(1997) 12 MAD CK 0002

In the Madras High Court

Case No : Criminal O.P. No. 16705 of 1997 and Criminal M.P. No. 6669/97

J. Jayalalitha APPELLANT

Vs

The State RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Citation : (1998) 2 LW(Cri) 541

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : N. Jothi, for the Appellant; G. Masilamani, A.S.G. and Mr. Babu Muthu Meeran, Govt. Advocate (Crl. side) on behalf of the State, for the Respondent

Judgement

A. Raman, J.—The Petitioner herein filed an application before the XIII Additional Sessions-cum-Special Judge, Madras in Crl.M.P. No.

281 of 1997 in C.C. No. 4 of 1997, praying to adjourn the case to some other date, in view of the pendency of S.L.P.(Criminal No. 3290 of

1997) on the file of the Supreme Court.

2. A private complaint was laid by one R.S. Bharathi against the petitioner herein u/s 169 of Indian Penal Code. The gist of the private complaint is

that the petitioner herein, while she was the Chief Minister of the State of Tamil Nadu, purchased certain properties from TANSI and that such a

purchase was irregular and opposed to the norms and rule and that such a purchase by the petitioner, who is legally bound as a public servant, not

to purchase or bid for the property either in her own name or in the name of another, is an offence liable to be punished u/s 169 of Indian Penal

Code.

3. The said complaint was taken on file by the IX Metropolitan Magistrate. The Petitioner thereafter filed Criminal O.P. No. 5633 of 1995 to call

for the records in C.C. No. 3733 of 1995 and quash the same. This application was dismissed by this Court on 28.07.97 against the order of

dismissal, the petitioner had preferred SLP (Criminal) No. 3290 of 1997 before the Apex Court. The SLP has been admitted and interim stay of

the proceedings in C.C. No. 3723 of 1995, pending on the file of IX Metropolitan Magistrate, has been ordered.

4. With reference to the alleged offence of purchase of land, building belonging to TANSI, investigation was taken up by the Q Branch, CB CID,

Chennai and they have filed, after investigation, final report. Therefore, the petitioner herein, filed an application u/s 309 of Criminal Procedure

Code, for postponement of the said proceeding initiated on the report of Additional Superintendent of Police, ""Q"" Branch, CB CID, Chennai. The

CB CID had filed the charge-sheet against the petitioner and five others under Sections 120-B, 409, 420 read with 34, 169 of Indian Penal Code

and u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act.

5. The private complaint filed by R.S. Bharathi was only u/s 169 of the Indian Penal Code. The charge-sheet filed by the C.B.C.I.D. Police against

the petitioner is not only u/s 169 of Indian Penal Code, but also under other sections of the Indian Penal Code as well. In the SLP filed before the

Supreme Court, the following questions of law are raised for consideration :

(a) Whether taking the entirety of the complaint filed by Respondent in C.C. No. 2723 of 1995 and the Sworn statement recorded on 3.8.1995 an

offence is made u/s 169 I.P.C. against the Petitioner?

(b) Whether the Code of Conduct is-sued in G.O.Ms. No. 1012 dated 28.5.1969 has the force of law so as to legally bind a person and thereby

fall within the mischief of Section 169 I.P.C?

(c) Whether the Tamil Nadu Small Industries Corporation is a Government as mentioned in clause 2(b) of the Code of Conduct for Ministers as

issued in G.O.Ms. No. 1012 dated 28.5.1969 by the Government of Tamil Nadu ?

(d) Whether the complaint of the first respondent is barred by limitation u/s 468 of the Code of Criminal Procedure?

(e) Whether sanction u/s 197 Cr.P.C. is not required for prosecuting the petitioner for an offence u/s 169 I.P.C. as alleged by the respondent in his complaint.

6. In the case taken cognizance of on the police report against the petitioner, the same question also arises. Therefore, if the Supreme Court

ultimately gives finding on those question of law raised for consideration, definitely the verdict of the Apex Court will have enormous bearing and

tremendous impact on an important aspect of the case against the petitioner. In other words, to a great extent, the verdict would conclude a major

issue arising in the case against the petitioner. Therefore, it is contended that since certain important questions of law are raised and arise for

consideration in a similar matter, where the petitioner is the same and where the basis of the complaint against the petitioner is the same, it is

necessary for the special court to postpone the trial of the case instituted on police report, until such time the Supreme Court decides the matter.

7. The other ground put forward by the petitioner is that the case instituted on police report and the case taken cognizance on a private complaint

have to be clubbed together and disposed of in the manner indicated in Section 210 of the Criminal Procedure Code and therefore the Special

Court has to necessarily await the decision of the Supreme Court in the Special Leave Petition. The learned Additional Solicitor General, submitted

that the police report takes in not only offences under Indian Penal Code, but also, offences under Prevention of Corruption Act as well. Section

19-3(c) of the Prevention of Corruption Act in emphatic terms lays down that no court shall stay the proceedings under this Act on any other

grounds. Therefore, he contends that the postponement would, in effect, operate as stay of the case, pending disposal of the SLP before the

Supreme Court and that is not allowed u/s 19(3)(c) of the Prevention of Corruption Act.

8. He further contended that the purpose of the provision in Section 19(3)(c) of the Prevention of Corruption Act was to see that cases of such a

nature against persons who held public position should not be allowed to be dragged on. He also contended that the consistent view taken by the

Supreme Court is that proceedings under the such Act should be expedited. It was also contended by him that nothing prevented the petitioner

from moving the court for stay of the proceedings when they moved stay in SLP No. 3290 of 1997. Hence, he would contend that the case cannot be postponed and the application filed by the petitioner is only to drag on the proceedings.

9. Section 210 of the Criminal Procedure Code reads as follows:

210. Procedure to be followed when there is complaint case and police investigation in respect of the same offence:

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate,

during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject

matter of the inquiry or trial held by him, the offence which is the subject matter of the inquiry of trial held by him, the Magistrate shall stay the

proceedings of such inquiry or trial ! and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against

any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of

the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the

police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

10. Here, in this case, we are concerned with sub-section (2) of Section 210 of the Criminal Procedure Code. There is a private complaint against

the accused relating to an offence u/s 169 of Indian Penal Code. Therefore, it is clear that against the petitioner, in respect of an offence u/s 169 of

Indian Penal Code, there is also a police report. The Police report is inclusive of an offence u/s 169 of Indian Penal Code. Therefore, it is clear that

against the petitioner in respect of an offence u/s 169 of Indian Penal Code, there is already a private complaint. Subsequently, a police report has

also been filed against the petitioner. The police report has been filed before the Special court. The private complaint is pending on the file of the

IX Metropolitan Magistrate Court. Hence, Section 210 leaves no other option. It mandates the Magistrate to try together as though both were

instituted on police report.

11. The consistent view of various courts is that in such circumstances the cases should be taken together and disposed of together, but should not

be consolidated.

12. The proper course suggested is that the two cases should be tried together by the same court and that they should not be consolidated, that is

to say, the evidence would be recorded separately in both the cases one after the other, except to the extent that witnesses for the prosecution

who were common to both the cases be examined in one case and their evidence be read as evidence in the other. The trial court should, after

recording the evidence of prosecution witnesses in one case, withhold the judgment and then proceed to record the evidence of the witnesses in

the other case and thereafter he shall proceed to simultaneously dispose of the case by two separate judgments, taking care that the judgment in

one case is not based on the evidence recorded in the other case.

13. The Supreme court, as pointed in Kewal Krishan Vs. Suraj Bhan and Another, held that in order to avoid risk of conflicting findings, it is

ordinarily desirable that both the cases should be tried separately by the same court. There are other decisions, which are as follows:

(1) Kadipesan, President v. Kasim & others (1987 Cri.L.J. 1225)

(2) Chinnu Naicken Vs. Rangasami,

(3) Shantibhai Somabhai Raval Vs. Madhukani T. Shukla and Another,

(4) Joseph Vs. Joseph Annamma,

(5) Budaraju Seshagiri Rao & others v. T.V.Sarma & another (1976 (Crl.) M.L.J. 274)

(6) State Vs. Har Narain etc.,

(7) Bhupinder Singh Vs. Daljit Kaur,

(8) Ajij Khan Vs. Sirajuddin and Others,

14. All these cases referred to the procedure to be followed and how both the cases should be tried. These decisions indicate that both the cases

be tried by the same Magistrate and both the cases should not be consolidated, but it must be tried one after another and the judgment in both the

cases should be rendered simultaneously. Here, the foundation for the charge against the petitioner is u/s 169 of Indian Penal Code. The other

offences alleged in the police report are more or less offences that flow from the transaction which is claimed to be punishable u/s 169 of Indian

Penal Code by the private complainant. Therefore, the foundation for the charge against the petitioner is the same. The private complaint is anterior

in the point of time. The police case is later in point of time. Both the cases are of course pending before the different forums. The courts have

clearly laid down that these two cases necessarily have to be tried together, but should not be consolidated.

15. Section 210(2), Cr.P.C. also makes it clear that both cases shall be enquired by the learned Magistrate as though both the cases were

instituted on police report.

16. The case filed by the C.B.C.I.D., against the petitioner cannot be taken up independently and tried in view of Section 210 Cr.P.C. and the

pronouncements of the various court. It would follow that the learned Magistrate or the Special Magistrate, as me case may be, when his attention

has been drawn to the fact that mere is already a private complaint relating to the same offence, cannot dispose of the police case separately. He

has to wait for the other case as well. Only after the other case is transferred to his file and after holding trial simultaneously, men alone he can

pronounce judgment in the latter case as well as in the former case and independent disposal of one without reference to the other is therefore not

possible. Section 210(2) Cr.P.C. says both the cases have to be clubbed together and tried by the same Magistrate one after another and

disposed of simultaneously. The resultant position is that the hands of the Magistrate or Special Magistrate, as the case may be are tied down in the

sense that he cannot now proceed with the case unless the other case namely the case instituted on private complaint is also transferred to him and

taken up by him for simultaneous trial. Therefore, there is indirect embargo placed upon the lower court namely the special Judge from proceeding

further with the case instituted and taken cognizance on a police report on his file. Necessarily he has to wait for the disposal of the case before the

Supreme Court and only after the case taken cognizance on the private complaint against the petitioner is also transferred to his file, he can think of

proceeding with the trial of the case.

17. Since the foundation for charge against the petitioner is u/s 169 I.P.C., and as the other charges flow from the same, it is just and necessary

that the court shall wait the verdict of the Supreme Court in SLP No. 3290 of 1997. The verdict of the Supreme Court definitely, would, to a great

extent, regulate and will have either smothering or rejuvenating impact on the essence of charge made against the petitioner. Therefore, when the

Highest Court of the land is seized of the matter and when the decision of the Apex Court will have great legal impact upon the case, it is not only

just and necessary, but also imperative for the lower court to await the decision of the Apex Court. It may be that if the Apex Court answers the

questions posed for consideration in favour of the petitioner, then it is very likely that the entire edifice of prosecution may come down in which

case there may not be any necessity at all for the petitioner to face the trial of the case in the police instituted case. Therefore, it is not only

desirable but it is a must that the lower Court shall await the verdict of the Supreme court in SLP No. 3290 of 1997.

18. The learned Additional Solicitor General submitted that the provisions of Section 19 of Prevention of Corruption Act specifically provides that

there cannot be any stay and that the proceedings have to be gone through on day to day basis and therefore the spirit of the Act and the purpose

of such a provision in Section 19 of the Prevention of Corruption Act would be defeated if the lower court is ordered to await or postpone the

case till the disposal of the connected matter by the Supreme Court. According to the petitioner''s counsel, the relief asked for by the petitioner is

not stay but only postponement. The learned Additional Solicitor General would contend that the effect is to stay the proceedings. The Learned

Counsel for the petitioner would submit that Section 19(3) of the Prevention of Corruption Act would not apply to such cases and that Section 19

of the Prevention of Corruption Act will apply only to question of sanction since the very Section 19(3)(c) is referable only to proceedings where

sanction for the prosecution is questioned and that it would not affect the case on hand. Section 19 appears in Chapter V, which reads as follows:

Sanction For prosecution and other miscellaneous provisions.

Section 19 is headed as follows:

19. Previous sane lion necessary for prosecution:

19 (3) reads as follows'':

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the

ground of the absence of, or any error, omission or irregularity in, the sanction required under subsection (1), unless in the opinion of that court, a

failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority,

unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any

interlocutory order passed in any inquiry, trial, appeal or other proceedings.

19. The Learned Counsel for the petitioner therefore submitted that clause(c) would apply only to proceeding under the Act, where the sanction is

questioned or challenged or the proceedings relate directly or indirectly to the question of sanction and therefore Section 19(3)(c) cannot be

invoked in such cases. In this case on hand, the proceedings against the petitioner is not merely under the Prevention of Corruption Act. We find

that the charge-sheet against the petitioner is u/s 120-B, 409, 420 read with 34, 169 I.P.C. and u/s 13 (2) r/w 13(1)(d) of Prevention of

Corruption Act. For the offences, under the Prevention of Corruption Act, if proved, the maximum period of sentence provided is five years, but

Section 409 of I.P.C. provides for higher sentence. Therefore, while for the offences under the prevention of Corruption Act only a maximum

period of five years is provided for, the offence under the Indian Penal Code with which the petitioner is charged viz. Section 409 attracts a

maximum sentence of ten years. It cannot be therefore stated that the proceedings initiated against the petitioner is only under the Prevention of

Corruption Act. It is mainly under IPC as well one has to take into account the totality of the offences alleged. When a complaint is made to Court,

the court should take the complaint as a whole and there should be no splitting of fact. The fact as a whole has to be looked into. This position is

well laid in Re Chinnayya Goundan & others >(A.I.R. 474 Mad 1948). Therefore, we cannot for the purpose of contention split it to restrict the case as though it only falls under Prevention of Corruption Act. It is a complaint which, according to the charge-sheet attracts not only offences

under I.P.C, but also offences under the Prevention of Corruption Act. Therefore, it cannot be said , that it is a proceeding wholly pending under

Prevention of Corruption Act. Therefore, in my opinion Section 19(3)(c) cannot be made applicable to the facts of this case. It is to be pointed out

Section 22 of the Prevention of Corruption Act reads as follows:

22. The provisions of the Code of Criminal Procedure 1973 (2 of 1974) shall in their application to any proceedings in relation to an offence

punishable under this Act have effect as if:

(a) in Sub-section (1) of Section 243, for the words ""The accused shall then be called upon"", the words ""The accused shall then be required to

give in writing at once or within such time as the court may allow a list of the persons (if any) whom he proposes to examine as his witnesses and of

the documents (if any) on which he proposed to rely and he shall then be called upon"" had been substituted;

(b) in Sub-section (2) of Section 309, after the third proviso, the following proviso had been inserted, namely:- ""Provided also that the proceedings

shall not be adjourned or postponed merely on the ground that an application u/ s 397 has been made by a party to the proceedings.

(c) Not withstanding anything contained in Sub-section (1) or Sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by

him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the

accused to recall the ""witness for cross-examination

(d) in Sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely:

Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall

not ordinarily call for the record of the proceedings:

(a) Without giving the other party an"" opportunity of showing case why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.

20. Section 22 of the Act suggests only certain modifications. Section 22 of the

Act also shows that the provision of Section 309 of the Code

would apply. The only deviation is that a proceeding shall not be adjourned on the ground that application u/s 397 Cr.P.C. has been made by the

party. Here, in this case, there is no such application filed u/s 397 Cr.P.C. Therefore, the provisions of Section 309 Cr.P.C. are applicable. The

Prevention of Corruption Act does not in any manner bar the application of Section 309 Cr.P.C. It is not as though the Prevention of Corruption

Act disposes of the case. On the other hand, Section 309 Cr.P.C. as well provides that in every enquiry or trial, the proceedings shall be held as

expeditiously as possible. There fore, it is not as though the framers of Cr.P.C. were oblivious or that such an idea struck only the framers of

Prevention of Corruption Act. Therefore, we find that Section 309 Cr.P.C. is applicable with all its remagnification to such a care. Even for the

purpose of arguments if it is to be held that this is a case only filed under the Prevention of Corruption Act, Section 5 Cr.P.C. sets out that nothing

contained in this code shall, in the absence of a specific provision to the contrary, affect, any special 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. Section 4 of the

Code also provided that all offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired, tried and otherwise dealt with

according to the provisions hereinafter contained. Section 4(4) of Prevention of Corruption Act provides that notwithstanding anything contained in

the code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis. The

Special Judge shall try any other offence other than an offence specified in Section 3, with which the accused may, under the Code of Criminal

Procedure, 1973 (2 of 1974), be charged at the same trial. Therefore, on a reading of the relevant portions of the Cr.P.C. and the Prevention of

Corruption Act, I am of the opinion that Section 19(3)(c), when it states that notwithstanding anything contained in the Codes of Criminal

Procedure, it only refers to a particular provision of the Code in that it mainly refers to Revisional Power. The purpose of Section 19(3)(c) of

Prevention of Corruption Act, in my opinion, appears to be to exclude the power of revision, with regard to the proceeding concerning the sanction. Section 19(3)(c) occurs in Chapter V under the heading ""Sanction of Prosecution and other Miscellaneous Provisions"". The very section

is headed as ""Previous sanction is necessary for prosecution"". Section 19(1) refers to the sanction. Section 19(2) is to the effect that if any doubt

arise was to whether the previous sanction should be given by the Central Government or State Government it is stated that sanction shall be given

by that Government or Authority which should have been competent to remove the public servant from the offence. Section 19(3) (a) and (b)

specifically refers to only proceeding challenging the validity of sanction. Section 19(4) refers to the question relating to omission or irregularity in

the sanction. The explanation also refers to only sanction.

21. Therefore, in such a context, when Section 19(3)(c) is read, the ordinary application will be that the court cannot stay the proceedings under

this Act on any other ground relating to sanction and that no court shall exercise the power of revision in relation to any interlocutory order passed

in any inquiry, trial, appeal or other proceedings which is related to sanction. Therefore, the stay referred to is referable only to any other question

raised relating to or concerning sanction. Section 19(3)(a) refers to the absence of error or omission or irregularity in the sanction. There may be

other flaws attached to a sanction. There may be other grounds, other than those mentioned in Section 19(3)(c) and when the sanction is

questioned or when it becomes necessary to adjudicate a point concerning sanction on such other ground, the court cannot stay the proceeding.

Otherwise, the other sections of the Parental Act viz. Cr.P.C. codes are left untouched. It is also to be pointed out that there is no dispute

whatever that section 210 Cr.P.C. would apply. Section 210 Cr.P.C. is not excluded under the Prevention of Corruption Act. Moreover, stay of

proceeding cannot be stated as something repugnant to the provisions of Prevention of Corruption Act. Moreover, Section 28 of the Prevention of

Corruption Act makes it clear that the provisions of the Act shall be in addition to any other law and not in derogation. When power has been

granted to postpone or adjourn proceedings and that power is not touched and when the provisions of Section 210 Cr.P.C. are admittedly

applicable and is mandatory and when Section 4 of the Criminal Procedure Code definitely states that offence under Indian Penal Code shall be only tried in accordance with the code of Criminal Procedure, to say that this Court has no power to stay it, in my opinion, is not an acceptable

proposition of law, nor it can be stated to be correct reading of the Section. Even assuming for the purpose of the case that Section 19(3)(c) of the

Prevention of Corruption Act shackles the power of court to stay, even then here by reason of application of Section 210 Cr.P.C, even if the

lower court wants to proceed further with the case, it cannot dispose of the case for the reason that it has to necessarily await the other case taken

cognizance on the private complaint. Further, law requires that both the matters shall be clubbed together and tried by the same court and disposed

of simultaneously. When that position is accepted and cannot be controverter, then necessarily the lower court has to wait for the verdict of the

Supreme Court. Until men, it cannot proceed further in the matter. Moreover, as I said, since the foundation of the charge is now a matter of

adjudication before the Supreme Court and its verdict is likely to have immense effect and impact on the very basis of the case, then necessarily the

court has to wait for the verdict of the Apex Court in that regard.

22. The learned Additional Solicitor General submitted that this is an attempt to drag on the proceedings. This contention in my opinion is nothing

but a routine objection. For, it is usually put forward without being serious of the import of the same. In this case, admittedly, the charge-sheet was

laid only on 15.11.96 and after laying of the charge-sheet, till 28.1.97 the adjournments were not at the instance of the petitioner. The case has

undergone adjournments after that before the lower court on one ground or anther till 30.4.97 and it can be stated that it was not at the instance of

the petitioner alone. The discharge petition was field on 4.2.97 and further copies, were furnished by the prosecution on 4.2.97. The matter was

adjourned for argument on discharge till 30.4.97. I do not dunk that it can be seriously stated that this application is filed with a view to prolong the

proceedings. The other submission made by the learned Additional Solicitor General is that when the petitioner moved the Supreme Court in SLP

No. 3290 of 1997 on the private complaint of R.S. Bharathi, they could have brought to the notice of Supreme Court, the pendency of this case

and could have obtained suitable directions from the Supreme Court. The SLP No. 3290 of 1997 was preferred against the disposal of Crl.O.P.

No. 5633 of 1995. I do not know whether it would have been necessary or appropriate for the petitioner to mention about the pendency of this

proceeding on the police report. One cannot presume that they refrained from mentioning or by design.

23. The Supreme Court has ordered interim stay. The State is equally conscious of the nature of the proceedings. They could have also mentioned

it before the Supreme Court and sought necessary relief. Therefore, what is done or not done by the petitioner before the Supreme Court does not

carry us anywhere.

24. Hence, on an analysis, I am of the view that in the peculiar circumstances of this case, it is not only just and necessary, but also expedient to

postpone the proceedings until such time the connected matter is disposed of by the Supreme Court. Hence, this application is allowed, directing

the XIII Additional Sessions-Cum-Special Judge, Chennai to postpone the proceedings in the case till such time, the Supreme Court disposes of

the SLP (Criminal) 3290 of 1997.

