

CRR 1567 of 2003

In the matter of : Abhoy Pada Laha

Mr. Debasish Roy ...for the petitioner

Mr. Bidyut Kumar Ray
Ms. Sima Biswas ... for the State

This criminal revision challenges the judgement and order passed by learned Additional Sessions Judge, 4th Court, Burdwan in Criminal Motion No. 341 of 1999, setting aside the order passed by the learned Sub-Divisional Judicial Magistrate, Burdwan on 25th of May 1999.

Briefly stated, that the petitioner before this Court happens to be one of the partners of Associated Transport Company, the partnership firm and there was an agreement between the firm and Pyrites, Phosphates & Chemicals Ltd. (hereinafter referred to as 'PPCL'). It was agreed that accused number 1 would be the warehouse and handling agent of PPCL at Burdwan and Bankura. The accused no. 1 for the aforesaid purpose furnished security to the extent of rupees one crore & sixty lakhs only by issuing six cheques drawn on Indian Bank, Kidderpore Branch. The petitioner Abhoy Pada Laha issued those cheques on behalf of the partnership firm.

On 19.8.1991, a representative of PPCL in due course of his duty attended the warehouse premises to verify the stock but he was not allowed to discharge his duty and it transpired that the accused person illegally transferred fertilizers to different persons

without any delivery order issued by PPCL. On 21.8.1991 the petitioner informed the police. The cheques issued on behalf of the handling agent of the partnership firm by Abhoy Pada Laha, partner of Associated Transport Company were presented to the bank but the cheques were returned for insufficient fund. In due course of time, the matter was brought to the notice of the said drawer of the cheques by a written notice, but the drawer did not act in terms of the requisition of notice, hence PPCL filed case under Sections 138, 141 and 142 of the N.I. Act. before the learned Additional Chief Judicial Magistrate, Sealdah.

On the other hand, on 31.8.1991 the Officer-in-Charge, Burdwan Sadar Police Station received an information in writing from Manager, Finance, PPCL narrating almost the identical incident. To his wisdom the Officer-in-Charge of the concerned P.S. found disclosure of cognizable offence and registered Burdwan P.S. Case No. 373 of 1991 dated 31.8.1991. Police took up investigation submitted charge sheet against Abhoy Pada Laha before the learned Sub Division Judicial Magistrate, Burdwan on 25.6.1993. The accused person thereafter filed an application before the Hon'ble Court for appropriate order to transfer the complaint case from the Court of learned 5th Judicial Magistrate, Sealdah to the Court of the learned Sub Divisional Judicial Magistrate, Burdwan and Hon'ble Court was pleased to pass the appropriate order, pursuant to which the complaint case was transferred to the Court of learned Sub Divisional Judicial Magistrate, Burdwan. The accused person filed an application seeking order for disposal of both the cases by the same Court,

simultaneously. The learned Sub Divisional Judicial Magistrate, Burdwan was pleased to allow the prayer with the direction that C.R. Case No. 807 of 1991 and G.R. Case No. 1098 of 1991 be tried analogously.

This order was challenged by filing a criminal revision being Criminal Motion No. 341 of 1999 which was considered by the learned Court of Additional Sessions Judge, Burdwan and the Criminal Motion was allowed. Consequently the order of Learned S.D.J.M. was set aside.

Mr. Roy, learned senior counsel appearing on behalf of the petitioner submits that both the criminal proceedings popped up from the same source i.e. presentation of six cheques issued by the petitioner in favour of PPCL as security, and cheques were dishonoured for insufficient fund. Therefore, to avoid any conflicting decision it was absolutely necessary in the interest of fair trial to assign both the cases to the same Court for disposal, if not analogously, atleast simultaneously. Learned Additional Sessions Judge, failed to appreciate the fact and was pleased to reverse the order of the learned Sub Divisional Judicial Magistrate, Burdwan only on the ground that cognizance of offence under Section 420 of the Indian Penal Code can be taken by the Court on the police report. But cognizance of the offence under Section 138 of the N.I. Act cannot be taken by the Court on police report. This was primarily the observation that learned Additional Sessions Judge, 4th Court, Burdwan to cape up the conclusion that both the cases cannot be tried together. Learned Additional Sessions Judge, Burdwan was pleased to observe that a Court is

competent to take cognizance of the offence under Section 138 of the N.I. Act.

'Court is competent to take cognizance the offence u/s. 138 of the Negotiable Instrument Act only when a complaint after complying with some statutory requirements is made by the complainant before the Court having jurisdiction to try such offence. But in the case of taking cognizance of the offence u/s. 420 I.P.C.no such procedure is required to be observed.'

According to the learned Sessions Judge, *"If the aforesaid two offences are allowed analogously tried it will appear to be an illegality which may vitiate the proceeding of both the cases."*

True, the learned Sub Divisional Judicial Magistrate while passing the order gave a direction that both the cases be tried analogously which prima facie suffers from certain irregularity; which could have been ironed out by the learned Additional Sessions Judge by holding that both the cases should be tried and disposed of by the same Court, as submitted by Mr. Roy, learned counsel appearing on behalf of the petitioner and I find every reason to be in agreement with Mr. Roy in the interest of fair trial. Simultaneous trial of both the cases would definitely eliminate the chance of conflicting decision and improper appreciation of the facts.

Under such circumstances, I am of the view that impugned judgement passed by the learned Additional Sessions Judge, 4th Court Burdwan should be set aside and order passed by the learned Sub Divisional Judicial Magistrate, Burdwan (presently learned Chief Judicial Magistrate, Purba Burdwan) should be

restored with certain modification that both the cases being C.R. Case No. 807 of 1991 and G.R. Case No. 1098 of 1991 be tried by the same Court simultaneously and it is expected that considering the age of the proceeding, the learned Trial Court would take pains to dispose of both the cases as early as possible.

With the aforesaid observation, the criminal revision, is thus, disposed of.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)