absent from the station on 8-3-72. He did not make

over or was not relieved of the charge when he went out of the Subdivisional headquarters. At one time there cannot be more than one Subdivisional Magistrate in charge of a Subdivision. Sri N. K. Saha was not, and could not be the Subdivisional Magistrate of Basirhat on 8-3-72. He took up the general file i.e. the Criminal Cases in the file of the Subdivisional Magistrate, which is called "general file" on 8-3-72. That did not vest him with the powers of the Subdivisional Magistrate. He could have those powers only on his being "placed" in charge of the subdivision u/s 13(1). When taking up general file he could not exercise any powers, other than those he had as a Magistrate, First Class, and his powers even when he was so functioning would, not enlarge but remain the same subject, to all the limitations under the Code. This contention is, therefore, rejected.

5. In the result, we make the Rule absolute, set aside the order dated 8-3-72 and all subsequent orders. Let the records be sent down at an early date to the Subdivisional Magistrate Shri R. K. Bhattacharyya or his successor-in-office for disposing of the matter in accordance with the directions given in the body of this judgment and in accordance with law,

Sankar Pd. Mitra, C.J.

6. I agree.