

(1975) 12 CAL CK 0029

Calcutta High Court

Case No: None

Pramatha Nath Basu

APPELLANT

Vs

S.K. Dutta, S.P. (Investigation)
and Others

RESPONDENT

Date of Decision: Dec. 11, 1975

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: 80 CWN 209

Hon'ble Judges: Amiya Kumar Mukherji, J

Bench: Single Bench

Advocate: Nalin Banerjee, Somendra Chandra Bose, Mahitosh Mazumder and Ashim Kr. Ghosh, for the Appellant; D. Das and Mrs. Archana Sengupta for the Respondents No. 1 to 4 and Noni Coomar Chakraborty for Other Respondents, for the Respondent

Final Decision: Dismissed

Judgement

Mr. Justice Amiya Kumar Mukherji

1. In this Rule, the petitioner prays for a Writ in the nature of Mandamus commanding the respondents not to proceed with any further investigation against the petitioner with regard to the alleged offence under the Prevention of Corruption Act, 1947.

2. Petitioner joined the Customs Department in the year 1946. He however, resigned from the said post with effect from 26th March, 1973. Some Police Officers of the Central Bureau of Investigation, Special Police Establishment, Delhi searched the petitioner's house on 5th March, 1973. A search warrant was issued by the Subordinate Magistrate, Sadar, Alipur. The said Police Officer seized certain papers and documents from the ground floor of premises No.22/26, Manoharpukur Road, Calcutta-29. After the aforesaid searches, the petitioner tendered a letter of resignation on 24th March, 1973, requesting to make it effective from 26th March,

1973. The said resignation was not, however, accepted by the authorities concerned. It is alleged by the petitioner that the entire actions of the respondents and the officers of the Special Police Establishment in carrying on the investigation and searching the petitioner's premises, office and in seizing the documents and other papers are illegal and without any authority of law. The petitioner being aggrieved by the said investigation moved this Court in an application under Article 226 of the Constitution and obtained the present Rule.

3. Mr. Somen Bose, appearing on behalf of the petitioner, contended that the petitioner having resigned on and from 26th March, 1973, no charge u/s 5(2) of the Prevention of Corruption Act, 1947, could be framed against the petitioner and as such, investigation regarding the aforesaid offence was not only without jurisdiction but also malafide in character.

4. The charge against the petitioner is u/s 5 (1) (e) of the Prevention of Corruption Act, 1947. The said section reads as follows:

A public servant is said to commit the offence of criminal misconduct if he or any person in this behalf is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

5. The charge against the petitioner is that, in between 1963 and 1970 when the petitioner was a public servant acquired assets worth about Rs.80,000/- which is disproportionate of his known sources of income. It is not disputed that the petitioner's letter of resignation has not been accepted by the authorities as yet as it will appear from the letter of the Collector dated 3rd May, 1973 which is Annexure "B" to the petition. It is contended by Mr. Bose that as the petitioner has ceased to be a public servant on and from 26th March, 1973 and tendered his resignation unconditionally, no proceeding under the Prevention of Corruption Act could be continued against him. According to Mr. Bose, the Government has got no power to compel its employee to work who has tendered unconditional resignation forfeiting his pension, gratuity and other benefits which he was entitled to under the terms and conditions of his service.

The letter of resignation is Annexure "A" to the petition. It does not, show that the petitioner's resignation was unconditional. He, however, referred in his letter dated 18th June, 1973 to the Collector of Customs, that he tendered his resignation "unconditionally."

6. In the affidavit-in-opposition filed on behalf of the respondents 5, 6 and 8 and affirmed by Thanu Iyer Ramaswami, the Deputy Secretary, Ministry of Finance, Department of Revenue & Insurance, it is stated that the petitioner's resignation contained in his letter dated 24th March, 1973 along with the relevant file was placed before the Minister of Revenue & Expenditure Sri K. R. Ganesh on May 19,

1973 and the Minister refused to accept the resignation. The said decision of the Minister was communicated to the Collector of Customs, Calcutta by Under-Secretary, Sri S. R. Sharma while he was the under Secretary of the department, by his communication dated 24th April, 1973.

7. Mr. Chakraborty, appearing on behalf of the respondents contends that although there are no rules relating to the resignation of Central Government service but there are executive instructions contained in Ministry of Home Affairs, vide O.M. No.39/6/57-Ests (A) dated 6th May, 1968 relating to resignation. In that executive instruction it is stated that the competent authority should decide the date with effect from which the resignation should be effective.

8. In (1) [Raj Kumar Vs. Union of India \(UOI\)](#), the Supreme Court observed that where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the condition of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. The said decision of the Supreme Court has been considered subsequently by a Division Bench of Patna High Court in (2) N.K. Jagnani v. Bihar State Electricity Board, (1975) LIC 943. The learned Judges observed:

The question still arises when it would be considered that the service of the petitioner was terminated, whether before or after the acceptance of his resignation? The answer, according to the Supreme Court's judgment referred to above, is that the service of this purpose would be considered as terminated, only after the acceptance of the resignation.

9. Mr. Bose relied upon a decision of a Division Bench of this Court in (3) Rabindra Nath Mazumdar v. Reserve Bank of India, 1975 CH 272 wherein it has been held that the effectiveness of resignation depends on the rules or conditions express or implied governing service in each case. If the rules or conditions require, either expressly or impliedly, that the resignation is to be accepted, without acceptance the resignation can not be effective. If, however, the rules or conditions do not require such acceptance, the resignation becomes effective as soon as it is tendered.

10. A Full Bench of the Allahabad High Court in the case of (4) [Bahori Lal Paliwal Vs. District Magistrate, Bulandshahr and Another](#), was of opinion that acceptance of resignation is necessary before the service of an employee can come to an end. Such an acceptance is a necessary step in giving effect to the resignation, and until that step has been taken, the resignation can not be said to be complete and effective. In the case of a civil servant it is not a matter affecting the two parties, namely the employee and the Government. The public has also the right to the service of all the citizens and may demand them in all departments, civil as well as military. The civil servants are appointed for the purpose of exercising the functions

and carrying on the operations of the Government. They have to discharge all sorts of duties, judicial as well as administrative and it would result in complete chaos if it were held that the resignation would become effective as soon as a civil servant tendered it. The exigencies of the public office may demand that the civil servant, must carry on the operations of the Government and continue to discharge the functions till the Government is able to make alternative arrangements.

11. In the instant case the executive instruction of the Home Department dated 6th May, 1968 requires that the competent authority should decide the date with effect from which the resignation should be effective. Therefore, the decision referred to by Mr. Bose would be of no assistance to the petitioner.

12. My attention was drawn to a Bench Decision of this Court in (5) Manmal Bhutoria v. State of West Bengal, (1972) 77 CWN 460.

In that case Major Bhattacharyya of the Indian Army was charged along with Manmal Bhutoria with an offence u/s 5(2) of the Prevention of Corruption Act, 1947. Major Bhattacharyya was invalidated from the military service with effect from 14th February, 1968. By a notification dated 15th June, 1967, the State Government allotted the case of Bhutoria and Major Bhattacharyya to the Fourth Additional Special Court on a report submitted by the Deputy Superintendent of Police, Central Bureau of Investigation dated 27th May, 1967. This Court held that the Special Courts Act and the Prevention of Corruption Act do not apply to a public servant who had ceased to be a public servant on the date the Court takes cognisance.

In the instant case the petitioner's resignation has not been accepted by the authorities and as such the petitioner still continues to be a public servant. So, the above decision has got no application to the facts and circumstances of the present case.

13. Mr. Nalin Banerjee, who appeared as the Senior Advocate on behalf of the petitioner, in course of his argument raised various points which were not taken in the petition. It was objected to by the learned Advocates for the respondents. Subsequently, without leave of the Court, a supplementary application was filed wherein those grounds have been taken. No order was passed on that supplementary application which was filed on 20th of June, 1975. That supplementary application has not been taken into consideration by me. Mr. Banerjee also filed notes on argument. I have dealt with, in this Rule, only those points taken by the petitioner in the petition formulated by Mr. Banerjee in course of his argument, notes of which were taken by me.

14. It is contended by Mr. Banerjee that in (6) [P. Sirajuddin, etc. Vs. State of Madras, etc.](#), the Supreme Court laid down a principle that before a public servant could be prosecuted for commission of an offence and a FIR for the same is to be lodged before the police, there must be a departmental enquiry on the basis of specific charges and the said public servant must be given an opportunity to explain those

specific charges. According to Mr. Banerjee, the departmental enquiry is necessary particularly in regard to an offence u/s 5(e) of the Prevention of Corruption Act, 1947. The said offence can be said to have been committed only when the public servant fails to explain the disproportionate character of his assets to the known sources of his income. The explanation by the delinquent officer could not be before the police, as the statement of an accused made before the police is not admissible in evidence. Accordingly, it is argued that such explanation should be at the stage of departmental enquiry if the explanation is found by the relevant authority to be unacceptable or doubtful, in that case only, the competent authority would be entitled to lodge the FIR for the suspected commission by the public servant of the offence u/s 5(e) of the Act.

15. In the instant case a departmental proceeding was started. Before the petitioner submitted his explanation, the police lodged the FIR and started an investigation after a preliminary enquiry by the CBI Inspector Sri J. N. Chatterji. According to Mr. Banerjee that procedure is not permissible in law and it is in contravention of the principle as laid down by the Supreme Court in the case of (6) [P. Sirajuddin, etc. Vs. State of Madras, etc.,](#) .

16. In the instant case under the orders of the Superintendent of Police, Central Bureau of Investigation, Inspector J. N. Chatterji of Special Police Establishment took up the investigation against the petitioner on 20th February, 1973 u/s 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act on the basis of certain informations. The said Inspector on the basis of his preliminary enquiry submitted the first information report before the Sub-divisional Magistrate, Alipore Sadar and prayed for issue of search warrant u/s 96 of the Criminal Procedure Code, to search three places viz. (i) petitioner's garden house at South Jagatddal under Sonarpore Police Station, (ii) premises No.22/26, Manoharpukur Road, Calcutta-29 and (iii) almirahs and drawers etc. where personal belongings of the petitioner are kept at Customs House No.15.1, Strand Road, Calcutta.

17. The facts of Sirajuddin's case is that, the appellant Sirajuddin was the Chief Engineer, Highways and Rural Works, Madras. When he attained the age of 55 years, he was asked to hand over charge of his office to Superintending Engineer, Madras. It appears that a copy of a petition concerning him addressed to the Minister, Public Works by one Rangaswami Nadar was received by the Chief Minister of the State. The Chief Minister directed the Director of Vigilance and Anti-Corruption to make confidential enquiries. Sometime in March, 1964 Government received a note from the said officer which cast serious assertions on the appellant's reputation and mentioned quite a few instances of his lack of probity. The Director of Vigilance started an enquiry against the appellant. In that enquiry a large number of persons including 18 public servants who spoke to matters touching the allegations against the appellant were examined. Statements in writing signed by the makers were taken from no less than nine public servants, two of them were given certificates

assuring them immunity from prosecution for the part played by them in rendering aid to the appellant in the commission of his malpractices. Amongst them two persons were subordinates of the appellant. By a notification the Governor of Madras conferred upon the Director and the Superintendents of Police of Directorate of Vigilance and Anti-Corruption Departmental all the ordinary powers of a Magistrate of the First Class u/s 5A of the Prevention of Corruption Act. A charge-sheet was filed against the appellant in the Court of the Special Judge, Madras. 47 witnesses had been examined during the investigation following the first information report and at least nine of them had been previously examined at, what was termed as a "preliminary or detailed enquiry". Before the Special Judge the appellant moved an application for discharge u/s 251-A of the Code of Criminal Procedure on the ground that the charges against him were groundless. The Special Judge held that the charge could be framed against the appellant u/s 5(2) read with section 5(1)(d) of the Act. The appellant filed two Writ petitions before the High Court for quashing the order of the Special Judge mentioned above. There was also a petition u/s 435/439 for revision of the order of the Special Judge. It was argued before the High Court that taking of signed statements from the persons who were eventually going to be examined in the criminal proceedings by giving them assurances of immunity and thereafter relying on their subsequent unsigned statements as those u/s 161(3) of the Code for the purpose of Section 173 amounted to a fraud on the procedure established by law. The High Court came to the conclusion that there had been a deliberate violation of the provisions of the Code and departure from a recognised and lawful procedure for investigation. The High Court found partly in favour of the appellant and held that the order of the statements before him u/s 173(4) of the Code without reference to the illegalities in the investigation should be quashed. The High Court further directed the Special Judge to take up the matter once again and consider the case excluding from consideration all statement under Sections 161(3) and 164 which were found vitiated in the light of the observations made by it. The Supreme Court observed that the procedure adopted against the appellant before laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fair play. The Supreme Court further observed that before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said Department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must be proceeded

in a fair and reasonable manner. The Enquiring Officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The Supreme Court ultimately dismissed the Appeal.

18. In Sirajuddin's case the Supreme Court disapproved the mode of enquiry conducted by the Vigilance and Anti-Corruption Department of Madras. In that enquiry 18 public servants made statement, against the appellant, two of them were subordinate officers of the appellant who were given assurances by the Vigilance Department that they would not be prosecuted for aiding and abetting the offence committed by the appellant. It appears that on the basis of such enquiry the first information report was lodged. In that context the Supreme Court said that before the first information report was lodged there should have been a preliminary enquiry, it might be by the Vigilance Department against a Government servant. The Supreme Court has not laid down the law that before a first information report is laid for commission of an offence u/s 5(1)(e) or any of the sections under the Prevention of Corruption Act, 1947, there must be a departmental enquiry and the delinquent should be given an opportunity to explain the specific charges made against him.

19. In (7) [C.S.D. Swamy Vs. The State](#), the Supreme Court in construing Section 5(3) of Prevention of Corruption Act observed that the section required the accused person to "satisfactorily account" for the possession of pecuniary resources or property disproportionate to his known sources of income. The Legislature has adversely used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily", and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance.

20. In (8) Public Prosecutor v. Satyanarayan Rao, (1954) MLJ 643, Balakrishna Ayyar J. said "Section 5(3) speaks of the accused person satisfactorily accounting for his pecuniary resources. Mr. Ethiraj asked : to whom is this satisfactory account to be furnished? and seemed to suggest that this account need not be to the Court and that it might be given to some one else, as for instance to the official superior of the accused person or may be even to the investigating officer. Regard being had to the context in which the words occur, regard being also had to the fact that it is the Court which is required to presume that he is guilty. I have no doubt that Section 5(3) requires that the accused should satisfactorily account for his possession of disproportionate resources not to some one else but the Court before which he is being tried.

21. In view of the above two decisions referred to above, I am unable to accept the contentions of Mr. Banerjee that a public servant can not be charged u/s 5(1)(e) of the Act without holding a departmental enquiry and unless in that enquiry the

public servant fails to explain satisfactorily the disproportionate character of his assets to the known sources of his income.

22. It is contended that search warrant issued by the Sub-divisional Magistrate, Alipore, was without jurisdiction inasmuch as no proceeding was pending before any Court. The language of Section 96, Criminal Procedure Code makes it clear that the search warrant can not be issued at the stage of investigation. It is submitted by Mr. Banerjee that if comparison is made between section 94 and section 96 of the Code and the Schedule V and the difference is considered, the position would be clear that the Code did not authorise the Magistrate to issue search warrant u/s 96 of the Code at the stage of investigation.

23. In (9) *Clarke v. Brojendra Kishore Roy Chowdhury*, LR 39 IA 163, the Privy Council pointed out that for the purpose of an enquiry about to be made, a general search is permitted by part 3 of Section 96(1) of the Code of Criminal Procedure.

24. In (10) *Hasimara Industries Ltd. v. Company Law Board & Ors.* 79 CWN 865, a Division Bench of this Court held that an investigation taken up under the Criminal Procedure Code is a proceeding within the meaning of the third clause of Section 96(1) of the said Code. A general search warrant issued in aid of such an investigation is not invalid.

25. Accordingly, in view of the above decisions, I am unable to hold that no search warrant can be issued by the Sub-divisional Magistrate for the purpose of investigation by the police. In the instant case, the investigation was carried on by an Inspector of the Delhi Special Police Establishment. By virtue of sub-section (3) of Section 5 of the Delhi Police Establishment Act, 1946, read with the notification of the State Government dated 24th February, 1958, an officer of the Delhi Police Establishment exercises the power of an officer-in-charge of a police station in Calcutta. Therefore, the investigation which has been carrying on in the present case is an investigation within Section 4(1)(b) of the Criminal Procedure Code, 1898, under Part V, Chapter XIV of the said Code.

26. It is urged that the Sub-divisional Magistrate has got no territorial jurisdiction with respect to the search made at the Customs House situated at Strand Road which is within the jurisdiction of the Chief Presidency Magistrate, Calcutta.

27. It appears that three places were searched, - (1) petitioner's garden house at Sonarpore, (2) his residence at Manoharpukur Road and (3) his personal belongings at Customs House, Calcutta.

28. It is not disputed that the Sub-divisional Magistrate, Alipore has territorial jurisdiction over Sonarpore Police Station.

29. In (11) [Union of India \(UOI\) Vs. Maj. I.C. Lala etc. etc.](#), the Supreme Court has said with respect to an offence committed in more than one place under the Prevention of Corruption Act that, if an offence is committed in more than one

place, the order of every Magistrate within whose jurisdiction the offence or part of the offence was committed is not necessary in order to enable the investigation to be carried on; all that is necessary is that the Magistrate who makes the order u/s 5A of the Prevention of Corruption Act should have territorial jurisdiction over the place where any part of the ingredients of the offence took place.

30. Section 5A has been amended in 1964. Now, without the order of the Magistrate an Inspector of the Delhi Police Establishment can investigate with respect to an offence committed under the said Act. In the instant case the first information report was lodged by the Investigating Officer before the Sub-divisional Magistrate, Alipore. Admittedly the learned Magistrate has jurisdiction to issue a search warrant for the search of the petitioner's garden house at Sonarpore. That being so, in my opinion, and in view of the decision of the Supreme Court referred to above, the order of every Magistrate within whose jurisdiction the offence or part of the offence was committed, is not necessary for the purpose of issue of a search warrant u/s 96(1) of the Code of Criminal Procedure.

31. It is urged that Section 156(1) of the Code of Criminal Procedure does not authorise an officer-in-charge of a Police Station to investigate the offences under the Prevention of Corruption Act which are exclusively triable by a Special Judge.

32. This argument is not well founded. Section 5A of the Prevention of Corruption Act makes Section 156 inapplicable to the investigation of an offence u/s 5 of the Act. Section 5A of the Act says that notwithstanding anything contained in the Code of Criminal Procedure, 1898, no Police Officer below the rank - (a) in the case of the Delhi Police Establishment, of an Inspector of Police shall investigate any offence punishable u/s 5 of the Act without the order of a Presidency Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest thereof without a warrant.

33. In (12) [Bhajahari Mondal Vs. The State of West Bengal](#), where the Supreme Court dealt with the West Bengal Criminal Law Amendment (Special Courts Act) 1949 and observed:

The crucial date for the purpose of determining the jurisdiction of the Court would be the date when the Court received the record and took cognizance of the case and took any step in aid of the progress of the case and not when the evidence of the witnesses began to be recorded. u/s 4 of West Bengal Act (W. B. Act XXI of 1949) as amended by the Act of 1952 the jurisdiction of the Court arises when the notification is issued distributing the case to a particular Special Court giving the name of the accused and mentioning the charge or charges against him which must be under one of the offences specified in the Schedule. In the absence of any of these elements the Special Court would have no jurisdiction.

34. Before distribution of the case by the State Government to a special judge, in my view, the rules laid down in Chapter XV of the Code of Criminal Procedure, 1898,

would be applicable with respect to an offence committed under the Prevention of Corruption Act.

35. Lastly, it is contended that the principle of natural justice has been violated as the police officer who held the preliminary enquiry was the first informant complaining the alleged offence committed by the petitioner and proceeded to investigate into the very same matter himself. The informant thus becomes the judge of his own cause.

36. Ordinarily investigation is undertaken on information received by a Police Officer. Receipt of information is not a condition precedent for investigation. Section 157 of the Code prescribes the procedure of an investigation which can be initiated either on information or otherwise. It is abundantly clear from the said provisions that an officer-in-charge of a police station can start investigation either on information or otherwise. u/s 4(b) of the Code investigation includes all the proceedings under this Code for the collection of evidence conducted by a police-officer.

37. In (13) [H.N. Rishbud and Inder Singh Vs. The State of Delhi](#), the Supreme Court described the procedure prescribed for investigation under Chapter XIV of the Code of Criminal Procedure thus:

Under the Code investigation consists generally of the following steps; (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consists of (1) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under S. 173.

38. The petitioner is a Central Government employee. His net salary was Rs.1,300/- per month. Information was received that the petitioner has acquired assets amounting to Rs.5 lakhs in his own name and in the names of his family members. As a precautionary measure a preliminary enquiry was made looking into the relevant records only for the purpose of prima facie satisfaction of the Investigating Officer before filing the FIR. It is true that on the basis of the preliminary enquiry, FIR has been filed before the Sub-divisional Magistrate, Alipore, praying for issue of a search warrant. The investigation is not yet complete. No charge-sheet has been framed.

39. No witness has been examined. No allotment of case has been made by the State Government to the Special Judge. I am unable to follow how the petitioner would be prejudiced on the ground that the informant police officer is making the

investigation. The first information is not a piece of substantive evidence, because it can only be used to corroborate or contradict the informant.

40. Section 8 of the West Bengal Act XXI of 1949 lays down a special rule of evidence with respect to an offence u/s 5(1)(e) of the Prevention of Corruption Act. There would be a trial before the special judge where the petitioner will get complete opportunity to contest the allegations against him and to make out his defence; he would be entitled to cross-examine and to produce his witnesses in support of his defence. The violation of principles of the natural justice and an informant becoming the judge of his own cause does not arise. Therefore, in my opinion, the argument is without any substance and must fail.

41. In the result, this Rule is discharged.

42. There will be no order as to costs.

43. All interim orders are vacated.