

STATE OF WEST BENGAL

v.

BEJOY KUMAR BOSE ETC. ETC.

December 7, 1977

[P. K. GOSWAMI AND V. D. TULZAPURKAR, JJ.]

West Bengal Criminal Law Amendment (Special Courts) Act, Sections 4(1) and 5—Scope of—Cognizance of the offences mentioned in the Act by Special Judge—Whether it is obligatory for the Special Judge to examine the complainant u/s. 200 of Criminal Procedure Code, prior to issuing process.

A criminal case arising out of a complaint made against the accused including the respondents who happened to be public servants at the material time, for the alleged offences u/s. 120-B/379/466/468/471 I.P.C. was allotted by the State Government through a notification No. 3165-J dt. 8-4-70 to the Third Additional Special Court, Calcutta constituted under the provisions of the West Bengal Criminal Law Amendment (Special Courts) Act. Following the notification, the appellant State through Ranjit Roy, Sub Inspector of Police filed a complaint before the Special Court on 11-9-70 detailing all the allegations against the accused and including the material facts that transpired in the course of the investigation of the case. The Special Court Judge after perusal of the complaint and hearing the Public Prosecutor, took cognizance of the case u/s. 409/109 and 409/34 I.P.C. which are offences mentioned in the Schedule of the Act, and issued processes to the accused. In the trial after examining 70 witnesses, the prosecution closed its case on May 2, 1974. The court framed charges against four accused including the respondents and discharged the remaining two accused by its order dated 26-2-1975. Charges were framed under various sections including SS. 409 and 420 read with s. 120-B I.P.C. The revision petitions moved by the respondents for quashing the trial on March 25, 1975, were accepted by the Calcutta High Court following its earlier decisions dated 29-3-1967 and 11-4-1975. The High Court held that no legal and valid cognizance of the offence was taken by the learned Judge, Special Court and, therefore, the entire proceedings became vitiated.

Allowing the appeal by certificate, the Court,

HELD : (1) It is not obligatory for the Special Judge to examine complainant under s. 200 Cr. P. C. Under s. 4(2) of the West Bengal Criminal Law Amendment (Special Courts) Act, the allotment by the State Government to the Special Judge of a case involving of scheduled offences vests the necessary jurisdiction in the Special Judge to proceed to trial and is, therefore, equivalent to that courts' taking cognizance of the offence. [385 G, 386 A-B]

Ajit Kumar Palit v. State of West Bengal [1963] Supp. (1) SCR 953 @ 965-966, followed.

(2) Section 200 of the Criminal Procedure Code in terms, comes into play after taking cognizance of an offence by a Magistrate. [386 D]

Gopal Das Sindhi & Ors. v. State of Assam & Anr. AIR 1961 SC 986, 988 and 989, referred to.

(3) There is nothing in s. 5(1) of the Act even after the amendment in 1960 to compel the Special Judge to comply with the provisions of s. 200 Cr. P. C. The words "in the manner laid down in clauses (a) and (b) of sub-s. (1) of s. 190 of the Criminal Procedure Code 1898" do not automatically introduce the provisions of s. 200 Cr. P. C. of Chapter XVI, nor do the above words in s. 5(2) of the Act, mandatorily compel the Special Judge to resort to the provisions of Chapter XVI. The legislature in the above amendment has advisedly omitted to include s. 200 Cr. P. C. and the other provisions in Chapter XVI of the Criminal Procedure Code. [385 H, 386 A, E, F]

(4) Because of the amendment of s. 5(2) in 1960, it may now be open to the Special Judge to apply his judicial mind to the complaint apart from

allotment of the case in order to come to a decision as to whether he is satisfied on the materials laid before him at that stage to take cognizance of the offence and proceed to trial. If he chooses to examine the complainant or any witness before issuing process against any accused, there is nothing in law to prevent him from doing so. If he does not do so and is satisfied on perusal of the complaint after allotment of the case by the Government that an offence has been disclosed against definite persons, no valid objection could be taken against his taking cognizance on the written complaint without complying with the provisions of s. 200 Criminal Procedure Code. No grievance can be made then that the Special Judge has not examined the complainant under section 200, Cr. P. C. period to issuing of process. [386 B-D]

Sudhir Chandra Bhattacharjee v. The State Crl. Appeals Nos. 23-26 of 1961 (decided on 29th March 1967, Calcutta) and *Shyama Saran Das Gupta v. The State* (decided on 11th April 1975, Calcutta) over-ruled.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 109-111 of 1977.

From the Judgment and Order dated 28-5-1975 of the Calcutta High Court in Criminal Revision Nos. 304, 371 and 318/75 respectively.

A. P. Chatterjee, G. C. Chatterjee and Mrs. Mukti Moitra for the Appellants in all the appeals.

A. K. Sen, Miss Uma Bannerjee and S. Swarup for Respondent in Crl. A. No. 611 of 1977.

The Judgment of the Court was delivered by

GOSWAMI, J. These appeals by certificate are from the common judgment of the Calcutta High Court of 28th May, 1975 disposing of three Criminal Misc. Revisions Nos. 304, 318 and 371 of 1975. There is a common question of law and will be disposed of by this judgment.

Briefly the facts are as follows :

A complaint was made against the accused by Shri J. F. C. Mc. Mohan, Dock Manager, Calcutta Port Commissioners, to the South Port Police Station alleging offences under Sections 120-B/420/379/466/468/471. I.P.C. against several accused including the respondents who happened to be public servants at the material time. The State Government issued a Notification No. 3165-J on 8-4-1970 under Section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act (hereinafter referred to as the Act) allotting the said case for trial to the Third Additional Special Court, Calcutta constituted under the provisions of the said Act for trial of the offences mentioned in the schedule to that Act. There is no dispute about the particular order of allotment of the case to the Special Court under the said Act. Following the Notification of April 8, 1970 the State of West Bengal through Ranajit Roy, Sub-Inspector of Police, filed a complaint before the Third Additional Special Court, Calcutta on 11-9-1970 detailing all the allegations against the accused and indicating the material facts that transpired in the course of the investigation of the case. The Special Court Judge after perusal of the complaint and hearing the Public Prosecutor took cognizance of the case under Sections 409/109 and 409/34, I.P.C. which are offences mentioned in the schedule of the

- A Act. The learned Judge thereupon issued processes against the respondent and other accused. In due course trial commenced. The prosecution after examining 70 witnesses closed its case on May 2, 1974. The Court framed charges against four accused including the respondent and discharged the remaining two accused by a lengthy order with reasons on 26-2-1975. Charges were framed under various sections including Sections 409 & 420 read with 120-B, I.P.C.
- B

The respondent moved the Calcutta High Court in revision for quashing the trial on March 25, 1975. The High Court allowed the Petition on 28th of May, 1975 and granted certificate to appeal to this Court under Article 134(1)(c) of the Constitution on March 26, 1976. Hence these appeals.

- C The High Court accepted the contention of the respondent that no legal and valid cognizance of the offence was taken by the learned Judge, Special Court and, therefore, the entire proceedings became vitiated and hence were quashed. The High Court in disposing of the matter in this way followed two earlier Division Bench decisions of the said Court in *Sudhir Chandra Bhattacharjee vs. The State*, Criminal Appeals Nos. 23 to 26 of 1961 decided on 29th March, 1967 and *Shyama Saran Das Gupta vs. The State*, decided on 11th April, 1975.
- D

The question that falls for decision in these appeals relates to the cognizance of the offences by the Special Judge under the Act. As the preamble shows, the Act provides for the more speedy trial and more effective punishment of certain offences specified in the schedule thereto. Section 4(1) of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure 1898 or in any other law, the offences specified in the schedule shall be triable by Special Courts only: Provided that when trying any case a Special Court may also try any offence other than an offence specified in the schedule, with which the accused may under the Code of Criminal Procedure, 1898, be charged with the same trial. There is, however, no dispute that the offences charged are exclusively triable by the Special Court.

- F Section 5 of the Act which is material for our purpose may be read:

"A Special Court may take cognizance of offences, in the manner laid down in clauses (a) & (b) of sub-section (1) of Section 190 of Code of Criminal Procedure, 1898 without the accused being committed to his Court for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates, instituted otherwise than on a police report."

- G This Section underwent some changes by two amendments in 1956 and 1960. Prior to the amendments, Section 5(1) did not contain the words "in the manner laid down in clauses (a) & (b) of sub-section (1) of the Code of Criminal Procedure, 1898" and the words "instituted otherwise than on a police report." We are not concerned in these appeals with the amendment of 1956 by which the words "instituted otherwise than on a police report" were inserted.
- H

It may be of interest to note that in a case under the unamended section before the Special Court this Court had to deal with the question of cognizance canvassed before it in *Ajit Kumar Palit vs. State of West Bengal*⁽¹⁾. This Court held on the terms of the provisions of the unamended section 5(1) of the Act as follows :—

“The word “cognizance” has no esoteric or mystic significance in criminal law or procedure. It merely means—become aware of and when used with reference to a Court or Judge, to take notice of judicially. It was stated in *Gopal Marwari v. Emperor*⁽²⁾ by the learned Judges of the Patna High Court in a passage quoted with approval by this Court in *R. R. Chari v. State of Uttar Pradesh*⁽³⁾ that the word, ‘cognizance’ was used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in *Emperor v. Sourindra Mohan Chuckerbutty*⁽⁴⁾, “taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.” It appears to us therefore that as soon as a special judge receives the orders of allotment of the case passed by the State Government it becomes vested with jurisdiction to try the case and when it receives the record from the Government it can apply its mind and issue notice to the accused and thus start the trial of the proceedings assigned to it by the State Government.”

The above decision of this Court could have concluded the matter, but it is pointed out by Mr. A. K. Sen, appearing on behalf of the respondent that in view of the amendment of Section 5(1) of the Act by the West Bengal Act XXIV of 1960 introducing the words “in the manner laid down in clauses (a) and (b) of sub-section (1) of Section 190 of the Code of Criminal Procedure, 1898”, the legal position has completely changed. He submits that it is now obligatory for the Special Judge to examine the complainant under Section 200, Cr.P.C. prior to taking cognizance of the offence. Since in the present case, proceeds the argument of Mr. Sen, the Special Judge took cognizance merely on the complaint of the Sub-Inspector of Police without proceeding in accordance with Section 200, Cr.P.C., the entire proceedings are vitiated.

We are unable to accede to the above submission of Mr. Sen. It is true that the amendment has introduced the manner of taking cognizance in accordance with Section 190(1)(a) & (b), Cr. P.C. appearing in Chapter XV of the Criminal Procedure Code, 1898, but the legislature in this amendment, at the same time, has advisedly omitted to include

(1) [1963] Supp. (1) S.C.R., 953 at 965-966.

(2) A.I.R. 1943 Pat. 245.

(3) [1951] S.C.R. 312, 320.

(4) [1910] I.L.R. 37 Cal. 412, 416.

A Section 200, Cr.P.C. and the other provisions of the next Chapter which is Chapter XVI dealing with "complaints to Magistrates".

B It is clear that under Section 4(2) of the Act, the allotment by the State Government to the Special Judge of a case involving of scheduled offences vests the necessary jurisdiction in the Special Judge to proceed to trial and is, therefore, equivalent to that Court's taking cognizance of the offence (See *Ajit Kumar Palit's* case (Supra). Because of the amendment of Section 5(2) in 1960, it may be now open to the Special Judge to apply his judicial mind to the complaint apart from allotment of the case in order to come to a decision as to whether he is satisfied on the materials laid before him at that stage to take cognizance of the offence and proceed to trial. If he chooses to examine the complainant or any witnesses before issuing process against any accused, there is nothing in law to prevent him from doing so. If he does not do so and is satisfied on perusal of the complaint after allotment of the case by the Government that an offence has been disclosed against definite persons, no valid objection could be taken against his taking cognizance on the written complaint without complying with the provision of Section 200, Cr.P.C. No grievance can be made then that the Special Judge has not examined the complainant under Section 200, Cr.P.C. prior to issuing of process.

C Section 200, Cr.P.C., in terms, comes into play after taking cognizance of an offence by a Magistrate (See *Gopal Das Sindhi and others v. State of Assam and another*(¹)). There is, therefore, no merit in the submission that taking cognizance of the offence in this case is invalid for which the whole trial is vitiated.

D The words "in the manner laid down in clauses (a) and (b) of Sub-section (1) of Section 190 of the Criminal Procedure Code, 1898" do not automatically introduce the provisions of Section 200, Cr.P.C. of Chapter XVI, nor do the above words in Section 5(2) of the Act mandatorily compel the Special Judge to resort to the provisions of Chapter XVI.

E Apart from this, Chapter XVI in terms refers to "complaints to Magistrates" and thereby excludes Special Judges who are to be guided by the special provisions of the special Act in the matters provided therein. There is nothing in Section 5(1) of the Act even after the amendment in 1960 to compel the Special Judge to comply with the provisions of Section 200, Cr.P.C.

F The objection of the respondents to the trial is on the score of the invalidity of the cognizance taken by the Special Judge on perusal of the written complaint after allotment of the case by the Government for the sole reason that the complainant had not been examined under Section 200, Cr.P.C. prior to issuing of process. The objection is clearly untenable for the reasons given above.

G The appeals are, therefore, allowed and the judgment of the High Court is set aside. Since the case is an old one, trial before the Special Judge shall be expedited.

H S.R.

Appeals allowed.

(1) A.I.R. 1961 S.C., 986, 988 & 989.