(2010) 09 DEL CK 0158

Delhi High Court

Case No: Writ Petition (Criminal) No. 347 of 2010

Ashok Kumar Singhal	APPELLANT
Vs	
State CBI	RESPONDENT

Date of Decision: Sept. 15, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 142, 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 243(1), 317, 34, 397, 397(1)
- Prevention of Corruption Act, 1988 - Section 19(3), 22

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: R.N. Mittal and Manoj Kumar, for the Appellant; Vikas Pahwa, Standing Counsel and Suchit Chandra, for the Respondent

Judgement

Shiv Narayan Dhingra, J.

The above petition and many more petitions have been filed by litigants against the orders of Special Judge framing charge for the offences under Prevention of Corruption Act coupled with or without charges for offences under IPC.

2. Some of the petitions were filed originally under Article 226/227 of the Constitution of India, some were filed as Revision Petitions and were converted as Writ Petitions at the request of the parties, and some Writs were filed after dismissal of Revision Petition.

3. In Dharambir Khattar Vs. Central Bureau of Investigation, the Bench of Dr. Section Muralidhar J. after considering the provisions of Section 19(3)(c) of Prevention of Corruption Act and after considering the legal position and after scanning through various judgments of Supreme Court had observed as under:

To conclude this part of the discussion it is held that in the context of Section 19(3)(c) the words "no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial..." includes an interlocutory order in the form of an order on charge or an order framing charge. On a collective reading of the decisions in V.C. Shukla and Satya Narayan Sharma, it is held that in terms of Section 19(3)(c) PCA, no revision petition would be maintainable in the High Court against order on charge or an order framing charge passed by the Special Court.

4. In para 24, the Bench observed that a petition u/s 482 Cr.P.C. and under Article 227 of the Constitution of India would also be not maintainable

In the present petitions it was urged that notwithstanding the above legal position, the powers of this Court under Article 226 and 227 of the Constitution and Section 482 Cr.P.C. remained untramelled. In other words, it was submitted that in appropriate cases, the said provisions could be invoked notwithstanding the statutory bar to challenge an order on revision passed by the Special Court. In the considered view of this Court, this argument although attractive also does not survive after the authoritative pronouncement of the Supreme Court in State v. Navjot Sandhu (supra). There a similar argument raised in the context of Section 34 POTA was negatived. An order by the Special Judge POTA regarding call interception was challenged in the High Court by a petition under Articles 226 and 227 of the Constitution read with Section 482 C.r.P.C. The Supreme Court held that the High Court ought not to have entertained the petition at all. It noticed the judgments in Madhu Limaye v. State of Maharasthra and Satya Narayan Sharma v. State of Rajasthan.

5. In subsequent decision in R.C. Sabharwal Vs. Central Bureau of Investigation, the Bench of V.K. Jain J. re-affirmed the legal position regarding the order on charge passed by Special Judge of CBI being an interlocutory order and observed as under:

For the reasons given in the preceding paragraphs, I am in full agreement with the view taken in Dharambir Khattar''s case as regards the interpretation of the expression "interlocutory order" used in Section 19(3)(c) of Prevention of Corruption Act, 1988.

6. However, Justice Jain''s Bench further observed that it was in full agreement with the view taken in the case of Dharambir Khattar that inherent power of the Court cannot be used to interfere with an order on charge or directing the framing of charge in case attracting the provisions of Prevention of Corruption Act, meaning thereby that a petition u/s 482 Cr.P.C. would not be maintainable before High Court assailing an order on charge, which was also the view of the previous bench. However, the bench of Justice Jain took contrary view to the view of Justice Muralidhar''s bench regarding maintainability of a petition under Article 227 of Constitution of India and observed as under:

40. In the case of Dharambir Khattar (supra), this Court also observed that in view of the decision of the Hon''ble Supreme Court in the case of Nayjot Sandhu(supra), the power of the Court under Article 226 and 227 of the Constitution cannot be used to interfere with an order of this nature. I have carefully gone through the decision of the Hon''ble Supreme Court in the case of Nayjot Sandhu (supra) and I find that in this case, the Hon''ble Supreme Court did not rule out invoking of writ jurisdiction of the High Court, in appropriate cases, even in respect of interlocutory orders. The Hon''ble Supreme Court noticed that the order of this Court challenged before it did not indicate as to whether the Court was exercising its power of superintendence under Article 226 of the Constitution or its inherent powers u/s 482 of the Code of Criminal Procedure. It was noted that the respondent Geelani had not invoked Article 227 of the Constitution and it was contended by Dr. Dhawan that the order was passed in exercise of inherent jurisdiction u/s 482 of the Code of Criminal Procedure. The Hon''ble Supreme Court found it difficult to accept the submission of Mr. Shanti Bhushan that the order of this Court was under Article 227 of the Constitution. Thus, Court felt, on the facts of the case before it, that neither the power under Article 227 of the Constitution nor inherent jurisdiction u/s 482 of the Code of Criminal Procedure should have been exercised, even if such powers were available. In para 28 of the judgment, the Hon''ble Supreme Court held as under:
Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunal''s within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order....

It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal''s within the bounds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised ''as the cloak of an appeal in disguise''.

41. Thus, in the case of Nayjot Sandhu (supra) the Hon''ble Supreme Court expressly recognized the powers of the High Court to interfere even with an interlocutory order in exercise of jurisdiction under Article 227 of the Constitution though it cautioned that such powers should be exercised sparingly and only with a view to keep subordinate Courts within the limits of their authority and only in very exception circumstances, warranting interference in exercise of these extraordinary

powers. Therefore, the judgment of the Hon''ble Supreme Court in the case of Nayjot Sandhu(supra) does not rule out invoking and exercise of constitutional powers of this Court in appropriate cases.

7. Ultimately, the bench of Justice Jain was of the view that the constitutional remedy under Article 226, 227 of the Constitution cannot be shut out on the ground that the petitions under Article 226, 227 of the Constitution, if entertained against interlocutory orders on framing charge, the revision petitions challenging such order may be re-filed as Writ Petitions. According to R.C. Sabharwal''s case (Supra), the remedy does not lie in denying writ jurisdiction of the High Court, but, lies in exercising a self restrain by the High Court in exercising jurisdiction under Article 226, 227 of the Constitution in accordance with authoritative pronouncements of the Supreme Court, sparingly and in exceptional circumstances.

8. This Court is of the view that the very purpose of the statutory provisions enacted by legislature u/s 19(3)(c) of the Prevention of Corruption Act stand defeated if the petitions under Article 227 are entertained against the order on charge.

9. In R.C. Sabharwal''s case the Single Bench gave the reasons as to why the Legislature was forced to enact Section 19(3)(c) of Prevention of Corruption Act and why expression ''interlocutory order'' needs to be interpreted differently from the interpretation given to it in the context of Section 397 of CPC in following manner:

12. One main object behind replacing Prevention of Corruption Act, 1947 by a new Act in the year 1988 was to expedite the proceedings initiated under Prevention of Corruption Act by providing for day to day trial of cases and incorporating prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory order. It has been experienced that those who are arraigned for trial under the provisions of Prevention of Corruption Act, try to delay the trial, using one or the other method and availing all possible remedies available to them in law, presumably in the hope that with the passage of time, the evidence that can be used against them during trial may not remain available, if they are able to delay the progress of the case, to the extent they can possibly do. Not only final or intermediate orders even interlocutory orders used to be and are still challenged despite the accused knowing it fully well that such orders cannot be subject matter of challenge in revisional jurisdiction. Though there is an absolute bar on stay of proceedings, it is not uncommon for the accused in such cases to seek stay of proceedings on the ground that they are likely to be seriously prejudiced and failure of justice is likely to be occasioned, unless the proceedings are stayed. Even if the Court is not inclined to stay the proceedings, considering the embargo placed by Section 19(3)(b)(c), the accused persons insist upon the record of the trial being summoned, contending that examination of the record would be necessary for the purpose of deciding the petition filed by them. Section 22(d) of Prevention of Corruption Act, 1988 provides that where the powers u/s 397(1) of the Code are exercised, the Court shall not ordinarily call for the record of the proceedings

without giving the other party an opportunity of showing cause why the record should not be called for, or if the Court is satisfied that examination of the record of the proceedings may be made from the certified copies. But it has been experienced that the record is requisitioned in many cases, entertaining the submission of the petitioners to the effect that scrutiny of the original record would be necessary for the purpose of proper and complete appreciation of the controversy involved in the case. As a result, even if there is no stay of proceedings, the trial comes to be stalled on account of the record having been requisitioned by the Superior Court. In fact, Trial Court Record has actually been summoned in Crl. Rev. P. No. 293/2006, 352/2006 and 294/2006 being disposed of this order, which shows that despite legislative restriction, the record of Trial Court continues to be summoned by the Superior Courts. Ordinarily, the accused in such cases command vast material resources and are in a position to have access to the best legal assistance for the purpose of their defence. If an order framing charge or directing framing of charge is not held to be an interlocutory order, the inevitable result would be a flood of Revision Petitions challenging such orders, coupled with request for either staying the proceedings in exercise of inherent powers of the Court or seeking summoning of the Trial Court record, thereby staying the trial for all practical purposes. This is yet another reason why the expression ''interlocutory order'' used in Section 19(3)(c) of the Prevention of Corruption Act needs to be interpreted differently from the interpretation given to it in the context of Section 397 of the Code of Criminal Procedure.

13. With a view to expedite the trial of cases, involving offences under Prevention of Corruption Act 1988, the Legislature has made a number of changes in the regular procedure prescribed in the Code of Criminal Procedure for trial of criminal cases. Special Courts have been constituted for trial of such cases. The Special Judges are required, as far as practicable, to hold the trial on day to day basis. A specific provision has been made placing embargo upon stay of proceedings under Prevention of Corruption Act not only on the ground of any error, omission or irregularity in the sanction unless such error, omission or irregularity has resulted in a failure of justice, but also on any other ground. Section 243(1) of the Code has been amended so as to require the accused in a corruption case, to give in writing, a list of the persons to whom he proposes to examine as his witnesses and the documents on which he proposes to rely. Another provision made in Section 22(b) of the Act provides that the proceedings shall not be adjourned or postponed merely on the ground that an application u/s 397 has been made by a party to the proceedings. This provision was necessitated since it was experienced that after filing a petition u/s 397 of the Code of Criminal Procedure, the accused would seek adjournment or postponement of proceedings on the ground that the Revision Petition filed by him was pending before the superior Court, and therefore, the trial Court should keep its hands off the proceedings. A specific provision has been made in Section 317 of the Code providing that the Judge may, for reasons to be recorded

by him and if he so thinks fit, proceed with the inquiry or trial in the absence of accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witnesses for cross-examination. This provision was necessitated experiencing that either accused or his pleader would be absent when the material witnesses are present and that would necessitate adjournment of the case to another date, thereby not only delaying the trial, but also causing inconvenience to the witnesses and putting pressure on them to get tired and exhausted on account of frequent visits to the Court. The objective behind all these provisions is to expedite trial of the cases instituted under Prevention of Corruption Act. If an order framing charge or directing framing of charge in such cases is not held to be an interlocutory order, the legislative objective behind enactment of Prevention of Corruption Act, 1988 is likely to be substantially defeated. The virus of corruption continues to eat into the vitals of our character and strength. With Government entering into large commercial contract and making huge purchases with increased expenditure on social welfare schemes and infrastructural projects, the scope for corrupt practices has increased manifold as the schemes and projects of the Government and its instrumentalities are executed only through public servants which gives considerable scope for misconduct on their part. Misuse of powers by those who occupy posts in Government is capable of causing considerable damage to the image and reputation of our country. We, therefore, need to curb and control the growing temptation to make a fast buck and get rich overnight by indulging in corrupt practices. This is possible only if those who indulge in such activities are given swift and deterrent punishment, which, in turn, is possible only if they are tried promptly and expeditiously, unhindered by unnecessary interference from superior Courts. It is with this objective in mind, Section 19(3)(c) of Prevention of Corruption Act has been enacted so as to take away the revisional powers of the High Court in the cases involving corruption by public servants.

10. This Court and the Apex Court have been consistently of the view as to what cannot be done directly cannot be done indirectly. The legislative intent, as expressed by introduction of Section 19(3)(c) of Prevention of Corruption Act, for speedier disposal of corruption cases cannot be allowed to be defeated by opening a back-door entry to the litigants for assailing orders on charge under Article 227 of the Constitution. It is evident from the fact that more than 30 petitions out of the above were initially filed as Revision Petitions but later on converted to Writ Petitions under Article 227 of the Constitution by the order of the Court. This itself shows that since the Revision against order on charge was barred by statute, the Court opened another door for doing the same act which could not have been done by the petitioners due to the statutory prohibition.

11. In Vishesh Kumar Vs. Shanti Prasad, the Supreme Court had occasion to consider a request made by the appellant to convert a revision into a petition under Article 227 of the Constitution and the Supreme Court made following observations:

17. It has been urged by the appellant in Vishesh Kumar v. Shanti Prasad Civil Appeal No. 2844 of 1979 that in case this Court is of the opinion that a revision petition u/s 115, Code of Civil Proceurde, is not maintainable, the case should be remitted to the High Court for consideration as a petition under Article 227 of the Constitution. We are unable to accept that prayer. A revision petition u/s 115 is a separate and distinct proceeding from a petition under Article 227 of the Constitution, and one cannot be identified with the other.

12. It would not be out of place to mention that revisional jurisdiction is part and parcel of the appellate jurisdiction of the High Court. In Nagendra Nath Dey v. Suresh Chandra Dey 59 I.A. 283, the Privy Council had observed that an application by party to an Appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptance of the term. Similarly, in Raja of Ramnad v. Ramid Rowthen and Ors. 53 I.A. 74, a civil revision petition was considered to be an appropriate form of appeal from the judgment of the subordinate Court. Thus the appellate jurisdiction can be exercised by High Court in both forms - in the form of Appeals, in the form of Revisions. Since the right to appeal and right to revision is statutory right, if the statute has taken away this right, the question arises as to whether this right should be permitted to the litigants under Article 227 of the Constitution or not?

13. It is settled law that supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to whether an inferior Court or Tribunal, has acted within its limits and not to correct an error apparent on the face of record, much less an error of law. In using supervisory power under Article 227 of the Constitution, High Court does not act as an Appellate Court and it is not permissible for a High Court, on a petition filed under Article 227 of the Constitution, to review or weigh the evidence upon which inferior Court or Tribunal passed the order or to see if it committed an error of law in decision. While passing an order on charge, the Special Judge has to take a prima facie view on the basis of evidence placed on record along with the charge-sheet and decide if the accused should be put to trial for certain offences as allegedly committed by him or not. The accused is put to notice of the offences by framing charges of the offences and then evidence is lead. In every revision against the order on charge and in every petition u/s 482 Cr.P.C. or under Article 227 of the Constitution, the only grievance raised before the High Court is that charge of the alleged offences was not made out and charge has been wrongly framed and the only prayer made is that the charges framed against the accused persons should be set aside and accused should be discharged. Once it has been authoritatively laid down by this Court that order on charge is an interlocutory order and no revision against the charge would lie and no petition u/s 482 Cr.P.C. would lie, entertaining a petition under Article 227 of the Constitution against the order on charge by the High Court and then re-appreciating the evidence collected by prosecution, and giving a finding whether charge was made out or not, would result in deleting Section 19(3)(c) from the Prevention of

Corruption Act and what has been prohibited directly would be done indirectly.

14. In Maruti Bala Raut Vs. Dashrath Babu Wathare and Others, Supreme Court had observed that it is not for the High Court to discuss the evidence and come to a conclusion different from the conclusion arrived at by the Tribunal. The High Court, while exercising its power under Article 227 of the Constitution, was not entitled to discuss the evidence given and to come to its own conclusion on the evidence and if this is permitted then it would clearly amount to overstepping the limits of power under Article 227 of the Constitution. When an order on charge is assailed before the High Court under Article 227 of the Constitution and it is stated that it was a fit case for discharge of the accused, in fact, the prayer made to the High Court is invariably to scrutinize the evidence collected by CBI and come to a conclusion different to the one arrived at by the Special Court.

15. In Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, Supreme Court had held that the powers of High Court under Article 227 of the Constitution are not greater than the power under Article 226 of the constitution. It has been further laid down that power of interference under Article 227 of the Constitution was limited to see that the subordinate Court and Tribunal function within the limits of their authority and the High Court cannot sit in appeal against the order of Tribunal under Article 227 of the Constitution.

16. In Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, it was laid down by Supreme Court that jurisdiction conferred by Article 227 of the Constitution was not by any means appellate in its nature for correcting errors in the decisions of Subordinate Courts or Tribunals but was merely a power of superintendence to be used to keep them within the bounds of their authority.

17. In Jagir Singh Vs. Ranbir Singh and Another, it was observed by the Supreme Court that power under Article 227 of the Constitution was a discretionary power and this power could only be exercised sparingly to keep subordinate Courts and Tribunals within the bounds of their authority and not to correct errors in their judgments. Where the Criminal Procedure Code itself banned the exercise of revisional powers by the high Courts, it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution, since the power of superintendence was not meant to circumvent statutory law.

18. In M.C. Mehta v. Kamal Nath and Ors. AIR 2000 SC 1997, the Supreme Court while considering the scope of Article 142 of the Constitution of India observed that the powers under Article 142 of the Constitution cannot be construed as powers which authorize the court to ignore the substantive rights of a litigant and this power cannot be used to ''supplant'' substantive statutory law applicable to a case or cause under consideration of the Court. The Supreme Court further observed that Article 142 of the Constitution even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory

provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly.

19. In Ranjeet Singh Vs. Ravi Prakash, the Supreme Court observed that in exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution High Court cannot indulge into re-appreciating or evaluation of evidence or correcting the errors in drawing inferences.

20. Even if it is considered that while considering charge on the basis of evidence collected by the prosecution two views were possible and the Trial Court had taken one view, which was plausible view, the High Court under Article 227 of the Constitution cannot interfere with the order of the Trial Court of framing charge, more so, when the order is held to be an interlocutory order in view of Section 19(3)(c) of the Prevention of Corruption Act.

21. In Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala, the Supreme Court had observed that High Court should not interfere and would be in error in interfering with the Trial Court order under Article 227 of the Constitution where two views were possible and the Trial Court had taken one view.

22. In AIR 1975 1297 (SC) power of superintendence of High Court was gone into by the Supreme Court and it was observed that this power cannot be invoked to correct the error of fact which can only be corrected by a superior court in exercise of a statutory power of appeal. The High Court in guise of exercising its jurisdiction under Article 227 of the Constitution cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final.

23. In view of these observations made by the Supreme Court in above cases, I consider that incase of Prevention of Corruption Act, framing of charge once having been held as an interlocutory order and no revision maintainable under the Statute, the High Court cannot open the doors of review of the order of Special Judge under Article 227 of the Constitution nullifying the statutory provisions. The function of High Court under Article 227 of the Constitution is limited to see that subordinate Court or Tribunal functions within its limit or authority and not to see whether the order passed by the Trial Court or Tribunal was the correct order or not. Under Article 227 of the Constitution, the High Court cannot correct the errors in the order.

24. In Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, Supreme Court observed that the powers of the High Court under Article 227 of the Constitution was not greater than the powers under Article 226 of the constitution and it was limited to see that the Tribunal functions within the limits of its authority. The High Court will not review the discretion of the Authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires.

25. It is well known fact that trials of corruption cases are not permitted to proceed further easily and a trial of corruption case takes anything upto 20 years in completion. One major reason for this state of affairs is that the moment charge is framed, every trial lands into High Court and order on charge is invariably assailed by the litigants and the High Court having flooded itself with such revision petitions, would take any number of years in deciding the revision petitions on charge and the trials would remain stayed. Legislature looking at this state of affairs, enacted provision that interlocutory orders cannot be the subject matter of revision petitions. This Court for reasons as stated above, in para No. 3 & 4 had considered the state of affairs prevalent and came to conclusion that no revision against the order of framing of charge or order directing framing of charge would lie. Similarly, a petition u/s 482 of Cr.P.C. would also not lie. I am of the opinion that once this Court holds that a petition under Article 227 would lie, the result would be as is evident from the above petitions that every order on charge which earlier used to be assailed by way of revision would be assailed in a camouflaged manner under Article 227 of the Constitution and the result would be same that proceedings before the trial court shall not proceed.

26. The decisions on a petition assailing charge requires going through the voluminous evidence collected by the CBI, analyzing the evidence against each accused and then coming to conclusion whether the accused was liable to be charged or not. This exercise is done by Special Judge invariably vide a detailed speaking order. Each order on charge of the Special Judge, under Prevention of Corruption cases, normally runs into 40 to 50 pages where evidence is discussed in detail and thereafter the order for framing of charge is made. If this Court entertains petitions under Article 227 of the Constitution to re-appreciate the evidence collected by CBI to see if charge was liable to be framed or, in fact, the Court would be doing so contrary to the legislative intent. No court can appreciate arguments advanced in a case on charge without going through the entire record. The issues of jurisdiction and perversity are raised in such petitions only to get the petition admitted. The issue of jurisdiction is rarely involved. The perversity of an order can be argued in respect of any well written judgment because perversity is such a term which has a vast meaning and an order which is not considered by a litigant in its favour is always considered perverse by him and his counsel. Therefore, entertaining a petition under Article 227 of the Constitution against an order on charge would amount to doing indirectly the same thing which cannot be done directly, I consider that no petition under Article 227 can be entertained.

27. However, since there are two views, one expressed by the Bench of Justice Jain in R.C. Sabharwal''s (supra) case and one held by the Bench of Justice Muralidhar in Dharamvir Khattar''s (supra) case and by this Bench, I consider that it was a fit case where a Larger Bench should set the controversy at rest. The matter is, therefore, referred to the Chief Justice for referring the following question:

Whether an order on charge framed by a Special Judge under the provisions of Prevention of Corruption Act, being an interlocutory order, and when no revision against the order or a petition u/s 482 of Cr.P.C. lies, can be assailed under Article 226/227 of the Constitution of India, whether or not the offences committed include the offences under Indian Penal Code apart from offences under Prevention of Corruption Act?

to a Larger Bench.

28. The matter be listed before Hon''ble the Chief Justice for referring it to a Larger Bench on 17th September, 2010.

There is no stay of proceedings before the Trial Court. Proceedings before the Trial Court shall continue.