

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
B. N. ANANTI PADMABIAH ETC.

DATE OF JUDGMENT 22/04/1971

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
GROVER, A.N.
HEGDE, K.S.
GROVER, A.N.
SIKRI, S.M. (CJ)
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 1836 1971 SCR 460
1971 SCC (3) 278

ACT:
Code of Criminal Procedure, 1898, s. 429-Difference of opinion between two judges of High Court-Reference to third judge-Third judge can deal with whole case and entertain new plea.
Prevention of Corruption Act, 1947, s. 5A and Code of Criminal Procedure, s. 12-Jurisdiction of Magistrate under s. 5A does not extend to whole of India-Magistrate can exercise jurisdiction under s. 5A throughout district in which he holds charge but not outside district.

HEADNOTE:
The appellants were charged with offences under s. 5(2) & 5(1) (c) and 5(1) (d) of the Prevention of Corruption Act, 1947 as well as under ss. 467 and 471 of the Indian Penal Code by the Special Judge, Gauhati. The appellants filed revision petitions in the High Court of Assam & Nagaland. On difference of opinion arising between the two Judges of the Division Bench reference was made to a third Judge under s. 429 of the Code of Criminal Procedure. Before the third Judge a new plea was advanced on behalf of the appellants, namely that the Magistrate at Delhi had no jurisdiction to accord sanction to an Inspector of the Delhi Special Police Establishment to investigate the case in Assam. The third Judge held that an order of a Magistrate of the local jurisdiction was necessary and excepting a Magistrate of the District where the crime was committed no other Magistrate outside the jurisdiction could make an order for investigation. In the result the proceedings before the Special Judge were quashed. In appeal by certificate to this Court, HELD:(i) The contention that the third learned Judge could only deal with the difference between the two learned Judges and not with the whole case could not be accepted. The language of s. 429 of the Code of Criminal Procedure is explicit that the case with the opinion of the Judges comprising the court of appeal shall be laid before another Judge of the same court. The other noticeable feature in s. 429 of the Code of Criminal Procedure is that the judgment

or order shall follow the opinion of the third learned Judge. Further more, the appeal is from the order of the third learned Judge as it must be by reason of the divided opinion of the Bench. [463D]

Hethuba & Ors. v. State of Gujarat, Cr. A. No. 100/67 dt. 13-3-1970, followed.

(ii) Section 12 of the Code of Criminal Procedure empowers the State Government to appoint besides the District Magistrate, Magistrates of the first, second or third class in any district and the State Government may from time to time define local areas within which such Magistrate may exercise all or any of the powers with which they may be invested under the Code. Section 12(2) of the Code of Criminal Procedure enacts that except as otherwise provided the jurisdiction and powers of such Magistrates shall extend throughout such district. It therefore follows that the Magistrates of the first class of a district have powers within defined local areas within the district and their jurisdiction and powers may in certain

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cases extend throughout such district. The Magistrate at Delhi can in certain cases exercise jurisdiction and power throughout the district where he is appointed. [464E-G]

It will not be in consonance with the jurisdiction and structure of courts of Magistrates to allow an order of investigation to be made by a Magistrate of Delhi for investigation of a case in the State of Assam. The reason is that a Magistrate orders investigation in a case which he has power to inquire into or try. The real import of s. 5A of the Prevention of Corruption Act is that investigation is to be done by Police Officers of a certain rank to ensure protection against frivolous, prosecution, and it is only with the order of Presidency Magistrate or a Magistrate of the first class that Police Officers below the rank mentioned in the section are allowed to investigate. It is therefore appropriate that Magistrates in Presidency towns or District will order investigation of cases within their respective jurisdiction. The effect of s. 5A of the Prevention of Corruption Act, is that it is a special Act which confers power on Presidency Magistrates throughout the Presidency town and Magistrates of the first class throughout the District when they exercise powers under the Code of Criminal Procedure. Therefore in cases governed by s. 5A of the Prevention of Corruption Act, Magistrates of the first class will exercise jurisdiction throughout the district irrespective of defined areas of their jurisdiction within the district by reason of s. 12(2) of the Code of Criminal Procedure. [465A-E]

In the present appeals, the order of investigation made by the Magistrate at Delhi for investigation of cases in the State of Assam was not a valid and competent order within the powers of the Magistrate at Delhi. The orders of investigation were therefore rightly quashed by the High Court. [465E-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 158 to 160 of 1970.

Appeals from the judgment and order dated March 31, 1969 of the Assam and Nagaland High Court in Criminal Revision Applications Nos. 53, 62 and 71 of 1968.

D.Mookherjee, Avtar Singh and R. N. Sachthey, for the appellants (in both the appeals).

Gobind Das and Lily Thomas, for respondent (in Cr. A. No. 158/1970).

J. P. Mitter and Sukumar Ghose, for respondent (in Cr. A. No. 159/ 1970).

A. S. R. Chari, Naunit Lal and Swaranjit Sodhi, for respondent (in Cr. A. No. 160 of 1970).

The Judgment of the Court was delivered by:

Ray, J.---These three appeals are by certificate from the judgment and order dated 31 March, 1969 of the High Court of Assam and Nagaland.

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These three appeals arise out of special cases No. 16 and 16A of 1964 pending in the court of the Special Judge, Gauhati. In Special Case No. 16 of 1964 Major J. S. Prosad, B. N. Ananthapadamanabhaiah and Motiur Rahman were charged under section 120B of the Indian Penal Code read with sections 5(2), 5(1) (c) and 5(1)(d) of the Prevention of Corruption Act, 1947 and section 467/ 471 of the Indian Penal Code. In Special Case No. 16A of 1964 charges were framed against S. Chatterjee and Motiur Rehman under section 120B of the Indian Penal Code read with sections 5(2), 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act and sections 467 and 471 of the Indian Penal Code.

The appellants filed three separate criminal revision petitions in the High Court. Four contentions were advanced before the High Court. First, that the Special Judge at Gauhati had no jurisdiction to try offences investigated by the Delhi Special Police Establishment as the Delhi Special Establishment Act was not extended to NEFA. Secondly, that under section 6 of the Delhi Special Police Establishment Act, the Delhi Special Police Establishment cannot investigate in a case in any area which is not a Union territory or a railway area without the consent of the Government of the State. It was contended that the consent of the Government of Assam was not taken. Thirdly, the investigation was carried out by an Inspector of Police under section 5(2) of the Prevention of Corruption Act under an order of a Magistrate of the First-class at Delhi but the Magistrate did not apply his mind to the matter and mechanically gave the permission. Fourthly, no sanction was taken under section 196A of the Code of Criminal Procedure before cognisance was taken by the court.

The Division Bench consisting of C. J. and Goswami, J. unanimously rejected the first two contentions but were divided in their opinion as to whether the Magistrate applied his mind to allow the investigation by an Inspector of Police and whether sanction under section 196A of the Code of Criminal Procedure was necessary. The matter was thereafter placed before the third learned Judge Sen, J. Before the third learned Judge another contention was advanced as to whether the Magistrate at Delhi had jurisdiction to accord sanction to an Inspector of Police of the Delhi Special Police Establishment to investigate the case in Assam. The third learned Judge held that an order of a Magistrate of the local jurisdiction was necessary and excepting a Magistrate of the district where the crime was committed no other Magistrate outside the jurisdiction could make an order for investigation. The third learned Judge also held that the Magistrate at Delhi did not apply his mind to allow the inspector of police to do the investigation. In the result, the proceedings before the Special Judge were quashed.

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A question arose as to whether a new contention as to the competency of the Magistrate at Delhi to sanction

investigation could have been raised before the third learned Judge when it had not been raised before the Division Bench. Counsel for the respondents contended that under section 429 of the Code of Criminal Procedure the case was to be laid before the third learned Judge and the third learned Judge was empowered to deal with the entire case and the judgment and order would follow the opinion of the third learned Judge.

This question came up for consideration in the recent unreported decision in Hethubha & Ors. v. The state of Gujarat (1). it was contended in that case on behalf of the appellants that the third learned Judge could only deal with the differences between the two learned Judges and not with the whole case. This Court held that the third learned Judge could deal with the whole case. The language of section 429 of the Code of Criminal Procedure is explicit that the case with the opinion of the Judges comprising the Court of Appeal shall be laid before another Judge of the same Court. The other noticeable feature in section 429 of the Code of Criminal Procedure is that the judgment or order shall follow the opinion of the third learned Judge.

Furthermore, the appeal is from the order of the third learned Judge as it must be by reason of the divided opinion of the Bench.

The more important question in the present appeals is whether the Magistrate at Delhi was competent to authorise the investigation of the case. The relevant provision is to be found in section 5A of the Prevention of Corruption Act, 1947 as it stood prior to its amendment in 1964 and is as follows :-

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no Police Officer below the rank-

(a) in the Presidency towns of Madras and Calcutta, of an Assistant Commissioner of Police;

(b) in the presidency town of Bombay of a Superintendent of Police; and

(c) elsewhere, of a Deputy Superintendent of Police,

shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under sub section (2) of this Act, without the order of the Presidency Magistrate or a Magistrate of the first class, as the case may be. or make any arrest therefore without a warrant".

(1) Cr. A.No. 100 of 1967 dt. 13-3-1970.

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The words "Presidency Magistrate or a :Magistrate of the First Class, as the case may be" were construed by counsel for the appellants to mean that except in the case of Presidency Magistrate it could be any first class Magistrate of any area inasmuch as there was no limitation with regard to any area of territorial jurisdiction by a Magistrate of the first class under section 5A of the Prevention of Corruption Act, 1947. Reliance was placed by counsel for the appellants on section 5 of the Code of Criminal Procedure that the investigation under section 5(2) of the Code of Criminal. Procedure could be according to the provisions of the Code of Criminal Procedure but subject to any enactment regulating the manner or place of investigation. It was said that section 5A of the Prevention of Corruption Act was a special Act regulating the manner of investigation and therefore the Code of

Criminal Procedure would not apply to that extent. Presidency Magistrate under sections 6 and 18 of the Code of Criminal Procedure are for each of the Presidency towns. A Presidency Magistrate exercises jurisdiction within the presidency towns for which he is appointed and within the limits of the port of such town. Magistrates of the first class are dealt with under sections 6, 10, 11, 12 and 13 of the Code of Criminal Procedure and their powers of sentence are dealt with by section 32 of the Code of Criminal Procedure. Section 6 speaks of magistrates of the first class, Magistrates of the second class and magistrates of the third class. Section 10 of the Code of Criminal Procedure speaks of district magistrate in every district outside the presidency town. Section 12 of the Code of Criminal Procedure empowers the State Government to appoint besides the District Magistrate, Magistrates of the first, second or third class in any district and the State Government may from time to time define local areas within which such Magistrates may exercise all or any of the powers with which they may be invested under the Code. Section 12(2) of the Code of Criminal Procedure enacts that except as otherwise provided the jurisdiction and powers of such Magistrates shall extend throughout such district. It therefore follows that the Magistrates of the first class of a district have powers within defined local areas within the district and their jurisdiction and powers may in certain cases extend throughout such district. The Magistrate at Delhi can in certain cases exercise jurisdiction and power throughout the district where he is appointed. The words "Presidency Magistrate or a Magistrate of the first class, as the case may" in section 5A of the Prevention of Corruption Act indicate that a Presidency Magistrate refers to the Presidency town where he exercises jurisdiction and similarly a Magistrate of the first class refers to a Magistrate of the first class of a district exercising power in that district. A Magistrate does not exercise jurisdiction throughout the length and breadth of India for

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purposes of Code of Criminal Procedure or of Prevention of Corruption Act. The Code of Criminal Procedure defines the territorial jurisdiction of Magistrates. It will not be in consonance with the jurisdiction and structure of Courts of Magistrate to allow an order of investigation to be made by a Magistrate of Delhi for investigation of a case in the State of Assam. The reason is that a Magistrate orders investigation in a case which he has power to inquire into or try. The real import of section 5A of the Prevention of Corruption Act is that investigation is to be done by Police Officers of a certain rank to ensure protection against frivolous prosecution and it is only with the order of Presidency Magistrate or a Magistrate of the first class that Police Officers below the rank mentioned in the section are allowed to investigate. It is therefore appropriate that Magistrates in Presidency towns or District will order investigation of cases within their respective jurisdiction. The effect of section 5A of the Prevention of Corruption Act is that it is a special Act which confers powers on Presidency Magistrates exercisable throughout the Presidency town and Magistrates of the first class throughout the District where they exercise powers under the Code of Criminal Procedure. Ordinarily, Magistrates of the first class may have defined areas within the meaning of section 12(1) of the Code of Criminal Procedure but in cases governed by section 5A of the Prevention of Corruption Act,

Magistrates of the first class will exercise jurisdiction throughout the district irrespective of defined areas of their jurisdiction within that district by reason of section 12(2) of the Code of- Criminal Procedure.

In the present appeals, the order of investigation made by the Magistrate at Delhi for investigation of cases in the State of Assam was not a valid and competent order within the powers of the Magistrate at Delhi. These orders of investigation are therefore rightly quashed by the High Court.

The contention on behalf of the appellants that the order of the Magistrate allowing the Inspector of Police to investigate was proper and that he applied his mind is not required to be gone into in the present appeals in view of the decision that the Magistrate at Delhi was not competent to authorise the investigation.

It is also not necessary to express any opinion on the other contention as to whether sanction under section 196A of the Code of Criminal Procedure was necessary before the courts could take cognizance of the matter.

We are of opinion that the order of the Magistrate at Delhi is not a valid and proper order and therefore the investigation was bad. We need not express any opinion as to whether there should be a fresh investigation. For these reasons, the appeals fail and are dismissed.

G.C.

Appeals dismissed.

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