

(2017) 04 KL CK 0024
In the High Court Of Kerala
Case No : 7082 of 2015

C.K.SATHYANATHAN & Anr.

APPELLANT

Vs

STATE OF KERALA & Anr.

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 201](#), [Section 173\(2\)](#), [Section 197](#), [Section 228\(1\)\(a\)](#)
- Saving of inherent p

Citation : (2017) 04 KL CK 0024

Hon'ble Judges : P.Ubaid

Bench : SINGLE BENCH

Advocate : K.RAMAKUMAR, S.M.PRASANTH, K.T.SHYAMKUMAR, ASHA BABU, ?
G.RENJITH, P.CHANDRASEKHARA PILLAI

Judgement

1. The petitioners herein are the accused Nos. 1 and 2. in C.C. No. 14 of 2009 of the Special Court (SPE/CBI)-I, Ernakulam, involving the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC" Act), and also the offences under Sections 120B and 420 of the Indian Penal Code. The offence under Section 120B of IPC is seen alleged against all the four accused. The accused Nos. 1 to 3. are public servants and the 4th accused is a non-public servant. Some vicious act, involving monetary elements amounting to misconduct as defined under Section 13(1)(d) of the PC Act in the matter of a bank loan transaction, is the subject matter of the prosecution. The 4th accused is the person to whom loan was sanctioned. The accused Nos. 1 to 3 are respectively the Chief Manager, the Manager and the Senior Manager of the Indian Overseas Bank, MG Road Branch. After thorough investigation, the Central Bureau of Investigation (CBI) submitted final report in the court below against four accused after obtaining necessary sanction to prosecute the accused Nos. 1 to 3, under Section 19 of the PC Act. Pending the prosecution, the said prosecution sanction was quashed by this Court as per the

judgment dated 11.11.2014 in W.P.(C) No. 1329 of 2010. In such a circumstance, the accused Nos. 1 to 3 filed separate applications seeking discharge and termination of proceedings. C.M.P. No. 355 of 2015 was filed by the first accused, C.M.P. No. 354 of 2015 was filed by the second accused, and C.M.P. No. 190 of 2015 was filed by the third accused. After hearing both sides, the learned Trial Judge found that the whole prosecution cannot be terminated, and the accused cannot be let free when the offences under Sections 120B and 420 of IPC are also alleged against the accused. The learned Trial Judge found that only as regards the offence alleged under the PC Act, the prosecution proceedings will come to an end, or will stand terminated in view of the judgment of the High Court quashing the prosecution sanction, but the prosecution will have to proceed as regards the other IPC offences, which will have to be tried by the competent Judicial First Class Magistrate Court. Accordingly, the learned Trial Judge dismissed the three applications filed by the accused, without deciding on the plea for discharge, and ordered the case to be sent to the Chief Judicial Magistrate's Court, Ernakulam, for trial in accordance with law, as per the common order dated 9.10.2015. The said order is under challenge in this proceeding brought under Section 482 Cr.P.C. by the accused Nos. 1 and 2. It appears that the third accused has not challenged the order.

2. The prayer in this Crl.M.C. is to quash the said order of the trial court, and also to terminate the further proceedings, including the prosecution ordered to be pursued in the court of the learned Magistrate.

3. The petitioners have raised a legal question in this matter, that when the prosecution sanction is set aside, and the Special Court has lost jurisdiction to try the offence alleged under the PC Act, it is a matter of total loss of jurisdiction. Their contention is that the court below grievously erred in sending the case to the Chief Judicial Magistrate's Court, Ernakulam, for trial in accordance with the law, and that instead, the court below should have terminated the whole proceedings, and let the accused free.

4. . Let me see what procedure is possible in a case like this when the prosecution sanction granted under Section 19 of the PC Act is quashed by the High Court. Section 3 of the PC Act provides that the Central Government or the State Government may, by notification in the official Gazette, appoint as many Special Judges as may be necessary for such area or areas, or for such case or group of cases, as may be specified in the notification, to try any offence punishable under the PC Act, and any conspiracy to commit, or any attempt to commit, or any abetment of any of the offences alleged under the PC Act. Section 4(1) of the PC Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, the offences specified in Subsection 1 of Section 3 shall be tried by Special Judges only. Thus, exclusive jurisdiction is given to the Special Judges appointed under Section 3 of the PC Act, to try offences under the PC Act. Subsection 3 of Section 4 further provides that when trying any case under the PC Act, a Special

Judge may also try any offence, other than an offence specified in Section 3 (offences under the PC Act) with which the accused may, under the Code of Criminal Procedure, be charged at the same trial. Thus, Special Judges appointed under the PC Act are given powers to try other offences also along with offences under the PC Act. This means that when a case involves offences under the PC Act, and other offences including IPC offences, the prosecution cannot be split up. The entire case involving all the offences will have to be tried by the Special Judge. Subsection 1 of Section 5 of the PC Act authorizes Special Judges appointed under the PC Act to take cognizance of offences without the accused being committed for trial. This means that a Special Judge can directly take cognizance on complaints, or on final reports submitted by the Police under Section 173(2) Cr.P.C. The Special Judge is bound to follow the procedure under the Code of Criminal Procedure for the trial of warrant cases, in trying the offences under the PC Act.

5. . In a pending case before the Special Court involving public servants and non-public servants, where the public servant died midway or during trial, or before the commencement of trial, the Special Judge will not lose jurisdiction because, the court had exclusive power and jurisdiction when cognizance was taken on the complaint, or the final report. This is settled by the Honourable Supreme Court in so many cases, including the latest one in *M/s. HCL Infosys Limited v. Central Bureau of Investigation* (AIR 2016 Supreme Court 3075) = (2016 (9) Supreme Court Cases 281). The Honourable Supreme Court held that the exclusive jurisdiction of the Special Judge under the PC Act to try public servants, and to try non-public servants along with public servants will not be affected, and will be retained even if the sole public servant dies before the commencement of trial. This is the spirit of Section 4(3) of the PC Act. This is not a case of death of the public servant midway. The case of the petitioners is that the Special Court became functus officio as regards the offences alleged under the PC Act when the High Court quashed the prosecution sanction granted under Section 19 of the PC Act as regards the accused Nos. 1 to 3. No doubt, in such a situation, the prosecution against the public servants under the PC Act will stand terminated. But in this case, there is allegation against the public servants also under Sections 120B and 420 of IPC. As regards the offence under Section 420 of IPC, the prosecution allegation is that by the vicious act of misconduct, the accused caused loss to the Bank dishonestly, and the accused thereby made some gain. Thus, though the prosecution under Section 19 of the PC Act stands barred in view of the judgment of the High Court quashing the prosecution sanction, the prosecution will have to proceed as regards the other offences alleged against all the accused. This is not a case where the IPC offences are alleged against the 4th accused alone. Such allegations are seen made against all the four accused. So, necessarily, the prosecution under the IPC offences must proceed against all the accused. But the question is, where it can proceed, and what exactly is the procedure at the hands of the learned Special Judge when the prosecution under Section PC Act becomes barred.

6. . The argument advanced by the learned senior counsel for the petitioners is that once the prosecution under the PC Act stands barred, that would apply to the IPC offences also. Thus, according to the learned senior counsel, this is not merely a case of bar of jurisdiction under the PC Act, but a case of total loss of the power of cognizance of the Special Court.

7. . The learned senior counsel cited *Sarah Mathew v. Institute of Cardiovascular diseases* (2014 (2) SCC 62) to explain what is meant by cognizance. The Honourable Supreme Court explained that taking cognizance is application of mind by the Magistrate/Court to the suspected offence, and that, whether a court has taken cognizance or not, will depend upon the facts and circumstances of each case. The word "cognizance" is not seen defined anywhere in the Code of Criminal Procedure. There are so many decisions of the various courts, including the Honourable Supreme Court, explaining the term "cognizance". Cognizance in criminal procedure is the act of application of mind, and the formation of a judicious decision on such application of mind, to proceed further for necessary steps towards prosecution on the complaint or the police report. In this case, the learned Trial Judge applied his mind, and also decided judiciously to act on the final report submitted by the CBI, for prosecution on the basis of the allegations made by the CBI in the final report, constituting the various offences, inclusive of the IPC offences. Thus, the act of cognizance taken by the court below was not merely as regards the offences under the PC Act. When the learned Trial Judge decided to take cognizance on the final report as regards the PC Act offences, he also decided to take cognizance for prosecution as regards the IPC offences. Just because a prosecution is not possible under the PC Act, or that it is barred under the law, the accused cannot be mechanically absolved of all liabilities under the criminal law, and they cannot be let free unconditionally without any action, as regards the other offences alleged to have been committed by them. The Code of Criminal Procedure is applicable for trial in Special Courts. So, once the court has taken cognizance of the IPC offences, the trial will have to proceed before the competent forum.

8. . In this case, the impugned order does not show that it is an order passed under Section 228(1)(a) Cr.P.C. The request of the accused for discharge was practically disallowed, and the accused were directed to face prosecution before the Chief Judicial Magistrate Court, Ernakulam. Now, the question is what procedure is actually possible in a case like this, when prosecution under the PC Act is barred, and trial as regards the PC Act offences is terminated. The answer is contained in the earlier discussion as regards cognizance, that once cognizance is taken as regards various offences, including the PC Act offences, trial as regards the non PC Act offences will have to proceed before the competent court. It cannot be said that such a prosecution as regards the IPC offences is not possible anywhere once the prosecution under the PC Act stands barred.

9. . Now, the question is what procedure is possible. This is not a case where the case can be transferred by the Special Court under Section 228(1)(a) Cr.P.C. The

special Court has no independent jurisdiction to try the offences under the Indian Penal Code. A Court of Session can transfer a case under Section 228(1)(a) Cr.P.C. because, a Court of Session is authorized under the law to try any offence along with a sessions offence. When the procedure under Section 228(1)(a) Cr.P.C. is not possible, and when no other specific provision is there in the Code of Criminal Procedure, or the PC Act to deal with the given situation, this Court will have to exercise the inherent jurisdiction under Section 482 Cr.P.C. for the ends of justice. What is not possible, or what is barred is only the prosecution under the PC Act. A legitimate prosecution proceeding on the basis of a cognizance rightly taken by the Special Court in exercise of the powers available at that time, cannot be mechanically terminated. The trial court cannot also exercise any discretionary power to find out a solution, in such a circumstance. The proper way must be to address the High Court for necessary orders. Here, even without such a reference, the matter is now before the High Court in this proceeding brought under Section 482 Cr.P.C. The only possible procedure, in the interest of justice, and to see that the accused are not let free, is to return the final report to the CBI for presentation before the proper court having jurisdiction to try the IPC offences. If the inherent jurisdiction under Section 482 Cr.P.C. is not exercised by the High Court in such a situation, an unpleasant situation of legal confusion would arise as to what procedure is possible, and where the accused will have to face trial for the IPC offences. This is a case where the trial court cannot do anything. The trial court cannot terminate the proceedings by discharge. The trial court also cannot transfer the case under Section 228(1)(a) Cr.P.C.. The complaint cannot be returned under Section 201 Cr.P.C. also because that stage is over. Then the only alternative, or the only way out to resolve the situation is, that the High Court will have to exercise the inherent jurisdiction under Section 482 Cr.P.C., and direct the court below to return the complaint to the prosecuting agency with direction to present it before the proper court having jurisdiction. The accused will have to face trial before the competent court as regards the offences alleged under the Indian Penal Code. The petitioners have also raised the question of prosecution sanction under Section 197 Cr.P.C.. In the nature of the allegations, the right court competent to try the case will have to consider and decide whether such sanction is necessary in this case. As regards the necessity of such sanction, when offences like criminal conspiracy are alleged, the legal position stands settled. All the relevant aspects, including the legal aspect of the said contention, will have to be considered by the right court when plea for discharge is made by the accused on the said ground. It is made clear that when a request comes for discharge before the right court, all the aspects including the question of sanction under Section 197 Cr.P.C. will have to be considered and decided by the court. In the result, this CrI.M.C. is disposed of as follows: (a) The impugned common order passed by the court below on 9.10.2015 will stand set aside, and the proceedings will stand revived in the trial court for proper procedure. (b) The learned Trial Judge shall return the final report along with the connected materials and documents to the prosecuting agency, with a direction to present the final report before the Judicial First Class

Magistrate Court having territorial jurisdiction; whether it is the Chief Judicial Magistrate's Court, or the court of any other Judicial Magistrate.

(c) On the final report being presented as directed above, the concerned court having territorial jurisdiction shall proceed on the final report in accordance with the law under the Code of Criminal Procedure.

(d) All the factual and legal contentions raised by the petitioners, including the question of sanction under Section 197 pf Cr.P.C., can be raised before the competent trial court.