

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 4434 of 2022

Kunal Kumar Ghosh @ Kunal Ghosh
-Vs-
The State of West Bengal & Ors.

For the Appellant: Mr. Ayan Bhattacharya
Mr. Ayan Chakraborty

Heard on: 13 January, 2023.

Judgment on: 13 January, 2023.

BIBEK CHAUDHURI, J. : -

1. The petitioner has challenged an order dated 5th September, 2022 passed by the learned Judge, Special Court, West Bengal (M.P.'s and M.L.A.'s). The order dated 5th September, 2022 runs thus:-

" Order No.37
Dated 05.09.2022

Today is fixed for evidence.

Among the 05 accused persons on CB, 04 accused person namely 1. Shomnath Dutta 2. Supriya Roy 3. Sudipta Sen and 4. Biresb Roy are present.

Accused Sudipta Sen is produced from J/C as he is detained in another case. The accused Sudipta Sen is enlarged on bail in connection with the present case.

The accused Sudipta Sen has been detained in custody in Presidency Correctional Home in connection with another case being G.R. case No.1658 /13 pending before the Ld. MM, 13th Court, Calcutta and R.C. 06/2014 pending before Ld. CMM, Calcutta.

Smt. Shreeparna Chakraborty, Ld. Advocate appeared for accused 1. Supriya Roy and 2. Biresh Roy.

Shri Ayan Chakraborty, Ld. Advocate appeared for accused Kunal Kumar Ghosh.

Shri Biblab Goswami, Ld. Advocate appeared on behalf of accused Shomnath Dutta and Sudipta Sen.

Ld. P.P. filed hazira.

No witness turned up.

In view of the Judgment passed by Hon'ble High Court, Calcutta on 29.07.2022 in connection with CRAN 01/2022 in CRR 1086 of 2022 arises from Special case no.51/2018 this Court has no jurisdiction to try the Magistrate Triable case.

The present case involved allegation for offence u/s. 420/406/506/34 of IPC which are Magistrate Triable.

Hence ordered.

Return the record with all other documents to Ld. Chief Judicial Magistrate, Howrah Court, Howrah (from where the record was sent to this Court in c/w G.R. 3337/2013).

Accused persons are directed to appear before the Ld. Chief Judicial Magistrate, Howrah Court, Howrah, on 15.11.2022.

Cancel the schedule of evidence.

Accused as before.

Sd/-

(Judge, Special Court, West Bengal
(MP's and MLA's Cases)
Bidhannagar, North 24 Parganas)"

2. It is submitted by the learned advocate for the petitioner that in view of the Hon'ble Supreme Court an order passed by this Court in

CRAN 01 of 2022 in CRR 1086 of 2022 a Court of the learned Judicial Magistrate is designated as the Special Court to try MP's and MLA's cases which are triable by a Magistrate. The learned Special Judge vide impugned order found that an offence under Sections 420/406/506/34 of the Indian Penal Code are Magistrate triable and accordingly he sent the case record and other documents to the learned Chief Judicial Magistrate, Howrah Court, Howrah.

3. The learned advocate for the petitioner admits that the orders passed by the learned Special Judge prior to setting up of the Special Court of the learned Judicial Magistrate cannot be said to be irregular or illegal in view of the de facto doctrine specially laid down in **Pulin Behari Das and 34 others vs. King Emperor** reported in **16 CWN 1105**.

4. Only question involved in the instant revision is, if an accused wants to challenge an order passed by the learned Special Judge during the interregnum what will be the forum to seek for redressal. If the forum is held to be this Court, the petitioner will lose the forum of the learned Sessions Judge or the learned Special Judge as the case may be to agitate its grievance against the order passed by the learned Additional Special Judge (MP's and MLA's cases).

5. Having heard the learned advocate for the petitioner this Court likes to record that the provision adopted by the learned Special Judge in respect of the Magistrate trial cases is not foreign to the Code of

Criminal Procedure. Practically, Section 228 of the Code of Criminal Procedure states that if at the time of consideration of charge the learned Sessions Judge finds that a case is not exclusively triable by the Court of Sessions, he may frame charge against the accused and by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the First Class, on such date as he deems fit and thereupon such Magistrate shall try the offence in accordance with the procedure for trial of warrant cases instituted on police report.

6. If an accused is aggrieved against an order of framing of charge by the learned Sessions Judge, he may take appropriate action challenging such order in accordance with the Code of Criminal Procedure to its higher forum. An order passed by an authority under law who is not actually authorized to pass such order or deal with the matter, is regularized by incorporating defacto doctrine. In the case of **Gokaraju Rangaraju Etc vs State Of Andhra Pradesh** reported in **(1981) 3 SCC 132**, the judgment pronounced by the Sessions Judge were held to be valid and binding even though his appointment was invalid and the judgment delivered by him acting as a judge, engrossed the defacto doctrine as his action was under the colour of a lawful authority, having the same powers, functions and efficacy as that of the dejure judge. The doctrine means that the acts of the officer's defacto performed by them even the scope of their assumed official authority, in the interest of public or third persons and not for their own benefit,

are generally as valid and binding, as if they were the acts of the officer's de jure. Factual circumstances of the instant case is somewhat different. By an order of the Hon'ble Supreme Court, Special Courts to try the offences by or against the MPs and MLs have been declared to be taken up by the designated court. Initially a court in the cadre of District Judge (Entry Level) they are designated as the special court to try such offence. Subsequently, it was brought to the notice of the Hon'ble Supreme Court that there are certain cases against MPs/MLs involving offences triable by the learned Magistrate. Therefore, for the said offences a new court in the rank of Chief Judicial Magistrate was set up.

7. However, before establishment of Magistrate's Court to try such special cases, the orders passed by the learned Special Judge in the cadre of District Judge Entry Level are held to be valid orders as per defacto doctrine.

8. However, the defacto doctrine makes an invalid order valid when such order is made in the interest of the public and not for the own benefit of the authority under law. By virtue of validation of such order, the order is not presumed to be made by the learned Magistrate.

9. In the instant case the orders passed during interregnum period by the learned Special Judge till setting up of special court in the rank of Magistrate, are treated to be the orders of the learned Special Judge for the purpose of filing any revision or appeal against such order. In

such cases, revision or appeal, as the case may be will lie before the High Court at Calcutta against the order or judgment passed by the learned Special Judge dealing with the cases involving MPs/MLs.

10. For the reasons stated above, I do not find any irregularity in the order dated 5th September, 2022 passed by the learned Judge, Special Court, West Bengal (MPs and MLs cases). The impugned order is legal and valid.

11. In view of the above finding the instant revision is dismissed.

(Bibek Chaudhuri, J.)