

(2015) 10 CAL CK 0011
In the Calcutta High Court

Case No : C.R.R. Nos. 3315, 3316, 3317, 3318, 2834, 2836 and 2832 of 2014

Dipak Kumar Lahiri

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 197, 239, 240, 4(2)
Penal Code, 1860 (IPC) — Section 409
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 13(1)(d), 13(2)

Citation : (2015) 10 CAL CK 0011

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Uday Chandra Jha, Maheswari Sharma and Tulika Banerjee, for the Appellant

Final Decision : Dismissed

Judgement

Siddhartha Chattopadhyay, J.—Challenging the order dated 19.07.2014 passed by the Learned 3rd Special Judge, Bichar Bhawan in connection with Special Case No. 17 of 2004 the accused petitioner has filed this application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973. According to the petitioner, Learned Court below failed to take into consideration that as per Section(c) explanation (ii) of the Prevention of Corruption Act, 1988, the present petitioner is not a public servant and so he is not liable to be tried by a Special Court. According to him, by virtue of his retirement from the service he was no longer a public servant on the date of taking cognizance of offence and so he may be tried by a Judicial Magistrate. He also raised his eyebrow contending inter alia that the Learned Court below failed to appreciate that the sanction is necessary to prosecute the petitioner. He contended that there was ever any meeting of minds of the petitioner and the other accused persons to establish the allegation of criminal conspiracy. Ventilating his such grievances, by filing the aforesaid application, he prayed for quashing of the proceedings being Special Case No. 17 of 2004 and also to set aside the impugned order dated 19.07.2014.

2. As against this Learned Counsel appearing on behalf of the opposite party C.B.I., has contended that the impugned judgment does not call for any interference in view of settled position of law. According to him, Learned Court below had taken care of all legal aspects as well as material aspects in its proper perspectives.

3. The seminal issues spiralled in the course of hearing of this application centres around the following law points:--

"(1) if a sanction is required in connection with offences under Prevention of Corruption Act against a superannuated public servant?

(2) If a superannuated public servant will be tried by Special Court or by the Judicial Magistrate?"

4. Learned Counsel appearing on behalf of the petitioner had contended that if the accused ceased to be a public servant when the Court took cognizance of the offence, in that case proceedings will be vitiated. In support of his such contention he has referred to decision reported in State of West Bengal Vs. Sadan K. Bormal and Another, In that case the Hon''ble Apex Court held that though the Special Court was earlier empowered to try offences under the Act of 1947 since no such jurisdiction was conferred upon it afresh after coming into force of the Act of 1988, (which repealed the Act of 1947), it had no jurisdiction to try such offences after coming into force of the Act of 1988. He has also relied on the decision passed in connection with C.R.R. No. 3871 of 2011 (Ramkrishna Goswami v. The State of West Bengal & Anr. According to him, on the basis of the ratio as laid down by the Hon''ble Apex Court, the Special Court has no power to try the case of this present petitioner accused and at the same time sanction is required to prosecute even if he is an ex-public servant.

5. Learned Counsel appearing on behalf of the Superintendent of Police, C.B.I. contended that sanction is not at all required to prosecute an ex-public servant and he also stated that by operation of law Special Court has the power to try this case. In support of his such submission he has referred to the judgment passed in connection with C.R.R. No. 3871 of 2011 (Ramkrishna Goswami v. The State of West Bengal & Anr.) Hon''ble Single Bench of this Court has considered the decision reported in 2008 (3) SCC (Cri.) 678 in the case of the State of West Bengal v. Shyama Das Banerjee and others and also State of West Bengal Vs. Sadan K. Bormal and Another, . While passing the judgment in connection with State of West Bengal v. Shyama Das Banerjee, Hon''ble Apex Court held that upon cessation of the status of being a public servant, the Special Court created under the Act of 1949 will not be competent to try such an offender in respect of Section 409 of the Indian Penal Code and shall be tried before a Magistrate under the Code. In the instant case the prosecution has been launched under a special law also i.e. the Act of 1988 and in view of Section 26A of the Act of 1988 (as amended by the Amendment Act of 1994) a judge appointed under the Act of 1949 would be deemed to be the competent Court for trying offences. Under the

Act of 1988 (in the State of West Bengal Act of 1988), there is no distinction in the manner of forum of trial of former public servants. Section 4(2) and 5 of the Code of Criminal Procedure are to be read simultaneously for better appreciation of the present case. Section 4(2) of Code of Criminal Procedure Speaks:--

"(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

(5) Saving.--Notwithstanding contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form of procedure prescribed, by any other law for the time being in force."

6. Conjoint reading of those provisions, suggest that if the manner and forum of trial of offences under a special law, is provided, (like the Act of 1988) the same shall prevail over ordinary law. Therefore, in my considered view, as offence under P.C. Act is there, the Special Court has ample jurisdiction to try the case.

7. It was also argued that when cognizance was taken the petitioner was no longer in service. The prosecution was launched under Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act 1988, the same is not maintainable because under Section 19 of Prevention of Corruption Act, no Court shall take cognizance of an offence punishable under Section 7 , 10 , 11 , 13 and 15 alleged to have been committed by public servant except with the previous sanction of the Central Government or of the State Government as the case may be. Since the petitioner was a public servant, sanction under Section 197 of the Code of Criminal Procedure is required. If any offence is committed in discharge of public duties, no cognizance of offence carried to be taken, except with the previous sanction of the Central Government or the State Government as the case may be in respect of a person who is or was a public servant. The word "was" governs an ex-public servant in respect of an offence alleged to have been committed by such public servant, while the said word "was" is not there in Section 19 of the Prevention of Corruption Act.

8. The main object of providing for previous sanction for prosecution of public servant was to save the public servant from harassment of frivolous or unsubstantiated allegations. There should not be any unnecessary harassment of a public servant against any action which he has done in course of his official business. It is true that sanction under Section 19 of the Prevention of Corruption Act is necessary if a public servant is being prosecuted with under Section 13(2) and read with Section 13(1)(d) of the Prevention of Corruption Act, and Section 19 of the Act is clear enough to that effect.

9. It is well settled principles of law that such sanction is not required when some time after commission of the offence by the public servant under the Act 1988, the said public servant retires from public service. It cannot be said that he is no

longer answerable to the charges under the provisions of Prevention of Corruption Act because he has retired. I am not oblivious of the decision reported in S.B. Saha and Others Vs. M.S. Kochar, wherein it has been held by the Hon"ble Apex Court that Section 197 of Code of Criminal Procedure is applicable only when the offences are committed by the public servant in his official capacity or under colour of his office held by him and where the act complained of his dishonest misappropriation of the public money by the accused, sanction of the Government is not necessary. Criminal misappropriation can never be within the purview of "discharge of official duty" and it has got no relevance with the duties of a public servant. The decision reported in Kapil Abrol Vs. The State, and All India Criminal Law Reporter Sat Paul Vs. Inspector of Police and Another, speak that the protective umbrella of sanction does not extend to illegal acts and if when the offence is alleged to have been committed the accused was a public servant but at the time of taking cognizance if he retires, no sanction is necessary.

10. Learned Counsel appearing on behalf of the petitioner has contended that there is no element for framing of charge. He has also contended that Learned Court below failed to construe the meaning of Section 239 of Code of Criminal Procedure. For academic interest I want to quote:--

"S. 239. If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

11. It goes to show that on the basis of the police report and after hearing parties if it appears to the Magistrate that the charges are groundless in that case he is at liberty to discharge the accused. On the contrary if he finds that there is some material in that case he is to follow Section 240 of Code of Criminal Procedure. At the time of considering the petition under Section 239 of Code of Criminal Procedure, it is not expected that the Learned Special Judge will take a dress rehearsal of a trial.

12. Having regard to the facts and circumstances of the case and after considering the commonality of the legal issues involved in these criminal revisional applications, I think it should be disposed of by this common judgment and order.

13. After giving anxious thought over the law points involved herein, I am of the view that no sanction is required for prosecuting a person who was an ex-public servant. In view of Section 4(2) and 5 of the Cr.P.C. if the manner and forum of trial of offences under a special law is provided, the same shall prevail over ordinary law. Therefore, if there is an offence under Prevention of Corruption Act along with offences under the Indian Penal Code in that case the Special Court

constituted under the Act of 1988 shall have ample jurisdiction to try the case. In the result, all these criminal revisional applications are devoid of any merit and accordingly these are dismissed without cost.

14. Let a copy of this order be sent to the Learned Court below for information and taking necessary action in accordance with law.

15. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

16. Photocopy of this judgment and order duly countersigned by the Assistant Court Officer, shall be retained with the above records.