

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on 20.08.2010

C.R.R. No. 1405 of 2010

Shyamal Mukherjee

versus
State

Points:

Jurisdiction: Misappropriation of property of Birbhum District Central Cooperative Bank Limited whether can be decided by a Special court- West Bengal Criminal Law Amendment Act

Facts:

Invoking Section 482 of the Code of Criminal Procedure, the petitioner has challenged an order of framing charge under Sections 409/477A/465/420 of the Indian Penal Code contending that Special Court, constituted by West Bengal Criminal Law Amendment Act, is only empowered to hold trial of the offence punishable under Sections 409/477/420 of the Indian Penal Code, if it is committed by a public servant dealing with property belonging to Government as an agent of the Government but in the present case the alleged property misappropriated belonging to a Co-operative Society not to the Government.

Held:

Having gone through the Schedule to West Bengal Criminal Law Amendment Act, Court finds that Special Court has been empowered to hold the trial relating to the offence punishable under Section 409 of the Indian Penal Code as well as

under Section 477A or Section 420 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of the Government. In this case, there is no scope to dispute that the present petitioner was the Branch Manager of Birbhum District Central Cooperative Bank Limited and thus of course of he is a public servant. Furthermore, it is the allegation against him in course of his tenure in such capacity he had dominion over the property of the bank and he has misappropriated the same by falsifying the account, thus it can hardly be said that no offence for which charge has been framed, has been made out against him. Therefore, holding his trial for those offences which falls in the Schedule to the West Bengal Criminal Law Amendment Act, along with the other offences cannot be said impermissible in law. Para 6

For Petitioner : Mr. Rajdeep Majumdar
Mr. Kushal Kumar Mukherjee

For State : Mr. Sobhendu Sekhar Roy

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioner has challenged an order of framing charge under Sections 409/477A/465/420 of the Indian Penal Code.

2. Mr. Rajdeep Majumdar appearing with Mr. Kushal Kumar Mukherjee for the petitioner urged for quashing of the charge on the following grounds;

(a) Although in the order of framing charge the learned Judge has mentioned the charge has been framed under Sections 409/477A/465/420 of the Indian Penal Code but it appears from the formal portion of the charge that charge has only been framed under Sections 465/420 of the Indian Penal Code.

(b) In the aforesaid charge, no time and place has been disclosed. Only it has been mentioned on the same day and at the same place.

(c) A Special Court, constituted by West Bengal Criminal Law Amendment Act, is only empowered to hold trial of the offence punishable under Sections 409/477/420 of the Indian Penal Code, if it is committed by a public servant dealing with property belonging to Government as an agent of the Government but in the present case the alleged property misappropriated belonging to a Co-operative Society not to the Government.

3. On the other hand, Mr. Sobhendu Sekhar Roy, learned advocate, appearing on behalf of the State vehemently opposed the prayer for quashing. At the very outset he draws the attention of this Court from the Lower Court Records that it is incorrect to say that no charge under Sections 409/477A of the Indian Penal Code has been framed and he further submitted that the date and place of occurrence do not require to be mentioned because already while

framing of charge under Sections 409/477A of the Indian Penal Code, the Learned Court has mentioned the date and place.

4. I have given my anxious and thoughtful consideration to the rival submissions of the parties. Perused the Lower Court Records.

5. Now, having gone through the Lower Court Records, I find Mr. Roy is absolutely correct. There is no fault on the part of the Trial Court. I find in the charge framed under Section 409/477A of the Indian Penal Code, the time and place has been specifically mentioned, whereas in the rest of the charges it was mentioned that the offence was committed at the same time at same place. Therefore, the first contention on which the petitioner prayed for quashing of the case has no leg to stand.

6. The next submission of Mr. Majumdar, in my opinion, is also not tenable. Having gone through the Schedule to West Bengal Criminal Law Amendment Act, I find that Special Court has been empowered to hold the trial relating to the offence punishable under Section 409 of the Indian Penal Code as well as under Section 477A or Section 420 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of the Government. In this case, there is no scope to dispute that the present petitioner was the Branch Manager of Birbhum District Central Cooperative Bank Limited and thus of course of he is a public servant.

Furthermore, it is the allegation against him in course of his tenure in such capacity he had dominion over the property of the bank and he has misappropriated the same by falsifying the account, thus it can hardly be said that no offence for which charge has been framed, has been made out against him. Therefore, holding his trial for those offences which falls in the Schedule to the West Bengal Criminal Law Amendment Act, along with the other offences cannot be said impermissible in law.

7. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

8. The Trial Court is directed to immediately start the trial and conclude the same as expeditiously as practicable preferably within a course of one year.

9. The Trial Court is further directed to proceed with the trial in terms of Section 309 of the Code of Criminal Procedure.

10. Office is directed to send down the Lower Court Records at once.

11. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)