

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).2982/2005

(From the judgement and order dated 10/03/2005 in CRR No. 2116/2004 of The HIGH COURT OF CALCUTTA)

SUBRATA BARMAN SEN

Petitioner(s)

VERSUS

STATE OF WEST BENGAL

Respondent(s)

(With appln(s) for stay and office report)

[for final disposal]

Date: 25/08/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. P.N. Misra, Sr. Adv.

Mr. Suchit Mohanty, Adv.

Mr. Ranjan Mukherjee, Adv.

For Respondent(s)

Mr. Avijit Bhattacharjee, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeal is accepted, impugned order of the High Court and that of the Revisional Court are

set aside. The case is remitted back to the revisional Court to adjudicate on the revision filed by the

appellant against the order of the Magistrate summoning/refusing to discharge him for a fresh decision

in accordance with law.

Parties through their counsel are directed to appear before the revisional Court on 30th

October, 2006.

(J.S. Rawat)

(Kanwal Singh)

AR-cum-PS

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2006

(Arising out of SLP (Crl) No. 2982 of 2005)

Subrata Barman Sen

.....Appellant(s)

Versus

State of West Bengal

.....Respondent(s)

ORDER

Leave granted.

The appellant was charged for commission of the offence

punishable under Section 39 of the Indian Electricity Act, 1910 [for short "the 1910 Act"] for using the electricity unauthorisedly. He filed an application for discharge from the case before the Trial Court which was rejected on 30th September, 2002.

The Appellant challenged the said order of the Magistrate refusing to discharge him from the case by filing a revision petition. The revisional Court by its order dated 30th June, 2004 held that the case was triable exclusively by the Special Court constituted under the Indian Electricity (West Bengal Amendment) Act, 2001 (West Bengal Act XXX of 2001) [for short 'the Amendment Act'], against which the appellant filed a Criminal Revision Petition in the High Court of Calcutta. The High Court while upholding the findings of the revisional Court held that the offence would be triable exclusively by the Special Court under the Amendment Act and dismissed the revision petition. The said order of the High Court has been impugned in the present appeal.

The Amendment Act came into force with effect from 15th July,

2002 and the Special Courts were constituted in the year 2003. It was submitted before us by the learned counsel appearing for the appellant at the admission stage that the alleged offence was committed by the appellant under the 1910 Act and the offence could be tried by the Special Court as per provisions of Section 39G of the Amendment Act only if it had been committed under the Amended Act. Since the alleged offence was committed by the appellant under the 1910 Act he could be tried under the said Act only.

Notice was issued. Pursuant thereto the respondent has put an appearance. Counsel appearing for the respondent did not choose to file the counter affidavit.

Counsel for the appellant reiterated his contention that since the offence was not committed under the Amended Act the appellant could not be tried by the Special Court as provided in the Amendment Act. That the appellant could be tried under the 1910 Act only.

Counsel for the respondent fairly submits that the contention raised by the counsel for the appellant was unassailable and therefore,

no exception can be taken to the same.

In view of the submissions made by the counsel for the parties the appeal is accepted, impugned order of the High Court and that of the Revisional Court are set aside. The case is remitted back to the revisional Court to adjudicate on the revision filed by the appellant against the order of the Magistrate summoning/refusing to discharge him for a fresh decision in accordance with law.

Nothing stated herein above shall be taken as an expression of opinion on merits of the case. The revisional Court shall proceed in the case without being influenced by any of the observations made herein above or in the impugned order of the High Court.

Parties through their counsel are directed to appear before the revisional Court on 30th October, 2006.

.....J  
(ASHOK BHAN)

New Delhi; .....J  
August 25, 2006 (MARKANDEY KATJU)

