

(2014) 04 KAR CK 0026

In the Karnataka High Court

Case No : Criminal Appeal Nos. 3695, 3633 and 3700/2012

L.H. Hanumanthappa

APPELLANT

Vs

The State
 Mallikarjun Vs The State of Karnataka

 The State of Karnataka Vs Siddaram Ningappa
Koganur

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 307, 308, 326, 456(2), 475
Prevention of Corruption Act, 1988 — Section 19, 20, 21, 3, 4

Citation : (2014) ILR 3150 : (2014) 4 KarLJ 191 : (2014) 4 KCCR 2996

Hon'ble Judges : Rathnakala, J;H.G. Ramesh, J

Bench : Division Bench

Advocate : R.S. Lagali, Advocate in Criminal Appeal Nos. 3695, 3696, 3697, 3698, 3699/2012, Sri Ameet Kumar Deshapande, Advocate in CrI.A. No. 3633/2012, Sri A. Syed Habeeb, Spl. PP. for Lokayukta Sri Sanjay A. Patil, Add. Spp as Amicus Curiae in Criminal Appeal No. CrI.A. No. 3700/2012, Advocate for the Appellant; A. Syed Habeeb, Spl. PP. in Criminal Appeal Nos. 3695/2012 and Sri A. Syed Habeeb, Spl. PP for Lokayukta Sri Sanjay A. Patil, Add. Spp As Amicus Curiae in CrI.A. No. 3695, 3696, 3697, 3698, 3699/2012 and Sri R.S. Lagali, Advocate in Criminal Appeal No. 3700/2012, Advocate for the Respondent

Judgement

1. These appeals are placed before this Division Bench on a reference made by a learned Single Judge of this Court doubting the correctness of the interpretation of sub-section (6) of S. 5 of the Prevention of Corruption Act, 1988 made by this Court in H.C. Sathyan and Sowmya Sathyan Vs. The State .

2. In H.C. Sathyan, the learned Single Judge has held that the power to pass an order of attachment etc., conferred on a District Judge under The Criminal Law Amendment Ordinance, 1944 (Ordinance No. XXXVIII of 1944) ("the ordinance" for short) in connection with the offences punishable under the Prevention of Corruption Act, 1988 ("the Act") is given to a Special Judge under sub-sec. (6) of S. 5 of the Act only during the trial of the offence and such power cannot be exercised during investigation, pre-trial and post-trial stages of the case.

3. We have heard the learned counsel, perused the order of reference and the judgment in H.C. Sathyan (supra) and also the judgment of the Kerala High Court in Dr. V.K. Rajan Vs. State of Kerala, .

4. Before proceeding to examine the reference, we deem it appropriate to refer to the following observations made by a five-Judge Bench of the Supreme Court in Hardeep Singh Vs. State of Punjab and Others etc. etc., relating to interpretation of statutes:

43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.

44. No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable", (vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar, Martin Burn Ltd. v. Corpn. Of Calcutta, M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd., Sultana Begum v. Prem Chand Jain, State of Bihar v. Bihar Distillery Ltd., Institute of Chartered Accounts of India v. Price Waterhouse and South Central Railway Employee Coop. Credit Society Employees" Union v. Registrar of Coop Societies.)

(underlining supplied)

It is also relevant to state that in the aforesaid judgment (Hardeep Singh), it is held that the trial in a criminal case commences only on charges being framed. In this context, the following observations may be noticed:

38. In view of the above, the law can be summarised to the effect that as "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed. Thus, we do not approve the

view taken by the courts that in a criminal case, trial commences on cognizance being taken.

(underlining supplied)

5. The expression "while trying an offence" occurring in sub-sec. (6) of S. 5 of the Act [hereinafter referred to as "sub-section (6)"] needs to be interpreted in this Reference. Before proceeding to analyse sub-section (6), we deem it appropriate to refer to S. 5 of the Act:

5. Procedure and powers of special Judge.--(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered u/s 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorized by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law amendment Ordinance, 1944 (Ord. 38 of 1944).

(emphasis supplied)

6. The effect of sub-section (6) is that the Special Judges appointed under the Act are empowered to exercise all the powers and functions exercisable by a

District Judge under the ordinance in connection with the offences punishable under the Act while trying such offences.

7. In H.C. Sathyan & in V.K. Rajan (*supra*), the word "trying" occurring in sub-section (6) is interpreted to mean "trial". With respect, we are unable to subscribe to this view. It is relevant to state that the word "trial" is used in Ss. 4, 5, 6, 19, 20 & 21 of the Act. It is a basic rule of statutory interpretation that when two different words or expressions are used in a statute, the same must be held to have intended to convey two different meanings. If the intention of the parliament was to mean "trial" for the word "trying" used in sub-section (6), it would have used the expression "while holding the trial" like the expression-"hold the trial" used in S. 4(4) of the Act. It is to be noticed that the words "try", "trying" & "triable" are used in Ss. 3 & 4 of the Act to mean conferring "jurisdiction" on Special Judges to try offences punishable under the Act. Any word in a statute is to be construed by taking into consideration the particular context in which it is used. The word "trying" is not used in sub-section (6) in any limited sense or in the sense of reference to any particular stage of the proceeding. In our opinion, having regard to the purpose and object of sub-section (6), the expression "while trying an offence" shall mean "while adjudicating an offence". Any other interpretation would defeat the purpose and object of sub-section (6). The object of sub-section (6) is to confer all the powers of a District Judge under the ordinance in connection with the offences punishable under the Act on Special Judges appointed under the Act. Considering the object and purpose of sub-section (6), the expression "while trying an offence" should not be given a restricted interpretation as "while holding the trial" as given in H.C. Sathyan & in V.K. Rajan (*supra*). If the intention of the parliament was to confer the power on Special Judges only during the trial, it would have used the expression "while holding the trial" or "while conducting the trial" instead of using the expression "while trying". It is not as if the word "trial" is not used in the Act. As stated above, the word "trial" is used in several sections of the Act. Therefore, as stated above, the expression "while trying" used in sub-section (6) shall mean "while adjudicating" and cannot be construed as "while holding the trial".

8. Further, the word "while" occurring in the expression "while trying an offence" shall not be construed as restricting the power of a Special Judge only to the period of adjudication. Having regard to the object and purpose of sub-section (6), no limitation can be read into the word "while" occurring in sub-section (6). As noticed earlier, the object and purpose of sub-section (6) is to confer all the powers of a District Judge under the ordinance in connection with the offences punishable under the Act on Special Judges inter alia to prevent disposal or concealment of money or other property procured by means of offences under the Act. In this context, it is relevant to refer to H.P. Gupta Vs. Manohar Lal and Others, wherein the Supreme Court has interpreted the word "while" occurring in S. 456(2) of the Criminal Procedure Code, 1973. The following observations made therein are relevant:

4...the words are not "when convicting" or "when upholding the conviction" but the words are "while disposing of the appeal, reference or revision" and these would mean in continuation of the disposal of the appeal, reference or revision and these words cannot be regarded as importing a limitation on the power to the effect that such order must be incorporated in the body of the judgment disposing of the appeal reference or revision. In other words, the appellate or revisional Court acting u/s 456(2) will have jurisdiction or power to pass the order for restoration of possession at any time but it has to be exercised with discretion within reasonable time of the disposal of the appeal, reference or revision.

(underlining supplied)

As could be seen from the above observations, the Supreme Court has held that the word "while" cannot be regarded as importing any limitation on the exercise of power.

9. In the result, we answer the reference as under:

(i) The interpretation of sub-section (6) of S. 5 of the Prevention of Corruption Act, 1988 made in H.C. Sathyan and Sowmya Sathyan Vs. The State is not correct and it is accordingly overruled.

(ii) Under sub-section (6) of S. 5 of the Prevention of Corruption Act, 1988, a Special Judge having jurisdiction to try offences punishable under the Prevention of Corruption Act, 1988 is conferred with all the powers and functions exercisable by a District Judge under The Criminal Law Amendment Ordinance, 1944 (Ordinance No. XXXVIII of 1944) which include the power to pass an order of attachment, forfeiture, disposal of attached property etc. in connection with the offences punishable under the Act. Exercise of the aforesaid power by a Special Judge is not restricted to the duration of trial of such offences. A Special Judge can exercise the power at all stages which include investigation, pre-trial and post-trial stages.

(iii) An application for attachment in connection with the offences punishable under the Act could be made either to the District Judge under the ordinance or to the Special Judge under the Act as the power conferred on them is coextensive.

Registry shall now list these appeals before the appropriate Bench for hearing.