

(2014) 03 GAU CK 0046

Gauhati High Court

Case No: W.P. (C) No. 24 of 2014

Mohet Hojai

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: March 6, 2014**Acts Referred:**

- National Investigation Agency Act, 2008 - Section 10, 11, 14, 14(2), 19
- Penal Code, 1860 (IPC) - Section 120(B), 121, 121(A), 409, 420
- Prevention of Corruption Act, 1988 - Section 13(1)(c), 13(2)
- Unlawful Activities (Prevention) Act, 1967 - Section 16, 17, 18, 20

Citation: (2014) 3 GLT 122**Hon'ble Judges:** Biplab Kumar Sharma, J**Bench:** Single Bench**Advocate:** R. Sharma, Advocate for the Appellant; P.N. Choudhury, Learned Standing Counsel and J.A. Hasan, Learned PP, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Biplab Kumar Sharma, J.

The challenge in the writ petition is the order dated 22.10.2013 of the learned Special Judge, CBI (Additional Court No. 1) in Special Case No. 12/2010. The petitioner has also prayed for a declaration that the criminal proceedings in the CBI SC No. 12/2010 and 10/2010, now pending before the CBI Court are not maintainable in view of the provisions of The National Investigation Agency (NIA) Act, 2008. According to the petitioner, the aforesaid two cases are not maintainable in law in view of the proceeding against the petitioner and others in the NIA Special Court in the form of Case No. 01/2009. The petitioner, who is involved in NIA Special Case No. 01/2009 has already been charge sheeted on 05.06.2009 u/s 120(B)/121/121(A) of the IPC read with Section 16/17/18 and 20 of the UA(P) Act. Presently, the proceeding in the said case is going on and as submitted by the

learned counsel appearing for the respondents, as many as 32 prosecution witnesses have already been examined.

2. As stated in the writ petition, the NIA while investigating the aforesaid case, discovered certain facts of misappropriation of Government funds and criminal misconduct of public servant in the concerned Autonomous district and, therefore, the NIA issued a letter to the Government of Assam, Home and Political Department, informing about such discovery with a request to the authority to initiate appropriate action against the offenders under the PC Act and the IPC by handing over the investigation to the CBI.

3. Pursuant to the aforesaid request of the NIA, the Government of Assam handed over the investigation of the case to CBI by issuing necessary notification etc extending the powers and jurisdiction of the Delhi Special Police Establishment Act to the Dima Hasao Autonomous District Council, thereby empowering the CBI to take up the investigation of the case. Accordingly, the CBI, after investigation filed charge sheet dated 23.11.2011 before the learned Special Judge, Additional CBI Court No. 1, Assam and thereafter, CBI Special Case No. 12/2010 was registered. Proceeding against the petitioner along with other charge sheeted accused persons was initiated u/s 120(B)/409/420 IPC read with Section 13(2)/13(1)(c) & (d) of the PC Act, 1988. On the basis of the materials available on record, charge against the petitioner has been framed u/s 120(B)/420 IPC read with Section 13(2) and 13(1)(c) & (d) of the PC Act.

4. Pursuant to the said investigation and charge sheet, the petitioner is presently facing trial in CBI Special Case No. 12/2010 and also CBI Special Case No. 10/2010, as the matter pertains to two different departments arising out of the same transaction. According to the petitioner, during the course of the CBI Court trial, he could discover that as per the provisions of Section 14 of the NIA Act, 2008, there cannot be two parallel proceedings, one in the NIA Special Court and the other in the CBI Special Court, having regard to the transaction in which the petitioner is said to be involved.

5. The petitioner filed the Annexure-B application dated 03.09.2013 praying for keeping in abeyance the proceedings in CBI Special Case No. 12/2010. The prayer so made was on the basis of Section 19 of the NIA Act, 2008, which reads as follows:-

"19. Trial by Special Court to have precedence. - The trial under this Act of any offence be a Special Court shall be held on day to day basis on all working days and have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance."

6. The aforesaid application was taken up for hearing by the learned Special Judge, CBI and the same having been rejected by the order dated 22.10.2013, the

petitioner has invoked the writ jurisdiction of this Court making the aforesaid prayers.

7. I have heard Mr. R. Sarma, learned counsel for the petitioner and Mr. P.N. Choudhury, learned Standing Counsel, CBI. I have also heard Mr. J.A. Hasan, learned P.P. NIA. I have also perused the entire materials on record.

8. While Mr. Sharma, learned counsel for the petitioner has made his submissions in reference to Sections 14 and 19 of the NIA Act, so as to contend that in view of the pendency of the proceeding before the NIA Special Court, the proceeding in the CBI Court is required to be kept in abeyance till a decision is arrived at in the said NIA Court, both Mr. P.N. Choudhury, learned Standing Counsel, CBI and Mr. Hasan, learned P.P. NIA, submit that the writ petition has been filed on a misconception and the pleas raised in the same are misconceived. Referring to the provisions of Sections 8, 10 and also 14 and 19 of the NIA Act, 2008, they submit that the provisions of Sections 14 and 19, on which the learned counsel for the petitioner has placed reliance will have to be understood in the particular context and not out of the context so as to hold that the CBI proceeding is not maintainable.

9. Mr. Sarma, learned counsel for the petitioner has also referred to the clause relating to definition of Section 2 of the NIA Act, 2008 so as to emphasis the meaning of the term "Special Court". According to him, in view of the provisions of Sections 11 and 22 of the Act, it is only the NIA Court, which is empowered to try the offence alleged to have been committed by the petitioner and which is being tried in the CBI Court.

10. The NIA Act, 2008 is an Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organizations and for matters connected therewith or incidental thereto.

11. The aforesaid Act was enacted in the 59th year of the Republic of India with the following statement of objects and reasons:-

"Over the past several years, India has been the victim of large scale terrorism sponsored from across the borders. There have been innumerable incidents of terrorist attacks, not only in the militancy and insurgency affected areas and areas affected by Left Wing Extremism, but also in the form of terrorist attacks and bomb blasts, etc., in various parts of the hinterland and major cities, etc,. A large number of such incidents are found to have complex inter-State and international linkages, and possible connection with other activities like the smuggling of arms and drugs, pushing in and circulation of fake Indian currency, infiltration from across the borders, etc. Keeping all these in view, it has for long been felt that there is need for

setting up an Agency at the Central level for investigation of offences related to terrorism and certain other Acts, which have national ramifications. Several experts and Committees, including the Administrative Reforms Commission in its Report, have also made recommendations for establishing such an Agency.

The Government after due consideration and examination of the issues involved, proposes to enact a legislation to make provisions for establishment of a National Investigation Agency in a concurrent jurisdiction framework, with provisions for taking up specific cases under specific Acts for investigation, provisions for setting up of Special Courts and for other related matters. These provisions are proposed to be incorporated in the National Investigation Agency Bill, 2008.

The Bill seeks to achieve the objectives mentioned above."

12. Section 8 of the Act provides power to investigate connected offence. As per the said provisions, while investigating the scheduled offence, the agency may also investigate any other offence, which the accused is alleged to have committed if the offence is connected with the scheduled offence. Section 10 empowers State Government to investigate scheduled offence. Since the provisions of Section 14 and 19 have been exclusively referred to by the learned counsels for the parties, for a ready reference, they are also quoted below:-

"14. Powers of Special Courts with respect to other offences.-

(1) When trying offence any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorized by this Act, or as the case may be, under such other law.

19. Trial by Special Court to have precedence. - The trial under this Act of any offence be a Special Court shall be held on day to day basis on all working days and have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance."

13. Referring to the sub-section 2 of Section 14, it is the submission of Mr. Sarma, learned counsel for the petitioner that the special Court referable to NIA Act may convict such person of such other offence and pass any sentence or award punishment authorized by the Act or as the case may be under such "other law" as mentioned in the said sub-section. According to him, since the offence under the PC Act and the IPC forming the subject matter of the CBI case was found to have been

committed by the petitioner during the investigation carried out in respect of the alleged offence under the NIA Act, there could not have been a separate proceeding in the CBI Court and instead it is the NIA Court, which should try both the offences being connected with the scheduled offence.

14. As stated in the writ petition, the NIA while investigating the particular offence allegedly committed by the petitioner discovered certain facts of misappropriation of Government funds and criminal misconduct of public servant in the Autonomous district. Therefore, the NIA issued a letter to the Government of Assam informing about such discovery with a request to the authority to initiate appropriate action against the offenders under the PC Act and the IPC. It was pursuant to said request the Government of Assam handed over the investigation to the CBI in respect of that part of the offence allegedly committed by the petitioner under the PC Act and the IPC. Pursuant to the investigation, the charge sheet against the petitioner was submitted under the aforesaid provisions of the PC Act and the IPC. Thereafter, charge was framed against the petitioner u/s 120(B)/420 IPC r/w section 13(2)/13(1)(c) & (d) of the PC Act, 1988.

15. As noted above, only plea of the petitioner before the learned Special Judge, CBI was that in view of the provision of above referred section 19 of the NIA Act, there cannot be two parallel proceedings and consequently the CBI Case should be kept in abeyance till final disposal of the NIA case. However, coming to this Court, the petitioner has further contended that the CBI proceeding in the given facts and circumstance is not maintainable in view of the provision of section 14 of the NIA Act.

16. In the impugned order dated 22.10.2013, the learned Special Judge, CBI referring to the relevant provisions of NIA Act, 2008 including the provisions of Sections 14 and 19, has held thus:-

"Having heard Id. advocates for both sides I cannot but agree with Id. PP since it is specifically provided in Section 19 of NIA Act that the trial of a case under NIA to be tried on day to day basis on all working days and shall have precedence over trial in any other case against the accused in any other courts not being a special court. Now Section 11 of the NIA Act provides for constitution of Special Court by Central Government and Section 22 empowers the state government constitute Special Court under NIA Act to try the scheduled offences. The provision u/s 19 is clearly worded where "not being special court" connotes offences pending for trial in any special courts and it does not say that "special courts" for the purpose of section 19 should be constituted under Sections 11 and 22 of the NIA Act.

Further section 14 of the Act envisages the (1) When trying any offence, a Special Court may also try and other offence with which the accused may, under the Code be charged, at the same trial if the connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorized by this Act or, as the case may be, under such other law. But then the offences pending for trial against accused Mohet Hojai in the Special Court, CBI also include offences under P.C. Act 1988 which are to be tried by Special Courts constituted u/s 3 of the Act. Special Courts constituted u/s. 11 and 22 of NIA Act are not empowered to try case under P.C. Act 1988 and as such I do not agree with Id. counsel for the accused Mohet Hojai that the jurisdiction of the Special Court under P.C. Act on such grounds as contended by the Id. advocate for the accused in course of his argument above.

Thus in the light of the above discussion I hold that the prayer of the accused Mohet Hojai cannot be entertained and same is rejected. The hearing of the petition stands disposed accordingly."

17. The main thrust of the argument of the learned counsel for the petitioner is in reference to Section 14(2) of the NIA Act, 2008, which in my considered view will have to be understood in the context of the provisions of Sections 8 and 10 of the NIA Act, 2008. Further, as has been referred to, the said Act was constituted for the specific purpose. When the investigation in respect of the purported offence committed by the petitioner under the NIA Act, 2008 was carried out, it was found that the petitioner is also involved in the misconduct of public servant and also misappropriation of Government funds. It was in such circumstances, the matter was referred to the Government by the NI Agency and thereafter the CBI was empowered to investigate the case. Upon completion of the investigation, charge sheet was filed and thereafter, charges against the petitioner u/s 120(B)/420 IPC r/w section 13(2), 13(1)(c) & (d) of the PC Act were framed. Presently the proceeding is going on and as submitted by the learned counsels for the parties, about 13 prosecution witnesses have already been examined.

18. Above being the position, I do not find any infirmity with the order impugned in this proceeding i.e. the order dated 22.10.2013 passed by the learned Special Judge, CBI (Additional Court No. 1) in Special Case No. 12/2010. I also do not find any ground to grant the further prayer made in this writ petition. Accordingly, the writ petition is dismissed, leaving the parties to bear their own costs.