
(1998) 11 BOM CK 0089

In the Bombay High Court

Case No : Criminal Revision Application No. 106 of 1996

Central Bureau of Investigation

APPELLANT

Vs

Shri I.D. Dubey and others

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Penal Code, 1860 (IPC) — Section 409

Prevention of Corruption Act, 1947 — Section 5(1)(c), 5(2), 5(4)

Citation : (1999) 5 BomCR 873 : (1999) BomCR(Cri) 873 : (1999) 2 MhLj 402

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : J.C. Satpute, Ms. Usha Kejriwal, app, for the Appellant; Bhargawan, instructed by . M.V. Kini and Co., for the Respondent

Judgement

D.G. Deshpande, J.—Heard Mr. Satpute, Advocate for the C.B.I. Heard Mr. Bhargawan, Advocate for the respondent No. 1 (Accused No. 1) and A.P.P. for the State.

2. Order passed by IIIrd Court, Esplanade, Mumbai on 30-8-1995 dropping the proceedings against accused No. 1 and discharging him from the prosecution is challenged by the C.B.I. petitioner.

3. The question involved in this case is whether A.C.M.M. was justified in dropping the proceedings and discharging the accused on the ground that prosecution of the accused under the provisions of I.P.C. was not maintainable when the petitioner failed to obtain sanction to prosecute the accused under the Prevention of Corruption Act, 1947.

4. It appears from the record that after 5-6 importance witnesses of the prosecution were examined by the trial Court, accused raised an objection to the effect that proceedings against him were liable to be quashed because if at all the accused was to be prosecuted, then he could have been prosecuted under the provisions of the Prevention of Corruption Act but since the prosecuting

agency could not obtain necessary sanction in that regard under the said Act, the accused was prosecuted under the provisions of the I.P.C. The gist of the objection raised by the accused is that if from a set of certain facts, the offence under the Prevention of Corruption Act was made out then the accused could not be prosecuted under the I.P.C. by avoiding to prosecute him under the Prevention of Corruption Act. The trial Court while upholding the objection of the accused relied upon the following three authorities:

1. M/s. Phoenix Mills Limited v. Central Bureau of Investigation, 19 Bombay Law Reporter, page 87;
2. K.P. Sinha v. Aftabuddin, AIR 1955 Patna 453: 1955 Criminal Law Journal 1382;
3. (Dr. P.M. Kamath - Petitioner), 1954 Criminal Law Journal 799;

However, as against this, the learned Prosecutor for C.B.I. relied upon and produced a direct Judgment of the Bombay High Court reported in Volume 56 BLR 980 The State v. Sahebrao Govindrao Jadhtav. He contended that this was a Judgment having direct bearing on the objection raised by the accused and therefore it has to be accepted in toto.

5. A perusal of this judgment shows that the accused Sahebrao, who was a Talathi in that case was prosecuted for breach of trust of Rs. 444/- which he had recovered towards legal. The Magistrate however transferred this case along with other 10 cases against the other accused to the Court of Additional Sessions Judge, Pune, on the ground that though the accused were charged u/s 409 of the I.P.C. they had no jurisdiction to hear the case as the offence fell u/s 5(1)(c) punishable u/s 5(2) of the Prevention of Corruption Act. The Additional Sessions Judge, Pune made a reference to the High Court for quashing the orders passed by the Magistrate. Deciding these references Justice Chagla considered all the relevant provisions of the Cr.P.C., the Criminal Law Amendment Act, the I.P.C. and the provisions of the Prevention of Corruption Act and adopted the view taken by the Punjab High Court that the provisions of section 409 qua a public servant were superseded by the Prevention of Corruption Act and in order to rebut this view the Legislature amended the Prevention of Corruption Act and by Act LIX of 1952 enacted sub-section (4) of section 5, which provides:

The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.

Justice Chagla therefore held that section 5 does not derogate from any other provisions of law nor from section 409 or the Cr.P.C. According to him it was clear that the special procedure set up under Prevention of Corruption Act does not entitle the public servant that the only proceedings which could be instituted against him must be under the Special Act and not under Cr.P.C.

6. Apart from this, there is one more strong reason for rejecting the objection raised by the accused that there is no legal bar either in the Constitution or in the Criminal Procedure Code or in the Prevention of Corruption Act that if a certain set of facts constitute an offence as defined under the I.P.C. then merely because those facts also constitute an offence under some other provisions, there can be no prosecution under the provisions of the I.P.C. What protection can be at the most granted and is granted is that there cannot be two prosecutions on the basis of the same facts. If those prosecutions are there, then they are either to be amalgamated but the decision in both has to be one, and other protection is that a person cannot be punished twice on the basis of the same set of facts though they may constitute two different offences. Therefore, considering all these aspects, the Revision is required to be allowed. Hence, the order:

ORDER

Criminal Revision Application is allowed. Rule made absolute. The impugned order dated 30-8-1995 passed by A.C.M.M. IIrd Court, Esplanade, Mumbai, is quashed. Proceedings are restored to file and the Magistrate to decide the cases as early as possible within a period of one year.

Prayer for stay is rejected.

Prayer for leave to Appeal to the Supreme Court is also rejected.

Certified copy expedited.

7. Criminal Revision Application allowed.