

(1997) 02 CAL CK 0029
In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction Criminal Rev. No's. 455-458 of 1995

Indra Narayana Ganguly

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Constitution of India, 1950 — Article 254
General Clauses Act, 1897 — Section 8
Penal Code, 1860 (IPC) — Section 409
Prevention of Corruption Act, 1988 — Section 26, 3, 4, 6
West Bengal Criminal Law Amendment (Special Courts) Act, 1949 — Section 13, 2,
2(2), 9(1)

Citation : (1998) 1 CALLT 147 : (1997) CriLJ 2870

Hon'ble Judges : Nripendra Kumar Bhattacharyya, J

Bench : Single Bench

Advocate : Mr. Biswanath Sanyal and Mr. Jaharlal Roy, for the Appellant; Mr. Sasanka Kumar Ghosh, for the Respondent

Judgement

N.K. Bhattacharyya, J.—By these 4 revisions the accused has challenged the order of taking cognizance passed by the learned Judge, Calcutta, 3rd Special Court, by order No. 1 dated 27-6-94 in 4 cases, namely Case No. 9 to Case No. 12 of 1994.

2. Accordingly, 4 revision cases have been moved challenging order No. 1 dated 27-6-94 passed by the learned Judge. Calcutta, 3rd Special Court, in those 4 cases and as the 4 revision cases, being Criminal Revision Case No. 455 to 458 of 1995, invoke the similar question of law, these 4 cases have been taken up together and disposed of by this Judgment.

3. The short fact leading to the cases are that on the ground of criminal breach of trust by the petitioner in disbursing the salary of the staff of Home Department for the period from March, 1987 to September, 1990 involving an amount of Rs. 1,21,372.19 and for the month of August, 1990 regarding discrepancy of an amount of Rs. 5,625.10. four FIR were lodged and the matters

were assigned or referred to by the Government to the court of Judge, 3rd Special Court, Calcutta and 4 cases have been registered in the said court being Case Nos. 9 to 12 of 1994 and in the said 4 cases by-Order No. 1 dated 27-6-94 the learned Special Judge took cognizance in the said four cases upon the charge-sheet submitted for an offence u/s 400 of the Indian Penal Code and issued summons. The said order of taking cognizance is the subject matter of challenge in the four revision cases.

4. On a common ground the order of taking cognizance in the said four cases by the learned Judge, has been challenged.

5. According to Mr. Sanyal, the Special Judge being appointed by notification u/s 2 of West Bengal Special Courts Act, 1949 for trying the offences mentioned in that Act is not competent to try the offence or to take cognizance under the Prevention of Corruption Act, 1988, which Act came into force in the year, 1988.

6. It was contended that the Criminal Law (Amendment) Act, 1952, a Central Act, came into force and section 6 of that Act provided for appointment of Special Judge for trying the offences under the Prevention of Corruption Act.

7. By introduction of section 13 in the West Bengal Special Courts Act, 1949 there was virtual exclusion of application of Criminal Law (Amendment) Act, 1952 and that had prevented the application of the said Act in West Bengal. So no Judge was appointed u/s 6 of 1952 Act and the old appointment of the Judges of the Special Court by notification u/s 2 of the West Bengal Special Courts Act, 1949 continued.

8. The Prevention of Corruption Act, 1988 a Central Act, came into force in 1988. By that Act and particularly u/s 13 of that Act the Prevention of Corruption Act, 1947 and the Criminal Law (Amendment) Act, 1952. stood repealed.

9. A conjoint reading of section 3 and 4 of the Prevention of Corruption Act, 1988 clearly indicates that an offence punishable under the Act, 1988 can be tried only by a Special Judge appointed u/s 3 of the said Act and not by any other court, notwithstanding anything contained in any other law for the time being in force.

10. Section 26 of 1988 Act protects the appointment of Special Judges who were earlier appointed as Special Judges u/s 6 of the 1952 Act.

11. That protection has not been extended to the appointment of Special Judges appointed by a notification u/s 2 of the West Bengal Special Courts Act, 1949.

12. Section 4 of the Prevention of Corruption Act, 1988 clearly expressed that notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force the offences under the said Act shall be tried by Special Judges only and the term special Judges is in reference of section 4 of 1988 Act, meaning the Special Judges who have been appointed u/s 3 of that Act or whose appointment under the repealed Criminal Law (Amendment) Act, 1952 has been protected u/s 26 of the 1988 Act.

13. It has further been contended that section 8 of the General Clauses Act cannot override a Constitutional provision namely Article 254 of the Constitution of India.

14. 1988 Act being a Central Legislation and subject matter relates to concurrent list of the 7th schedule of the Constitution of India which was enacted by the Parliament will prevail and have an overriding effect over any existing provision of the West Bengal Special Courts Act, 1949 in case of conflict or militancy between them irrespective of the fact whether the West Bengal Special Courts Act, 1949 had received the assent of the President earlier.

15. This point has already been decided earlier by two decisions of this court in the case of H.D. Barman v. CBI/SPE/Cal. through the State of West Bengal, reported in 1993 (II) CHN 141 and also in the case of J.Af. Dum v. CBI through the State of West Bengal, reported in 1995(11) CHN 113 wherein it has been held that taking cognizance of an offence under 1988 Act by a Special Judge appointed by notification u/s 2 of West Bengal Special Courts Act, 1949 is not permissible under the law and such the order of taking cognizance is bad, Illegal and without jurisdiction.

16. As this is the settled law now I am the opinion and view that the order of taking cognizance by the Impugned orders by the Special Judge are bad, Illegal and without Jurisdiction and cannot be sustained in law.

17. Mr. Chaitanya Chandra Mukherjee, the learned Advocate for CBI has taken a further point that by notification No.6614-J the Government of West Bengal has appointed the Special Judges under sub-section (2) of section 2 read with sub-section (1) of section 9 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 (West Bengal Act XXI of 1949, as amended, and functioning as such Judges as Special Judges under the Prevention of Corruption Act, 1988) for the purpose of trial of offences as enumerated in Clauses (a) and (b) of sub-section (1) of section 3 of the Prevention of Corruption Act, 1988 that has been done in exercise of a power conferred by sub-section (1) of section 3 of the prevention of Corruption Act, 1988 as such taking cognizance of an offence by such Judge is protected.

18. According to Mr. Mukherjee as by the notification the appointment of Special Judges, who were appointed by the notification u/s 2 of the West Bengal Special Courts Act, 1949 and under sub section (1) of section 9 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and functioning as such are protected and empowered to try the offences under the prevention of Corruption Act, 1988.

19. I find no Justification in the submission of Mr. Mukherjee inasmuch as by the notification in effect retrospective operation of section 3 of the Prevention of Corruption Act, 1988 the appointment of the Special Judges u/s 2 of 1949 Act is sought to be regularised by introduction of section 3 of the 1988 Act with retrospective effect is illegal and not permissible under the law.

20. The same could have been done by a Central legislation and not by notification. Notification cannot override the provisions of the law. Notification is nothing but a fiat and the fiat cannot override the law. That is the settled principle of law and as such I overrule the contention of Mr. Chaitanya Chandra Mukherjee.

21. I, accordingly, allow the revisions and quash the orders impugned and the proceedings.

22. Revision allowed