

Gauhati High Court

Maidhan Das Agarwalla vs R.B. Medhi And Anr. on 17 June, 1953

Equivalent citations: AIR 1953 Gau 220

Author: Deka

Bench: S Prosad, Deka

JUDGMENT Deka, J.

1. This is a Rule obtained by the petitioner-Maidhan Das Agarwalla on a petition under Article 227 of the Constitution of India on the allegation that the orders passed by Mr. Ram Bhadra Medhi, Special Judge, Gauhati on 1-4-53 and subsequent thereto in Special Case No. 1 of 1952 were without jurisdiction.

2. The facts leading to this petition are as follows:--On the 3-3-1952, the petitioner Maidhan Das Agarwalla filed a complaint in the Court of the Deputy Commissioner and District Magistrate, Goalpara against Sri Charn Barua, Opposite Party No. 2 alleging that the accused Sri Charan Barua While posted as the Circle Inspector of Police at Kokrajar within the District of Goalpara received bribes and attempted extortion of money from the complainant who is a partner of a rice mill at Fakiragram and of a firm trading under the name--Agarwalla and Co. at Fakiragram within the Goalpara district. The learned District Magistrate on receiving this complaint held a preliminary enquiry under Section 202, Cr. P. C. and on finding a prima facie case made out under Section 161, I. P. C. and Section 5 of the Prevention of Corruption Act (Act 2 of 1947), asked the State Government for necessary sanction to prosecute the accused and on the said sanction being received, the case was transferred by the District Magistrate to the Court of Mr. M. N. Barua first Class Magistrate at Dhubri for disposal. After the case had proceeded some length in the Court of the said Magistrate and some witnesses for the complainant were examined, the petitioner learnt of the passing of the Criminal Law Amendment Act, 1952 (Act 46 of 1952) and moved the learned Magistrate on or about 25-8-52 to adjourn the hearing of the case as under Section 7 of the said Act the offence was exclusively triable by a Special Judge appointed for the purpose by the State Government under the provision of the said Act and the learned trying Magistrate adjourned the proceeding accordingly.

3. By Gazette Notification No. JJD. 113/52/15 dated 9-9-1952 the Subordinate Judge and Assistant Sessions Judge, L.A.D. Gauhati, was appointed by the State Government as the Special Judge for the lower Assam Districts to try offences punishable under Section 161, I. P. C. and Section 5 of the Prevention of Corruption Act, 1947, and other offences specified in Sub-section (1) of Section 6 of the Criminal Law Amendment Act, 1952. After the said notification was published, the trying Magistrate Mr. M. N. Barua forwarded the case to the Court of Mr. D. N. Hazarika, Special Judge L.A.D. appointed under the Government Notification referred to above. The complainant on getting information of the same made an application to the Special Judge for holding the trial at Dhubri, but the learned Special Judge did not accept that prayer and fixed the case for hearing on 16-2-1953 at Gauhati, tout on 13-1-53 Mr. Hazarika passed an order in the absence of the parties postponing the hearing of the case sine die along with similar other cases as can be inferred from the order,--on the ground that he was under orders of transfer indicating however,--that he would take them up later. The order ran as follows:

"As I am under orders of transfer from Gauhati, intimate all Deputy Commissioners to stop the witnesses from attending the Court on the date fixed above.

The date of trial will be fixed sometime after on receipt of necessary orders from the Government and it will be duly notified to the parties.

For the present, case is adjourned sine die."

4. By Gazette Notification dated 17-12-52, Mr. D. N. Hazarika, Subordinate and Assistant Sessions Judge, L.A.D. with Headquarters at Gauhati was transferred as Subordinate and Assistant Sessions Judge of the same District with Headquarters at Dhubri and Mr. Ram Bhadra Medhi, Officiating Additional Subordinate and Assistant Sessions Judge, L.A.D. with Headquarters at Dhubri was transferred and appointed as officiating Additional Subordinate and Assistant Sessions Judge of the same District with Headquarters at Gauhati. By Gazette Notification, dated 22-12-1952, the State Government in exercise of its power conferred by Sub-section (1) of Section 6 of Act 46 of 1952 appointed amongst others the Subordinate and Assistant Sessions Judge, L. A. D. at Dhubri and the Additional Subordinate and Assistant Sessions Judge, L.A.D. at Gauhati as Special Judges in addition to their duties within their respective" jurisdictions to try the offences specified in Clauses (a) and (b) of Section 6(1) of the Act. A further Gazette Notification appeared on 19-1-4953 whereby the State Government in exercise of its powers conferred by Sub-section (1) of Section 6 of the Criminal Law Amendment Act, 1952, in partial modification of the earlier Gazette Notification,--appointed the following Subordinate and Assistant Sessions Judges in the State as Special Judges in addition to their duties, within the areas specified against their names to try offences specified in Section 6(1) Clauses (a) and (b) of the said Act. The relevant extracts from the above notifications are as follows:

" * *

(5) The Subordinate and Assistant Sessions Judge, Lower Assam Districts at Gauhati, Kam

(6) The Subordinate and Assistant Sessions Judge, Lower Assam Districts at Dhubri, Goal

5. The petitioner's case is that the offences complained of were committed within the d

the Court of the Special Judge at Gauhati on 1-4-53 in spite of there being an earlier intimation that the hearing of the case was postponed sine die by the order of the Special Judge, Gauhati passed on 13-1-53. On 1-4-53, the case was taken up by Mr. R. B. Medhi, Subordinate and Assistant Sessions Judge, Gauhati who rejected the prayer on behalf of the complainant for an adjournment of the case and the contention that the Special Judge, L.A.D. at Dhubri had the exclusive jurisdiction was also rejected and the prayers of the complainant for moving the State Govt. and High Court for transfer of the proceeding to the Court of Special J. at Dhubri were also rejected; he further ordered that the complainant should be brought (to quote the exact word) to the Court on the next day and that he

would proceed with the case. On 2-4-53, the case was taken up but was adjourned till 17-4-53 for hearing. The Rule is against this set of orders passed by Mr. Medhi.

6. The Special Judge L.A.D. at Gauhati, Mr. R. B. Medhi, and the accused Sri Charan Barua are opposite Parties Nos. 1 and 2 respectively to this proceedings. The Rule has been opposed on behalf of them both. The contention on behalf of the Special Judge, Mr. Medhi, represented by the Advocate General, has been that he was invested With powers to try this and similar other cases as a successor to the office of Mr. R. Hazarika, with his headquarters at Gauhati and the contention on behalf of the accused opposite party has been that on grounds of law as well as for the balance of convenience of the parties and more particularly of opposite party No. 2, Gauhati is the proper venue for the trial.

7. The only point for us to examine is whether Mr. D. N. Hazarika, the Special Judge, L. A. D. who validly assumed jurisdiction over the case and registered the case as Special Case No. 1 of 1953 of his Court was subsequently deprived of the seisin of the case and it vested in Mr. R. B. Medhi, after his transfer to Gauhati and whether Mr. Medhi had the jurisdiction to try the case in consideration of the Gazette Notification dated 22-12-1952 and 19-1-1953, the gists of which have been indicated above.

8. It is admitted by both sides that on 9-9-1952 when the first Gazette Notification appointing "Special Judges" under Section 6 of the Criminal Law Amendment Act was published, Mr. D. N. Hazarika was the only Subordinate Judge & Assistant Sessions Judge in the Lower Assam Districts with his Headquarters at Gauhati and by virtue of the said Notification he was invested with the jurisdiction to try the case then pending in the Court of the Senior Magistrate at Dhubri, the case being admittedly of the nature that would come within the scope of Section 6 of the Criminal Law Amendment Act, 1952. Mr. R. B. Medhi who might not have been an Additional Subordinate Judge and Assistant Sessions Judge did not come into the picture at all and his appointment was admittedly of an officiating nature. The Gazette Notifications of 17-12-1952 are clear on the point that the transfer of Mr. Hazarika as well as of Mr. Medhi was only with regard to their Headquarters and there was nothing to indicate that one succeeded the other with respect to their offices, one being a Subordinate Judge and Assistant Sessions Judge and the other an Additional Subordinate Judge and Assistant Sessions Judge. The Gazette Notification of 22-12-1952 gives for the first time the power of a Special Judge under Section 6 of the Act (Act 46 of 1952) to Mr. Medhi, Additional Subordinate Judge and Assistant Sessions Judge L. A. D. at Gauhati within his jurisdiction to try cases covered by Section 6. There is nothing there-

in to indicate or even to suggest that the cases tried by Mr. Hazarika as Special Judge would vest in him by virtue of this Notification, nor was Mr. Hazarika deprived of the seisin of the cases, that he had in his file as Special Judge since vested with the powers by the Gazette Notification of 9-9-52. The Gazette Notification of 19-1-1953 made it clear that Mr. Hazarika by virtue of his office as Special Judge was authorised to try offences specified in Clauses (a) and (b) of Section 6(1) of the Criminal Law Amendment Act, 1952, arising within the Goalpara District which would, normally cover the pending cases as well from, that district as there was nothing to suggest otherwise. It further appears that the Gazette Notification No. JJD. 113/52, dated 19-1-1953 is in partial

modification of the Gazette Notification No. JJD, 113/52/61 dated 22-12-52 dealing with the appointment of the Special Judges whereby Mr. Medhi was, for the first time authorised to try cases covered by Section 6 of Act 46 of 1952 or by virtue of which it might be said that both Mr. Hazarika as well as Mr. Medhi enjoyed the powers to try cases, as Special Judges within the Lower Assam Districts. This notification of 19-1-1953 expressly limited the jurisdiction of the Special Judge at Gauhati to offences arising within Karup District, Mangaldai Sub-division of the Darrang District and Shillong. Mr. Medhi, therefore, cannot be said to have seisin of the case now unless there be something in the Gazette Notifications to indicate that he was authorised to take up all or some cases pending in the file of Mr. Hazarika no matter where the offence took place. There was no order of transfer and it is doubtful whether there could be any,--except in cases coming within Section 7 of the Act, which provides that the State Government, could specify one of the Special Judges to try any particular offence, when there are more than, one Special Judges for the same area. Section 7 of the said Act dealing with the jurisdiction, of the Special Judges lays down-

"(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act 5 of 1898) or in any other law the offences specified in Sub-section (1) of Section 6 shall be triable by special judges only.

(2) Every offence specified in Sub-section (1) of, Section 6 shall be tried by the special judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government."

9. There might have been scope for contention on the basis of the Gazette Notification No. JJD. 113/52/61 of 22-12-52 that both Mr. Hazarika as well as Mr. Medhi could have exercised powers of the Special Judge in addition to their respective duties within then respective jurisdictions which extended throughout the Lower Assam Districts, but the later Gazette Notification of 19-1-53 removes the scope for that contention and Mr. Medhi could thereafter claim no jurisdiction with regard to the cases (triable by a Special Judge) in which the offences were alleged to have been committed within the District of Goalpara. The Gazette Notification Of 17-12-1952 No. JJD. 115/52/17B relating to the transfer and appointment of Mr. Medhi as Officiating Additional Special Judge and Assistant Sessions Judge, L.A.D. at Gauhati has been partially modified by the Gazette Notification of 19-1-1953, No. JJD. 1/53/21 whereby the appellation "Additional" is dropped and he was appointed to officiate as Subordinate and Assistant Sessions Judge of the same Districts with Headquarters at Gauhati. This Notification has been sought to be construed by the learned Advocate-

General appearing on behalf of Mr. Medhi as giving Mr. Medhi the identical power that was once exercised by Mr. D. N. Hazarika at Gauhati. The wordings of the notification are quite clear and it does not relate to the powers exercised by Mr. Hazarika as a Special Judge, but is confined to ordinary civil and criminal jurisdiction. Another contention of Mr. Lahiri was that the Gazette Notification of 9-9-1952, invested the incumbent in the office of the Subordinate Judge and Assistant Sessions Judge, L. A. D. at Gauhati with the powers of a Special Judge and those powers once vested still remain with the office because the authorisation was not in the name of Mr. Hazarika and relies on Section 15 of the General Clauses Act, 1897, for support. But it is admitted by

both sides that Mr. Hazarika was the only, person then in the office of the Subordinate Judge and Assistant Sessions Judge in the Lower Assam Districts and the powers were vested in him by virtue of the office and he has not been removed from that office ever since though his Headquarters had been changed from Gauhati to Dhubri. The power evidently was not with the headquarter but with the person in office. Mr. Lahiri's contention that Mr. Medhi succeeded Mr. Hazarika in office earlier to the Gazette Notification of 19-1-1953 and stepped into his shoes as a Special Judge with regard to all pending cases is not correct in the face of the other notification whereby he is distinctly deprived of all powers to act as a Special Judge with respect to offences committed in the Goalpara District. Mr. Medhi had at no time acquired any seisin over the case in question and his exercising the powers of a Special Judge with respect to this case specially after the Gazette notification of 19-1-53 amounted only to an illegal usurpation of powers not sanctioned by law. Another contention of Mr. Lahiri was that the notification of 19-1-1953 limiting the jurisdiction of Special Judges could not have been retrospective in its operation and once the jurisdiction to try the case vested in Mr. Medhi, he cannot be subsequently deprived of the same by any provisions of the Criminal Law Amendment Act & he relied on--'G. P. Stewart v. Brojendra Kishore Roy, AIR 1939 Cal 628 (A), to show that unless the parent Act itself clearly authorised the issue of a Notification with retrospective effect it must be presumed that such a notification is forbidden, or in other words inoperative in its effect. But this contention has no application to the facts of this case as in our opinion, the power to try the case in question never vested in Mr. R. B. Medhi at any time. The contention, if correct, applied to the seisin of Mr. Hazarika as well, and by subsequent notification, he could not be deprived of the same in favour of Mr. Medhi.

10. Mr. S. K. Ghose appearing on behalf of the opposite party No. 2 adopted the argument addressed by Mr. Lahiri and in addition submitted that in case Mr. Medhi is found to have concurrent jurisdiction by the operation of law and it is intended by the State Government that he should try the case as indicated by the Government letter referred to by Mr. Medhi in his order of 1-4-53, the order of this Court might not be given effect to. We are not aware of the contents of the Government letter and we cannot presume anything else to be Government's intention contrary to what is published in the relevant Gazette Notifications. We cannot take any note of the personal inconvenience caused to the accused if the trial is held elsewhere. It was faintly sounded because there was an earlier application by the accused for a transfer of this case under Section 526, Cr. P. C. from Dhubri to Gauhati and that application was dismissed summarily by this Court on 21-7-52.

11. In the circumstances of the case, we accept the contention raised by the petitioner that Mr. Medhi, the now Special Judge at Gauhati has at no time acquired any jurisdiction or seisin over the case in question and his orders relating to the hearing of the case passed on 1-4-53 or on any other date thereafter were without jurisdiction and they have to be set aside which we do accordingly under the powers enjoyed by the High Court under Article 227 of the Constitution of India. It is an established principle that when there is illegal exercise of jurisdiction by any of the Court or tribunal within the territorial jurisdiction of this Court, the High Courts in exercise of its power of superintendence can interfere and set aside the orders impugned and give proper directions.

12. The result is that the Rule is made absolute but in the circumstances of the case, we make no orders as to costs.

Sarjoo Prosad, C.J.

13. I agree.