
(2010) 08 DEL CK 0251

In the Delhi High Court

Case No : Criminal Revision Petition No. 387 of 2010 and C.M. Application No's. 12848 and 12849 of 2010

Om Parkash

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Prevention of Corruption Act, 1988 — Section 19(3)

Citation : (2010) 08 DEL CK 0251

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Ramesh Gupta and Vipin Sanduja, for the Appellant; Vikas Pahwa, Additional Standing Counsel and Sachin Chandra, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The present revision petition u/s 397/401 of Criminal Procedure Code has been filed against the charge framed against the petitioner by the Special Judge-01 (CBI), Rohini Courts, Delhi.

2. At the very outset, counsel for the CBI submitted that a revision petition against framing of charge by the Special Judge, CBI was barred u/s 19(3)(c) of Prevention of Corruption Act, 1988 (as amended) wherein it is provided that no court shall exercise power of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. This Court had considered the issue whether a revision would lie or not against charge under Prevention of Corruption Act in Dharamvir Khattar and Ors. v. CBI 2009 IV AD (Delhi) 657 and after discussing numerous judgments of this Court and Apex court had come to a conclusion that the order framing charge was purely an interlocutory order and a revision against the order framing charge was barred u/s 19(3)(c) of Prevention of Corruption Act. This Court in Criminal Revision

Petition No. 293 of 2006 titled R.C. Sabharwal and Ors. v. CBI decided on 6th January, 2010, after considering Dharamvir's case (supra) and State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, and Satya Narayan Sharma Vs. State of Rajasthan, had observed that a revision was not maintainable. However, in above case it was contended that if revision was not maintainable, there should be no bar on challenge being made under Article 227 of the Constitution of India. This Court observed that since no request had been made to court by any of the revisionists that revision should be converted to a petition under Article 227 of the Constitution of India and revision was not maintainable, the revision was dismissed. However, one of the petitions made under Article 226/227 was kept pending for decision.

3. It is argued by counsel for the petitioner that this Court had not held that a petition under Article 227 of the Constitution of India was also not maintainable.

4. In Bharat Parikh Vs. C.B.I. and Another, , Supreme Court had considered the issue of maintainability of revision or a petition u/s 482 Cr.P.C against charge and observed as under:

16 With regard to the second proposition regarding the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers u/s 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried. It is only in the exceptional circumstances enumerated in State of Haryana v. Bhajan Lal 1992 Cri.L.J. 527, that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed. As observed in Debendra Nath Padhi's case (supra) at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused has to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to reopen the proceedings once charge has been framed or for invocation of the High Court's powers u/s 482 of the Code of Criminal Procedure.

5. It is settled law that what cannot be done directly, cannot be done indirectly. Where the Legislature has specifically barred a revision against order on charge, the powers of this Court under Article 226 or 227 of Constitution of India cannot be invoked to circumvent the legislative intent nor inherent powers u/s 482 Cr.P.C. can be exercised for that purpose.

6. I, therefore, consider that the present revision filed by the petitioner against charge framed by the Special Judge, CBI was not maintainable and is liable to be dismissed and is hereby dismissed.