(2010) 07 DEL CK 0337

Delhi High Court

Case No: Criminal M.C. No. 4310 of 2009 and Criminal M.A. No. 14741 of 2009

D.K. Tyagi		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: July 15, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 482
- Penal Code, 1860 (IPC) - Section 120B, 420, 468, 471
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

Citation: (2010) 6 ILR Delhi 592

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

Bench: Single Bench

Advocate: Anup Kr. Sinha and A.K. Pandey, for the Appellant; Harish Gulati and Anindya Malhotra, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.
The present petition has been filed by the petitioner u/s 482 Cr.P.C. for quashing of FIR No. RC.AC.3/2004-A0002 dated 24.05.2004, lodged u/s 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act and Section 120B IPC r/w Section 420/468/471 IPC, P.S. ACU-III, CBI.

2. The main ground taken by the petitioner is that the respondent had not obtained sanction against the petitioner u/s 197 Cr.P.C. It is contended that since the petitioner was charged with the offence under IPC along with offences under the provisions of corruption act and the offence under IPC could not be separated from the offences of prevention of corruption act and even if no sanction was necessary under Prevention of Corruption Act, sanction u/s 197 Cr.P.C. was necessary for offence under IPC since the petitioner was a public servant.

3. It is not disputed that the petitioner was terminated from the service after holding an inquiry. The Supreme Court in State of Kerala Vs. K. Karunakaran, , observed as under:

In this case, as stated earlier, the respondent was the Chief Minister of the State of Kerala when the offences were alleged to have been committed by him. He demitted the office of the Chief Minister and when the charge-sheet was filed, he was a Member of the Parliament. There is no allegation that he has misused or abused his office as a Member of Parliament. Therefore, no permission of the Speaker of Lok Sabha would be necessary to prosecute him despite the fact that he was a Member of Parliament when the charge-sheet was filed.

For the reasons stated above, I hold that permission of the Speaker of Lok Sabha is not necessary to prosecute the respondent for the offences alleged to have committed by him under the P.C. Act. I set aside the impugned order and allow this revision-petition filed by the State.

4. In view of above decision, I consider that no sanction was necessary for prosecution of the petitioner under Prevention of Corruption Act. So far as sanction u/s 197 Cr.P.C. for prosecution of the accused under IPC offences is concerned, even if it is considered that sanction was necessary and no cognizance could be taken under IPC offences against the accused, in my opinion the FIR against the accused cannot be quashed and accused will have to face trial for the offences under Prevention of Corruption Act. The plea taken by the accused that the offences cannot be segregated is not tenable. A criminal act may attract several penal provisions of different statutes. A person, for want of relevant sanction may be acquitted under one statute where obtaining of sanction was mandatory, but he can be convicted under other statutes where obtaining of sanction is not necessary. I therefore consider that the FIR cannot be quashed on the ground of not obtaining sanction u/s 197 Cr.P.C. since FIR also mentions of offences under IPC. As the FIR is under various provisions of P.C. Act, the accused is liable to face trial before the Trial Court and raise the issue of non accordance of sanction for IPC offences. The petition is hereby dismissed.