

## **Superintendent And Remembrancer Of ... vs Ashutosh Ghosh And Ors. on 16 January, 1979**

**Equivalent citations: (1979)4SCC381, 1979(11)UJ497(SC), AIRONLINE 1979 SC 2**

**Author: S. Murtaza Fazal Ali**

**Bench: A.D. Koshal, S. Murtaza Fazal Ali**

### **JUDGMENT**

S. Murtaza Fazal Ali, J.

1. This appeal by certificate is directed against the judgment of the Calcutta High Court dated 25th of March, 1976, by which the High Court quashed the proceedings taken against the respondents on the basis of a charge sheet submitted by the police after due investigation. We have heard learned Counsel for the parties and have also perused the order of the High Court very carefully. At the time when the enquiry was conducted by the committing Magistrate, the old CrPC, 1898 was applicable and the new CrPC 1973 had not come into force. Under the old Code the Magistrate should have committed the case to the Court of Sessions if he was satisfied that there was sufficient ground for proceeding or a prima facie case was made out against the accused. The respondents, however, approached the High Court even before the commitment enquiry was completed and in fact before any evidence could be produced before the Magistrate, and the High Court having felt that further proceedings against the respondents amounted to an abuse of the process of the court as no case was made out against respondents, accepted the plea of the respondents and quashed the proceedings. Having gone through the judgments of the High Court, it seems to us that the High Court has exceeded its jurisdiction in quashing the proceedings at a stage when the commitment enquiry was not even complete. It would have been a sounder exercise of discretion for the High Court to exercise its power under Section 561A CrP.C. or under Section 215 of the old Code after an order of commitment was made. Even as it is, we find that the High Court appears to have gone into minute details and the pros and cons of the matter when this was beyond the inherent jurisdiction which was being exercised by the court under Section 561A CrP.C. On this ground alone: the order of the High Court stands vitiated and we do not want to make any observations on the merits of the case which may prejudice either party.

2. We, therefore, allow this appeal and set aside the order of the High Court quashing the proceedings against respondents and send the matter back to the Magistrate. Under the provisions of Section 484 of the CrPC, 1973, it is obvious that at the time when the new Code came into force in the year 1973 no commitment enquiry was pending before the court which had already been

quashed by the order of the High Court. The proviso to Sub-section 2(a) of 484 applies, which runs as follows:-

(2) Notwithstanding such repeal:

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with provisions of the CrPC, 1898, as in force immediately before such commencement (hereinafter referred to as the old Code), as if this Code had not come into force;

(Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code).

3. In view of the clear language enshrined in this proviso, it is obvious that the new Code will now apply to the proceedings before the committing Magistrate. Under the new Criminal Procedure Code the committing court need not take any evidence but has only to see whether the case is exclusively triable by the court of sessions which undoubtedly it is, in view of the allegations made against the respondents. The Magistrate, therefore, will now commit the case to the court of sessions. It will, however, be open to the respondents to urge at the time of the framing of the charge before the Sessions Judge any legal plea that is open to them which will be duly considered by the Sessions Court. We would also like to make it clear that the Sessions Judge shall decide the case of the accused untrammelled and uninfluenced by any observation made by the High Court in its judgment.