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Calcutta High Court

Case No: C.R.R. No. 198 of 1999

Amarendra Nath Ghosh alias Bappa		APPELLANT
	Vs	
The State and Another		RESPONDENT

Date of Decision: March 14, 2001

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120
- Prevention of Corruption Act, 1988 - Section 13(1), 3
- West Bengal Criminal Law Amendment (Special Courts) Act, 1949 - Section 13, 2, 6

Citation: (2001) CriLJ 4371

Hon'ble Judges: Debiprasad Sengupta, J

Bench: Single Bench

Advocate: Balai Chand Roy, Susanta Banerjee and Ashok Kr. Pandey, for the Appellant;Dipak Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Debiprasad Sengupta, J.
The present application is for quashing of a proceeding being special case No. 7 of 1998 arising out of Case No. RC-6(E)/96, CBI/BS & FC/New Delhi now pending in the Court of Id. Judge, 1st Special Court, 23 Parganas at Alipore u/s 120-B/409/420/477A of the Indian Penal Code and Section 13(2) read with Section 13(1)(c) and (d) of Prevention of Corruption Act, 1988.

2. One Mr. B.K. Dhir, Regional Manager, Allahabad Bank. Regional Office (South), Calcutta lodged a complaint dated 23-11-96 to the Superintendent of Police, Central Bureau of Investigation, Banking Securities and Fraud Call, New Delhi and on the basis of the said complaint a case was registered being Case No.

RC-6(E)/96-BS&FC/DLI. The allegations made in the said complaint is that during period 94-95 one Mrs. S.R. Ramamani, the then Branch Manager, Allahabad Bank, Southern Avenue Branch, Calcutta entered into a criminal conspiracy with other persons of the Branch of Allahabad Bank including one Nilopam Das, Branch Manager, Punjab National Bank, Shakespeare Sarani, Calcutta and also other private individuals and pursuant to the said conspiracy 29 Bankers'' cheques were issued amounting to Rs. 10.84 crores without any consideration by Mrs. S.R. Ramamani in a fraudulent and dishonest manner. The said Banker''s cheques were drawn in favour of non-existent entities who dishonestly and fraudulently encashed the said Banker''s cheques through collection process by opening fictitious Accounts with Punjab National Bank, Shakespeare Sarani and with the connivance of said Nilopam Das and other officials of Punjab National Bank without observing the Banking formalities thereby causing wrongful loss of Rs. 10.84 Crores to Allahabad Bank.

3. On completion of investigation charge-sheet was submitted against the present petitioner and others alleging commission of offences u/s 120B read with Section 409/ 420 of the Indian Penal Code and Section 13(2) read with Section 13(1)(c) and (d) of Prevention of Corruption Act, 1988. On the basis of the said charge-sheet the learned Judge. 1st Special Court, Alipore by his order dated 14-12-1998 took cognizance of the offence and issued process. It is at this stage the petitioner came up before this Court for quashing of proceeding.

4. Mr. Balai Chandra Roy, learned Advocate appearing for the petitioner submits that taking cognizance of offence under the Prevention of Corruption Act by a Special Judge appointed by notification u/s 2 of the W.B. Criminal Law Amendment (Special Court) Act, 1949 is not permissible under the law and as such the order of taking cognizance of the offence is bad and without jurisdiction. According to Mr. Roy the Special Judge being appointed under the notification dated 23-4-1993 u/s 2 of the W.B. Special Courts Act, 1949 for trying the offences mentioned in the Act, is not competent to try the offence and to take cognizance of the offence under the Prevention of Corruption Act, 1988. It is submitted that after the Criminal Law (Amendment) Act, 1952, which is a Central Act, came into force Section 6 of the said Act provided for appointment of Special Judge for trying the offences under the Prevention of Corruption Act. But the effect of inclusion of Section 13 of the W.B. Special Courts Act, 1949 in the year 1963, is virtual exclusion of the Criminal Law (Amendment) Act, 1952 from West Bengal. The Government of West Bengal by Notification u/s 2 of the W.B. Special Courts Act, 1949 constituted Special Courts for trying offences mentioned in the schedule. But the Special Judge appointed under this Act (Act of 1949) is not empowered to try cases under the Prevention of Corruption Act, 1988, although he can try offences under the Prevention of Corruption Act. 1947.

5. In reply to the aforesaid argument advanced on behalf of the petitioner, it is submitted by Mr. Dipak Sengupta, learned Advocate for the opposite party that the

above position has now been settled by the West Bengal Amendment of Section 26 of the Prevention of Corruption Act. Mr. Sengupta produces the relevant Notification being No. 2969-L dated 23rd December, 1999, by which the Prevention of Corruption Act, 1988 was amended. The Amending Act is known as the Prevention of Corruption (West Bengal Amendment) Act, 1994. Paragraphs 2, 3 and 4 of the said Notification are as follows :

2. The Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act) shall, in its application to West Bengal, be amended for the purpose and in the manner hereinafter provided.

3. In the principal Act, after Section 26, the following section shall be inserted :

26-A. (1) Every Judge appointed to preside over a Special Court under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, for any area or areas and holding office on the commencement of this Act shall be deemed to be a Special Judge appointed u/s 3 of this Act for that area or areas and, accordingly, on and from such commencement every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

(2) Every Judge appointed to preside over a Special Court under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, for any area or areas, holding office on any date after the commencement of this Act but before the commencement of the Prevention of Corruption (West Bengal Amendment) Act, 1994 (hereinafter referred to as the said date) and purporting to act under the provisions of this Act, shall be deemed to a Special Judge appointed u/s 3 of this Act for that area or areas and accordingly, on and from the said date, every such Judge shall continue to deal with all the proceedings pending before him on the said date in accordance with the provisions of this Act.

6. Notwithstanding anything contained in the principal Act or in any other law for the time being in force, any order passed, any evidence recorded or any action taken under the principal Act by a Judge of a Special Court appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, and purporting to act under the provisions of the principal Act, before the commencement of this Act shall be deemed to have been validly passed, recorded or taken under the principal Act as amended by this Act as if this Act were in force when such order was passed or such evidence was recorded or such action was taken.

7. It is clear from the aforesaid provision of Section 26-A of the Act that now there is no bar for the Special Judges appointed under the W.B. Special Courts Act, 1949, to take cognizance of offence or to try offences under the Act. It is also clear from the said amendment that Special Judges appointed under W.B. Special Court Act, 1949, shall be deemed to be a Special Judge appointed u/s 3 of the 1988 Act for trial of offences under the Prevention of Corruption Act, 1988. It may be mentioned in this

connection that since Criminal Law Amendment Act, 1952 is not applicable in West Bengal, by the State Amendment of Section 26-A of the Act it has been provided that the Special Judge appointed under W.B. Criminal Law Amendment (Special Court) Act, 1949, shall be deemed to be Special Judges appointed u/s 3 of the Prevention of Corruption Act.

8. Mr. Roy, learned Advocate of the petitioner submits that the Notification dated 23-12-1999, by which amendment of Section 26-A has been made, does not have any retrospective operation. He draws my attention to sub-paragraph (2) of paragraph 1 of the said Notification which reads like this : "It shall come into force at once." But I am unable to accept such contention of Mr. Roy in view of paragraph 4 of the said Notification, which provides that any order passed, any evidence recorded or any action taken under the principal Act by a Judge of Special Court appointed under the W.B. Criminal Law Amendment (Special Courts) Act, 1949, before the commencement of this Act, shall be deemed to have been validly passed, recorded or taken under the principal Act as amended by this Act as if this Act were in force when such order was passed, such evidence was recorded or such action was taken.

9. The next point raised by Mr. Roy, learned Advocates of the petitioner is that the two sanction orders issued by the sanctioning authority speak of complete non-application of mind and casual approach by the sanctioning authority in the facts and circumstances of the case. It is further submitted that the condition precedent to a valid sanction is the application of an independent mind without being influenced by any extraneous consideration, but in the present case there is a total non-application of mind by the sanctioning authority while according sanction for prosecution.

10. Mr. Sengupta, learned Advocate appearing for the opposite party submits that the order of sanction does not suffer from any illegality and the same was issued on proper application of mind. In support of his contention Mr. Sengupta relies on a judgment reported in Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh,) wherein it was held by the Hon''ble Apex Court as follows :

It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. What the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may come into existence after the

grant of sanction is wholly irrelevant.

11. Mr. Sengupta, learned Advocate next relies on a judgment of the Hon''ble Apex Court reported in 1997 SCC (Cri) 35 (State of M.P. v. Dr. Krishna Dr. Saksena). In the said judgment it was held as follows :

But the recitals in the last but one paragraph of the sanction order show that the sanctioning authority was satisfied after complete and conscious scrutiny of the records produced in respect of the allegation against the accused. Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order if challenged during the trial as that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction. We, therefore, held that the twin reasons given by the learned single Judge of the High Court for quashing the proceeding on the grounds that the sanction was invalid are unsustainable and unjustified.

12. Relying upon the aforesaid judgment Mr. Sengupta submits that it is too early to consider such point as the petitioner will get ample opportunity to challenge the sanction order when the sanctioning authority has been cited as a witness in the charge-sheet. I have perused the sanction orders which are placed before this Court and in my considered view the sanction orders do not suffer from any illegality. The sanction orders were issued by the sanctioning authority on proper application of mind and on consideration of the materials placed before it.

13. I have heard the learned Advocates of the respective parties. I have also perused the relevant documents which are annexed to this revisional application. In my opinion that is not a fit case for quashing of the proceeding on the grounds agitated by the learned Advocate of the petitioner. The present application accordingly fails and the same is dismissed.

14. Since this is a very old case of 1998 I direct the learned trial Judge to proceed with the trial and to conclude the same with utmost expedition without granting any unnecessary adjournments to either of the parties.

Let urgent xerox certified copies if this order, if applied for be supplied to the respective parties at an early date.