

(1999) 08 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Criminal Revision 91 Of 1998

Bihari Lal Bhagat

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Citation : (2000) KashLJ 587 : (2000) SriLJ 586 : (2000) 2 SriLJ 586

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : K.N.Bhat, Advocates appearing for the Parties

Judgement

1. The Central Bureau of Investigation (C.B.I) registered a case under section 3/7 of the Essential Commodities Act 1955. After investigation

report under section 173 of the Criminal Procedure Code has been produced in the Court of Sessions Judge, Kathua. Sessions Judge, Kathua

who is exofficio Special Judge under the Essential Commodities Act has framed charge under section 3/7 of the Essential Commodities Act vide

order dated 09121998. The petitioner challenges the order on the grounds that the investigation of the case being without jurisdiction the order

framing the charge is illegal and an abuse of the process of the court and therefore liable to be quashed.

2. Mr. Sethi appearing for the petitioner argued that consent of the State Government is necessary under section 6 of the Delhi Police

Establishment Act (for short The Act). The Act empowers the C.B.I, to investigate offences for which notification dated 01041964 has been

issued under Section 5 of the Act. His further argument is that as per objects and reasons The Act empowers to investigate only offences of

bribery and corruption committed by officers or others in the department of Central Government. Since the petitioner is not an employee of any government department, the investigation was without jurisdiction and the charge groundless.

3. Mr. Bhat on the other hand argued that C.B.I, has the power to investigate and the charge has been rightly framed. He further argued that revision against the order of framing charge is not maintainable. The first ground of ground of challenge is without any basis in view of the judgment of this court in 'Lt. Col. H.N. Tripathi Vs. State', JKLR 1987 (1) 386 in which it has been held that:

8. The Central Government vide notification No. 25/3/60AVD (i) and (ii) dated 01041964, authorised the SPE to investigate offences punishable

under the State PC. Act as well as under Sections 161 and 165 RPC besides other specified offences detailed in the notification, in Jammu &

Kashmir. The notification had been issued consequent upon the consent of the State Government for their issuance conveyed vide letter No.

S253/57PD dated 18121963 addressed by the Secretary to the Government of J&K. General Department to the Deputy Secretary to Govt. of

India, Ministry of Home Affairs, New Delhi. These notifications are a complete answer to the first argument of Mr. Koul, as CBI vide these

notifications read with the relevant provisions of the 1946 Act has jurisdiction to investigate the offences specified therein and the offences in the

present case have been so specified. Brother Bhat J, has not made any reference, whatsoever, to these notifications at all in his judgment let alone

considered them and thus, reached a conclusion to the contrary. Brother Sethi J, has, however, on the strength of these notifications repelled the

argument of Mr. Koul and I am in complete agreement with his lordship.

4. However, according to Mr. Sethi the letter of the State Government relied in the case of Tripathi (supra), being prior in date of the notification, it

could not be construed as consent under section 6 of the Act. Even this argument must fail because section 6 does not contemplate a separate

notification evidencing consent. This section reads as under:

Consent of State Government to exercise of powers and jurisdiction. Nothing contained in section 5 shall be deemed to enable any member of

the Delhi Special Police Establishment to exercise powers and jurisdiction in any

area in a State, not being a Union territory or railway area, without the consent of the Government of that State.

5. This section nowhere prescribes the form in which the consent is to be conveyed. So neither any separate notification nor any order is necessary. It is sufficient compliance of the Act if notification under section 5 is issued after obtaining the consent of the State Government. This view finds support from the decision of Patna High Court in 'Association for Protection of public Rights and Interest through its Secretary Vs. State of Bihar and others', 1990 Cri. L. J. 1928 in which it has been held that: "An argument that there could be no consent "casewise" or "personwise or that there could be no implied consent when the statute requires express consent was not accepted by the Court in J.N. Sahay's case (1982 Cri. L.J. 410). This Court has said (para 15): "I do not find any force in this connection advanced by learned counsel for the petitioner in this regard. All that is contemplated either by entry 39 of the 1935 Act or for that matter. Entry 80 of the Constitution of India referred to earlier, is that a Police Force belonging to any part other than the part where it is called upon to investigate any case, cannot do so unless its powers to investigate were extended by obtaining the consent of the concerned State over whose territory the members of the Police Force belonging to an outside agency were to put their feet. It is not possible to read in Section 6 to support the reasoning and argument of learned counsel for the petitioner that the consent of the State Government cannot be given in relation to an 'area' in this manner and that it must be with respect to the whole of the State or any part of the same as such. It goes without saying that offence by an accused are committed in relation to a geographical area or places and, therefore, once a consent is given for investigating particular offences committed by any particular person, obviously and as a matter of necessary corollary, it would amount to giving consent for the investigation over the entire area and confer jurisdiction for making investigation with reference to the entire area over which the offences committed by any particular person are spread over.

6. Mr. Sethi next argued that petitioner is not a public servant and therefore C.B.I, has no jurisdiction to investigate. In support of this he relies on the State of Object and Reasons for the amendment of the Act made in 1952.

The Objects and Reasons reads as under:

The Delhi Special Establishment is a Central Police Force constituted under the Delhi Special Police Establishment Act to investigate offences of

bribery and corruption committed by officers or others in department of Central Government. It does not confer any power to deal with cases

concerning

a) Corporation and other bodies set up and financed by the Government of India, and

b) department of the administrations in centrally administered states.

However, the Objects and Reasons do not override express provisions of the Act. Section 3 of the Act before the amendment of 1952 read as

follows:

The Central Government may by notification in the official Gazette, specify the offences or classes committed in connection with matters

concerning departments of the Central Government which are to be investigated by the Delhi Special Police Establishment.

After the amendment it reads as follows .

Offences to be investigated by Special Police Establishment. The Central Government may, by notification in the Official Gazette, specify the

offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.

7. So the words "'committed in connection with matters concerning departments of the Central Government'" have been omitted by the Amendment

of 1952. Thus the Central Government has plenary powers to specify the offences to be investigated by the Special Police Establishment. This,

however, is subject to section 6 of the Act. The amendment is significant because it does not restrict the powers of the Central Government to

specify the offences only in connection with the matters concerning departments of the Central Government. Since offences punishable under the

Essential Commodities Act, 1955 have been specified in the notification dated 01/04/1964, the C.B.I., therefore, has jurisdiction to investigate the

offences irrespective of the fact whether the case concerns a Corporation or any other body set up by the Government of India. Object and

Reasons of the amendment, therefore, cannot be read in derogation of section 3 of the Act.

8. In view of the above power to specify the offences for investigation is traceable to Section 3, 5 and 6. The case is squarely covered by these provisions and therefore the investigation is not without jurisdiction. The petition is accordingly dismissed.