
(2003) 02 KL CK 0052
In the High Court Of Kerala
Case No : Criminal R.P. No. 1645 of 2002

Prabhu

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Prevention of Corruption Act, 1988 — Section 11, 12, 14, 7

Citation : (2003) 1 ALT(Cri) 317 : (2003) CriLJ 2261 : (2003) 2 ILR (Ker) 225 : (2003) 1 KLT 631

Hon'ble Judges : N. Krishnan Nair, J

Bench : Single Bench

Advocate : C.S. Manu, for the Appellant; P.K. Ramkumar, A.C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

N. Krishnan Nair, J.—This revision is directed against the order dated 3.11.2002 of the Special Judge (SPE/CBI)-II, Ernakulam in an unnumbered case.

2. The facts necessary for the disposal of this revision may be stated as follows: The petitioner herein filed a complaint against one Dilip D. Khona, Partner, M/s. Devshi Bhanji Khona, Shipping Clearing & Forwarding Agents, Willington Island, Kochi-3, alleging the commission of the offences punishable under Sections 12 and 14(b) of the Prevention of Corruption Act. The allegation is that the said Dilip Khona used to give bribe to the Plant Quarantine Inspector for issuing, phyto sanitary certificate. It is specifically alleged that on 19.4.2001 he paid Rs. 4,000/- to G.M. Thippanna, Plant Quarantine Inspector as bribe for issuing the phyto sanitary certificate. The Central Bureau of Investigation has registered a case against Sri. G.M. Thippanna and he is now being tried in the Court of Special Judge, SPE/CBI-II, Ernakulam, for the commission of the offence punishable u/s 13(1)(a) read with Section 13(2) of the P.C. Act.

3. The lower court dismissed the complaint on the ground that a non-public

servant alone cannot be tried by a Special Judge appointed under the P.C. Act. It appears that the lower court is of the view that if an offence under the P.C. Act is committed by a non-public servant he can only be prosecuted along with a public servant.

4. Section 3 of the Prevention of Corruption Act empowers the State Government or the Central Government to appoint Special Judges to try any offence under the Act or conspiracy to commit such offences or any abetment thereof. As per Section 4 of the Act, the Special Judge appointed u/s 3 of the Act has exclusive jurisdiction to try the offences specified in Sub-section (1) of Section 3 of the Act. Sub-section (3) of Section 4 of the Act provides that when trying any case, a Special Judge also may try any 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.

5. In this case, the accused is alleged to have committed the offences Under Sections 12 and 14(b) of the P.C. Act. Section 12 of the Act lays down that whoever abets any offence punishable u/s 7 or Section 11 of the Act whether or not that offence is committed in consequence of that abetment, shall be liable to punishment. Thus u/s 12 of the Act even if the offence abetted is not committed by the public servant, the person who abetted the offence is liable to punishment. u/s 14(b) of the Act whoever habitually commits an offence punishable u/s 12 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and also be liable to fine. It is true that when an offence abetted is committed the person who abetted the offence and the person who committed the offence can be tried at one trial. Suppose in a case the offence u/s 7 or Section 11 abetted by a non-public servant is not committed by a public servant, the non-public servant can only be prosecuted u/s 12 or Section 14(b) of the Act. In such a situation, if a non-public servant alone cannot be tried before a Special Judge, the guilty person may go unpunished. The lower court relied on the decision of the Supreme Court in P. Nallammal Etc. Vs. State Rep. by Inspector of Police, : to hold that a non-public servant alone cannot be tried before a court of Special Judge. It appears that the court below has misunderstood the decision of the Supreme Court. In Nallammal's case the appellants contended that they are not liable to be prosecuted along with the public servants for the offences u/s 109 of the Penal Code read with Section 13(1)(e) of the P.C. Act. It was contended for the appellants that the offence u/s 13(1)(e) of the P.C. Act is unabettable. The Supreme Court held that if a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under P.C. Act, or if such a non-public servant abetted any of the offences which the public servant committed, such non-public servant is also liable to be tried along with the public servant before a Court of Special Judge having jurisdiction in the matter. There is nothing in the decision to indicate that a non-public servant alone cannot be tried for the offences punishable under Sections 12 and 14(b) of the P.C. Act. According to me, the impugned order in this case is clearly illegal and cannot be

sustained. A Special Judge has exclusive jurisdiction to try the offences punishable under Sections 12 and 14(b) of the P.C. Act and if any offence u/s 7 or Section 11 of the Act abetted by a non-public servant is not committed by a public servant the non-public servant alone can be tried by a Special Judge for the offence under Sections 12 or 14(b) of the Act.

In the result the impugned order is set aside. The lower court is directed to restore the complaint on file and proceed with the same in accordance with law. This Revision Petition is thus allowed.