S. N. BANERJEE

v.

BABU LAL GUPTA (DHANUKA) & ORS.

April 12, 1979

[S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

Section 187A Sea Customs Act and s. 196A Code of Criminal Procedure, 1898—Scope of.

Section 187A of the Sea Customs Act provides that no court shall take cognizance of any offence relating to smuggling of goods punishable under Item 81 of the Schedule to s. 167 except upon a complaint in writing made by the Chief Customs Officer or any other officer of Customs not lower in rank than an Assistant Collector of Customs authorised by the Chief Customs Officer. Section 196A of the Code of Criminal Procedure, 1898, so far as relevant, provides that no court shall take cognizance of the offence of criminal conspiracy punishable under s. 120B of the IPC unless a Chief Presidency Magistrate has, by order in writing consented to the initiation of the proceeding.

The appellant, who was Assistant Collector of Customs, sought the consent of the Chief Presidency Magistrate under s. 196A of the Code of Criminal Procedure for the prosecution of the respondents under s. 120B IPC as they were guilty of a conspiracy to commit offences under Item 81 of the Schedule to s. 167 of the Cutoms Act and s. 5 of Import and Exports (Control) Act. This was accorded. The appellant was authorised by the Chief Customs Officer to prosecute the respondents. A complaint was accordingly filed against them.

In the course of proceedings before the Chief Presidency Magistrate, one of the respondents moved the High Court alleging that the Chief Presidency Magistrate had no power to give his consent because till the date of their prosecution the appellant was not an officer holding the authorisation envisaged in s. 187-A of the Act and that the Magistrate could not act under s. 196A of the Code unless an application was made to him by a person holding such authorisation.

The High Court upheld the respondent's contention.

It was contended on behalf of the appellant that the High Court erred in interpreting s. 196A so as to incorporate therein the provisions regarding authorisation enacted by s. 187A of the Act.

Allowing the appeal,

HELD: The authorisation contemplated by s. 187A of the Act, which could be given only in respect of complaints embracing offences under Item 81 of the schedule to s. 167 of the Act, was actually obtained by the appellant from the competent authority before the complaint was filed. The complaint cannot be said to be hit by the provisions of s. 187A of the Act. [683 A-B]

A Section 196-A of the Code does not envisage any application whatsoever and, therefore, no application at all is necessary for action under that section. Assuming that such an application was necessary it would not follow that the same had to be made by a person holding the type of authorisation envisaged by s. 187-A of the Act. Under s. 196-A, there is no bar at all against the power of the Chief Presidency Magistrate to consent to the initiation of proceedings being exercised on an application made by any person, whether B or not he is connected with the official machinery normally burdened with the duty of initiation of prosecutions. The status of the person who supplies facts is not relevant. [683 D-E]

In the instant case the requirements of both the sections viz., s. 196A of the Code and s. 187-A of the Act were fulfilled before the complaint was filed and, therefore, there is no infirmity in the impugned proceeding.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 233 of 1972.

Appeal by Special Leave from the Judgment and Order dated 6-5-1970 of the Calcutta High Court in Crl. Revision No. 739/68.

D *K. K. Venugopal,* Addl. Soli. Genl., *S. Markandey* and *S. P. Nayar* for the Appellant.

N. C. Talukdar and *Sukumar Ghosh* for Respondent 3.

The Judgment of the Court was delivered by

E KOSHAL, J.—This appeal by special leave which is directed against a judgment dated May 6, 1970 of the High Court of Calcutta has arisen in the following circumstances. On March 2, 1963, Shri S. N. Banerjee, Assistant Collector of Customs, Calcutta, made an application to the Chief Presidency Magistrate, Calcutta, praying that consent be given under section 196A of the Code of Criminal Procedure, 1898 F (hereinafter called the Code) to the prosecution of 14 persons in respect of an offence under section 120B of the Indian Penal Code as they were guilty of a conspiracy to commit offences under item 81 of the Schedule to section 167 of the Sea Customs Act (hereinafter referred to as the Act) and section 5 of the Imports and Exports (Control) Act (the Control Act, for short). The application was G granted on March 5, 1963 when the Chief Presidency Magistrate accorded the consent asked for. Four days later, i.e., on March 9, 1963, Shri Banerjee was authorised by the Chief Customs Officer, Calcutta, to prosecute the said persons for the commission of offences under item 81 and section 5 above mentioned. On the same date, i.e., March 9, 1963, Shri Banerjee actually filed a complaint against H the said 14 persons accusing them of the commission of offences under section 120B of the Indian Penal Code and item 81 as well as section 5 aforesaid.

After the Presidency Magistrate, who was seized of the case, had examined 43 witnesses, one of the accused challenged his jurisdiction to entertain the complaint through a petition made to the High Court under sections 439 and 561A of the Code on the ground that the Chief Presidency Magistrate had no power to give the consent which he did on March 5, 1963, because, till that date, Shri Banerjee was not an officer holding the authorisation envisaged in section 187A of the Act. The petition stated that the Chief Presidency Magistrate could not act under the provisions of section 196A of the Code unless an application was made to him in that behalf by a person holding such an authorisation.

The High Court accepted the contention of the petitioner before it with the following observations :

> ".....The requirement of authorisation under section 187A Sea Customs Act .....to enable a Court to take cognizance attaches to sanction under section 196A Cr. P.C., as the allegations made or the charge framed is in respect of one offence and sanction granted by the Chief Presidency Magistrate at the instance of S. N. Banerjee, who was not authorised to initiate proceeding is therefore bad in law, as the officer had no authority to apply for sanction."
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> ".....Obviously, for an offence of the nature charged, there can be only one cognizance and therefore the sanction under section 120B must also be obtained by an Officer mentioned in section 187A Sea Customs Act, ..."

An argument put forward on behalf of Shri Banerjee that section 196A of the Code did not speak of any authorisation was repelled by the High Court in the following terms :

> "Mr. Mitra has also submitted that not only section 196A does not speak of any authority but that even after sanction, prosecution may not be initiated. This, in our view is over-simplification of the matter. Prosecution has been initiated and therefore this Court has to decide whether the magistrate is authorised under the law to take cognizance, without sanction under section 196A being obtained by person competent to initiate proceeding."

2. On behalf of Shri Banerjee, who is the appellant before us, it has been urged that the High Court has erred in interpreting section 196A of the Code so as to incorporate therein the provision regarding authorisation enacted by section 187A of the Act, and, after hearing

learned counsel for the parties, we find ourselves in complete agreement with him for the reasons which follow.

3. The two sections requiring interpretation by us are reproduced below :

Section 196A of the Code

"No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code,

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the State Government or some officer empowered by the State Government in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government has, by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary."

Section 187A of the Act

"*Cognizance of offences* : No Court shall take cognizance of any offence relating to smuggling of goods punishable under item 81 of the Schedule to section 167, except upon complaint in writing, made by the Chief Customs Officer or any other officer of Customs not lower in rank than an Assistant Collector of Customs authorised in this behalf by the Chief Customs Officer."

There is a corresponding section in the Control Act which, according to the High Court, provides for a similar bar against the taking of cognizance of complaints by Courts but to which we shall no longer advert as arguments were not addressed to us in relation thereto by learned counsel for either party.

4. Now, section 187A above extracted contemplates authorisation by the Chief Customs Officer only in respect of complaints embracing offences under item 81 aforesaid. As stated above, such an authorisation was actually obtained by Shri Banerjee in his favour from the competent authority, viz., the Chief Customs Officer, before the complaint was filed, so that the complaint cannot be said to be hit by the provisions of section 187A of the Act. The argument raised on behalf of the accused respondents and accepted by the High Court, however, was that, as the conspiracy forming the subject-matter of the offence under section 120B of the Indian Penal Code was a conspiracy to commit offences under the Act, an application by a person holding the authorisation above mentioned was a *sine qua non* for the accord of consent under sub-section (2) of section 196A of the Code. This argument, in our opinion, has no substance. For one thing, section 196A of the Code does not envisage any application whatsoever and, therefore, no application at all is necessary for action under that section. Even if it be held that such an application was inherent in the scheme of the section, it would not follow that the same had to be made by a person holding the type of authorisation envisaged by section 187A of the Act. As the language of section 196A of the Code stands, there is no bar at all against the power of the Chief Presidency Magistrate to consent to the initiation of proceedings being exercised on an application made by any person whosoever, whether or not he is connected with the official machinery normally burdened with the duty of initiating prosecutions. It is no doubt true that the consent to be given has to follow a consideration of all the material facts of the case, but then the status of the person who supplies such facts is not relevant. If the legislature had intended to restrict the accord of consent under section 196A of the Code to cases in which applications had been made by persons authorised in a particular manner, the exercise of the power would surely have been made subject to such a condition in specific terms. Holding that no application was at all needed for the accord of consent provided for in the section, and that, in any case, such an application need not have been made by a person authorised in the manner spoken of by section 187A of the Act, we repel the argument raised to the contrary on behalf of the accused-respondents. It follows that in the instant case the requirements of both the sections, namely, section 196A of the Code and section 187A of the Act were fulfilled before the complaint was filed so that, as found by the High Court, there is no infirmity in the impugned proceedings.

5. Learned counsel for the accused-respondents also contended that the consent given by the Chief Presidency Magistrate was not valid

A in law as it had been accorded without proper application of the mind to the material facts of the case. This contention we do not allow to be raised as it was not put forward before the High Court and embraces questions of fact.

6. For the reasons stated, the appeal succeeds and is accepted. The B impugned order is set aside and the trial court is directed to proceed with the case from the stage at which it was interrupted by reason of the impugned judgment.

P.B.R. *Appeal allowed.*