

(2010) 12 P&H CK 0163
In the Punjab And Haryana At Chandigarh
Case No : CRR No. 1978 of 2007

Kuldipak Ahuja

APPELLANT

Vs

Versus Central bureau of Investigation (CBI)

RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21
Penal Code, 1860 (IPC) — Section 120B, 379
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(1), 19(3)
Special Courts Act, 1979 — Section 11(1)

Citation : (2011) 2 RCR(Criminal) 710

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—As strange as it may seem, but strictly speaking, the tendency and frequency of the accused persons, holding

public offices to commit the heinous offences, with the active connivance of high profile accused for illegal gains, adversely affecting the health and

fabric of the society and then trying to delay and avoid the due process of law, to escape the punishment, have been tremendously increasing day

by day in every walks of life, leaving the Courts in lurch, to finally decide the criminal trials. The instant petition is burning example of such like

cases.

2. The epitome of the facts, culminating in the commencement, relevant for a limited purpose of deciding the core controversy involved in the

instant revision petition and emanating from the record, is that exhibiting deep concern with the environment-pollution, the Honble Apex Court in

Civil Writ Petition No. 4677 of 1985 has directed that no mining activity was to take place within an area of 2 Kms radius from the tourist resorts

of Badkhal and Suraj. Kund lakes, all mines falling within this radius were not to be re- opened and the areas falling within the radius from 2 Kms

to 5 Kms of the said area, the mining leases were not to be renewed without obtaining prior NOC from the Central and Haryana Pollution Control

Boards. The influential persons ignored the directions of Hon''ble Supreme Court, continued illegal mining by violating the relevant laws, rules and

regulations with impunity in active connivance of officials of the concerned departments. It necessitated Subhash Sharma alias Subhash Chander to

file a public interest litigation, vide Civil Writ Petition No. 14343 of 2000. Taking into consideration the grave violations and commission of the

offences by the accused alongwith public servants, the writ petition came to be disposed of by a Division Bench of this Court, vide order dated

22.4.2001 (Annexure PI), by virtue of which, the Respondent-Central Bureau of Investi-gation (for short ""CBI'') was directed to register a case

and conduct an investigation with regard to the mining and minerals in the District of Faridabad. While doing so, it would also look into the conduct

of the officers and find out as to whether or not they were guilty of any offence.

3. Sequelly, in pursuance of order (Annexure P1), the CBI registered criminal case (Annexure P2) against the accused. The CBI recorded the

statements of many witnesses, including the statements of Vivek Joshi, IAS Director Mines and P.K. Chaudhary, IAS Commissioner (Annexures

P3 and P4) respectively, collected the various documents, including the documents (Annexures P6 to P23) and letters vide Memo No. 2854 dated

20.10.1999; Memo No. 2867 dated 22.10.1999; Memo No. 2894 dated 27.10.1999; Memo No. 2899 dated 28.10.1999; Memo No. 3012

dated 2.11.1999 and Memo No. 3272-73 dated 10.12.1999 written by accused J.P. Malhotra for kind attention of Petitioner-accused Kuldeepak

Ahuja, State Mining Engineer,prima-facie demonstrating the conspiracy and his culpability in the commission of the crime.

4. Levelling a variety of allegations and narrating the sequence of events, in all, according to the prosecution that the accused hatched a criminal

conspiracy, dishonestly removed the ordinary and silica sand by way of illegal mining and abused their official, position as public servants for illegal

gratification by issuing short term permits in the name of Gopi Chand for obtaining pecuniary advantage for themselves and thus causing huge loss

of Rs. 76, 12, 51, 332/- to the State exchequer, Inter-alia, on the basis of aforesaid allegations and in the wake of order (Annexure P1), the instant

case was registered against the accused, vide FIR No. 35 dated 12.9.2001 (Annexure P2), on accusation of having committed the offences

punishable u/s 379 IPC, Section 21 of the Mines and Mineral (Regulations and Development) Act, 1957 and Section 13(1)(d) read with Section

13(2) of the Prevention of Corruption Act, 1988 (for short "the P.C. Act") by the Special Police Establishment Chandigarh Branch, in the manner

indicated hereinabove

5. After completion of the investigation, the CBI submitted the final police report/charge sheet against accused Kartar Singh Bhadana son of Na-

har Singh, the then Cooperation Minister Haryana; his brother-in-law Gopi Chand son of Mukh Ram, Petitioner Kuldeepak Ahuja son of Amar

Nath, State Mining Engineer and J.P. Malhotra, Assistant Mining Engineer, to face the trial for the indicated offences in Special CBI Court.

6. The accused raised an objection on the point of framing of charges for want of sufficient evidence/material. The Special Judge negatived their

plea, vide impugned order dated 21.4.2006, the operative part of which is as under:

After hearing the learned Counsel for the parties, at length and perusing the documents and statements of witnesses placed on record and relied

upon by the CBI, I am of the considered opinion that accused Kartar Singh Badana, Gopi Chand, Kuldeepak Ahuja and J.P. Mal-hotra in

criminal conspiracy with each other during the period 17.07.1989 to 16.4.2002 agreed with each other to do an illegal act i.e. to remove ordinary

sand as well as silica sand by way of illegal mining and in pursuance of the said agreement/conspiracy, they committed the offence of theft

punishable with imprisonment and thereby committed an offence punishable u/s 120-B IPC.

Secondly the accused Kartar Singh Badana and Gopi Chand, during the period 17.07.1989 to 16.4.2002 in pursuance of the said criminal

conspiracy/agreement dishonestly removed movable property i.e: ordinary sand and silica sand by way of illegal mining, without consent of the

State Government and thereby committed the offence of theft punishable u/s 379 IPC.

Thirdly, the accused Kuldeepak Ahuja, State Mining Engineer and J.P. Malhotra, Assistant Mining Engineer, during the period 17.07.1989 to

16.4.2002, abused their official position as public servants as State Mining Engineer, Chandigarh and Assistant Mining Engineer, Faridabad, by

issuing short term permits in the name of accused Gopi Chand for obtaining pecuniary advantage for themselves and thereby committed an offence

punishable u/s 13(2) read with 13(1)(d) of P.C. Act, 1988.

7. Having completed all the codal formalities and taking into consideration the entire material on record, the Special Judge, CBI Ambala

accordingly charge sheeted the accused, namely, Kartar Singh Badana, Gopi Chand, Petitioner Kuldeepak Ahuja and J.P. Malhotra, for the

commission of offences punishable under Sections 120-B and 379 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, by virtue of

impugned charge sheet dated 9.8.2007.

8. What is not disputed here is that Gopi Chand, co-accused of the present Petitioner, filed CRM No. M-32323 of 2006 for quashing the FIR in

question, the consequent proceedings and the impugned order dated 21.4.2006 framing the charges. That petition came to be dismissed and the

impugned order dated 21.4.2006 framing the charges was upheld by a Coordinate Bench of this Court (S.D. Anand, Ji), by way of order dated

22.5.2007, the operative part of which is as under:

In the present case, there are precise allegations that the Petitioner-Gopi Chand, who is brother-in-law of the former Haryana Minister - Kartar

Singh Badana, indulged in illegal mining in conspiracy with his relation aforementioned and their efforts in denuding the State exchequer were

facilitated by the dishonest conduct of S/Sh. Kuldeepak Ahuja and J.P. Malhotra (non-Petitioners-accused who were officers of the Mining

Department of the Government of Haryana) who thrice granted short term permits for 5 days each and granted further benefit to the Petitioner and

the other non-petitioners accused by relaxing the terms of payment for the said short term permits and also by shifting their responsibility to the

permit-holder to obtain No Objection Certificate from the Pollution Board. The public servant aforementioned are further accused of having

allowed Petitioner-Gopi Chand to continue with mining without having obtained the Non Objection Certificate and after the termination of permit

on 05.11.1999.

By the very nature of things, the offences alleged to have been committed by Kuldeepak Ahuja and J.P. Malhotra are punishable u/s 13(1)(d) read

with Section 13(2) of the Prevention of Corruption Act. The charge of conspiracy, which the Petitioner-accused is facing along with Kartar Singh

Badana, Kuldeepak Ahuja and J.P. Malhotra, can only be tried in terms of the provisions of Penal Code. As all these allegations are inter-relat-

able and evidence to be adduced by the CBI for proving the charge against the accused would be in the form of continuous transactions, the plea

raised on behalf of the Petitioner for an exclusive trial of the Petitioner in terms of the provisions of the Act is bereft of merit.

9. This is not the end of the matter. Petitioner Kuldeepak Ahuja, who was posted and working as Assistant Mining Engineer at the relevant time, still

did not feel satisfied with the impugned orders dated 21.4.2006 and 9.8.2007 of framing charges and filed the instant revision petition. That is how

I am seized of the matter.

10. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over

the entire matter, to my mind, there is no merit in the instant petition.

11. At the very outset, the learned Counsel appearing on behalf of Respondent-CBI has raised a preliminary objection of maintainability of the

present revision petition, in view of specific bar as envisaged u/s 19(3) of the P.C. Act. Faced with the situation, the learned Counsel for the

Petitioner contended that the bar under the said section is not attracted, in view of revisional power of this Court as contemplated u/s 397 Code of

Criminal Procedure.

12. Such thus being the legal position on record, now the sole question that arises for determination in this case, is as to whether the revision

petition against the impugned orders framing charges against the Petitioner is maintainable or not, in view of Section 19(3) of the P.C. Act?

13. Having regard to the rival contentions of the learned Counsel for the parties, to my mind, the instant revision petition is not legally maintainable,

in view of bar contained in Section 19(3) of the P.C Act, which postulates as

under:

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 Sub-section (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.

14. Meaning thereby, no Court shall exercise power of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other

proceedings. It is not a matter of dispute that while interpreting Section 11(1) of the Special Courts Act, 1979, a Constitutional Bench of Hon'ble

Apex Court in case V.C. Shukla Vs. State through C.B.I., , has ruled that an order framing charge against the accused was not a final order, but

an interlocutory one and, therefore, no appeal would lie against such order to the Supreme Court.

15. As is evident that the opening words of Section 19(3) of the P.C Act, notwithstanding anything contained in the Code of Criminal Procedure,

constitute a non-obstante clause that entirely keeps out the relevant provisions of Section 397 Code of Criminal Procedure. Therefore, the

argument of learned Counsel for CBI that resort cannot be had to the provisions of Code of Criminal Procedure, has considerable force and the

contrary argument of learned Counsel for the Petitioner that provisions of Section 397 Code of Criminal Procedure are attracted, is not only

devoid of merit but misplaced as well.

16. In this manner, the special legislative intent emanating from Section 19(3)(c) of the P.C. Act is clear and explicit that it was introduced for the

purpose of quick disposal of cases, involving corruption by the accused under the

Act. It is well settled principle of interpretation of statute that the words of an enactment are to be given their ordinary, popular and natural meaning. If such meaning is clear and unambiguous, the effect should be given to a provision of a statute in the same manner, whatever may be the consequences. By the very nature of the things, the basis of this principle is that the object of all interpretations being to know what the legislature intended, whatever was the intention of the legislature has been expressed by it through words which are to be interpreted accordingly. The intention of the legislature can be deduced only from the language through which it has expressed itself. If the language of a statute is clear, the only duty of the Court is to give effect to it and the Court has no business to look into the consequences of such interpretation. The Court is under an obligation to expound the law as it exists and leave the remedy to the legislature, even if harsh conclusions result from such exposition. Equally, it is now well recognized proposition of law that mandatory provisions and command of law have to be complied with in the same manner as envisaged and mandated by any statute and it cannot be interpreted otherwise. Therefore, keeping the clear mandate of Section 19(3)(c) of the P.C. Act into focus, to me, the instant petition is not legally maintainable, in the obtaining circumstances of the case.

17. Not only that, an identical question arose before Delhi High Court in case Dharambir Khattar And Other v. Central Bureau of Investigation

2010 (6) R.C.R. (Cri) 1733 : 2009 (4) A.D. (Del) 657. After considering the relevant provisions of Section 19(3)(c) of the P.C. Act and the

various earlier judgments, including the judgment in V.C. Shukla's case (supra) and Satya Narayan Sharma Vs. State of Rajasthan, , it Was held

as under:

Coming to the present case, this Court has no hesitation in holding that the ruling in V.C. Shukla in the context of the words interlocutory order? in

Section 11 SCA would apply on all fours (Sic. force). As already noticed, there is very little distinction between Section 11 SCA and Section

19(3)(c) PCA. The opening words of Section 19(3), like Section 11 SCA, constitutes a non obstante clause that keeps out the Code of Criminal

Procedure entirely. It evidences the legislative intent not to permit a revision petition against interlocutory orders passed by the Special Court

notwithstanding the position to the contrary under the Code of Criminal Procedure When the legislature expressly excludes the applicability of the

Code of Criminal Procedure by a non obstante clause, it would not be possible for a Court to overlook it and examine whether the order on

charge is in the context of Section 397 Code of Criminal Procedure an order that is subject to revision. In other words, if one were to accept the

arguments of learned Counsel for the accused, then the non obstante portion of Section 19(3) of the PCA would be rendered redundant. It must

be remembered that this is not a petition challenging constitutional validity of Section 19(3) of the PCA. On the other hand the Petitioners are only

seeking to interpret Section 19(3)(c) PCA to permit a revision petition against an order on charge by the Special Court.

18. Therefore, it was observed that revisions petition against the orders of framing of charges are not maintainable and all the similar revision

petitions were dismissed with costs of Rs. 25,000/- each. The learned Counsel for CBI has stated at the bar that the Hon"ble Supreme Court has

upheld the decision of Delhi High Court in Dharambir Khattar's case (supra), by virtue of order dated 24.8.2009 in SLP Nos. 5150 to 5153 of

2009, which was and in fact could not be disputed by the learned Counsel for the Petitioner. Therefore, the contrary argument of learned Counsel

for the Petitioner that revision petition is maintainable, pales into insignificance and ""stricto sensu"" deserve to be and are hereby repelled under the

present set of circumstances, as the law laid down by Delhi High Court upheld by Hon"ble Apex Court ""mutatis mutandis"" is applicable to the facts

and in the circumstances of the present case and is the complete answer to the problem in hand.

19. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

20. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the

course of trial of the case, the instant petition is hereby dismissed being not maintainable, in the obtaining cir-cumstances of the case.

21. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits of the case, as the same has been so

recorded for a limited purpose of deciding the instant petition in this context.