
(1990) 01 PAT CK 0024

In the Patna High Court

Case No : Criminal Miscellaneous No. 4073 of 1986

Purushottam Das Goswami and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 15-01-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 482
Penal Code, 1860 (IPC) — Section 120B, 193, 194, 195, 196

Citation : (1990) 38 BLJR 1353

Hon'ble Judges : G.G. Sohani, C.J.;U.P. Singh, J;B.N. Agarwal, J

Bench : Full Bench

Judgement

G.G. Sohani, C.J.—This full Bench has been constituted on a reference made by a Division Bench of this Court to consider the question as to whether a Compensation Officer appointed under the provisions of the Bihar Land Reforms Act, 1950, (hereinafter referred to as "the Act") can be held to be a Court within the meaning of Section 195(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

2. The material facts giving rise to this reference briefly are as follows:

A charge-sheet was filed against the accused-applicants before the Special Judge (Vigilance), Patna, by the Inspector of Vigilance, alleging that in pursuance of a conspiracy entered into by the accused, payment of more than two crores of rupees by way of compensation was fraudulently made by the accused and they, therefore, be tried for offences punishable under Sections 120-B, 420, 467, 468, 471 and 477 of the Indian Penal Code and u/s 5(2) read with Sub-section (1)(c) and (d) of Section 5 of the Prevention of Corruption Act, 1947, A preliminary objection was raised on behalf of the accused that the aforesaid offences were-alleged to have been committed by the accused in proceedings before a Compensation Officer appointed under the Act, that the Compensation Officer appointed under the Act was a "Court" within the meaning of Section 195(1)(b) of the Code and that as the complaint in the instant case was not filed by the

Compensation Officer, the learned Special Judge (vigilance) could not take cognizance of the offences. This objection was not upheld by the learned Special Judge. The accused thereupon filed an application before this Court u/s 482 of the Code praying that the proceedings before the Special Judge (Vigilance) be quashed on the ground that no proper complaint as required by Section 195(1)(b) of the Code was filed before the Special Judge. When the matter came up for consideration before a Division Bench of this Court, reliance was placed on behalf of the accused on a Division Bench decision of this Court reported in Chandra Kishore Jha v. The State of Bihar 1975 BBCJ 656 holding that a Compensation Officer appointed under the Act was a "Court" within the meaning of Section 195(1)(b) of the Code of Criminal Procedure, 1898. The Division Bench doubted the correctness of the decision reported in Chandra Kishore Jha v. The State of Bihar 1975 BBCJ 656 (supra) and was of the view that the matter required reconsideration by a Full Bench, That is how this matter has come up for consideration before this Full Bench.

3. Learned counsel for the accused contended that the provisions of Section 195(1)(b) of the Code prohibit a Court from taking cognizance of offences specified therein unless and until a complaint in writing was filed by a "Court*", that a Compensation Officer appointed under the provisions of the Act was a "Court" within the meaning of Section 195(1)(b) of the Code, that the decision in Chandra Kishore Jha v. The State of Bihar 1975 BBCJ 656 (supra) had correctly decided that the Compensation Officer was a Court, that the said decision had held the field for all these years and that there was no cogent reason for taking a view different from that taken in 1975 BBCJ 656. It was urged that even if two views were possible, the decision by the Division Bench in 1975 BBCJ 656 should not be over-ruled in view of the settled principles of law relating to precedents. In reply, it was contended that a Compensation Officer appointed under the Act was a Tribunal and that in view of the provisions of Sub-section (3) of Section 195 of the Code, unless the Act under the provisions of which that Tribunal was constituted declared it to be a Court for purposes of Section 195 of the Code, the Compensation Officer could not be held to be a Court within the meaning of Section 195(1)(b) of the Code.

4. To appreciate that contentions raised on behalf of the parties, it is necessary to turn to the relevant provisions of Section 195 of the Code, Section 195(1)(b) of the Code is as follows:

195. Prosecution for contempt of lawful authority of public servants, for offences against, public justice and for offences relating to documents given in evidence.-
(1) No Court shall take cognizance-

(a) * * * * * (b)(i) of any offence punishable under any of the following sections of the Indian Penal Code 45 of 1860, namely, Sections 193 to 196 (both inclusive), 199, 220, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in Sub-clause (i) or Sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Sub-section (3) of Section 195 of the Code lays down that in Clause (b) of Sub-section (1) the term "Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of Section 195 of the Code (under lining supplied). It is not disputed before us that there is no provision in the Bihar Land Reforms Act, 1950, declaring a Compensation Officer to be a Court for the purposes of Section 195 of the Code, u/s 19 of the Act, Compensation Officers are appointed to prepare in the prescribed form and in the, prescribed manner a compensation Assessment-roll containing, inter alia the compensation to be paid in accordance with the provisions of the Act, u/s 26 of the Act, objections filed by any person aggrieved by any entry in the draft Compensation Assessment-roll are required to be considered by the Compensation Officer and u/s 27, an appeal lies from an order passed by the Compensation Officer. Section 38(2) of the Act provides that any enquiry conducted by the Compensation Officer shall be deemed to be a judicial proceeding with the meaning of Sections 193 and 226 and for the purposes of Section 196 of the Indian Penal Code. There is, however, no provision in the Act, which declares the Compensation Officer to be a "Court" for the purpose of Section 195 of the Code. The question for consideration, therefore, is whether in the absence of any provision in the Act declaring the Compensation Officer to be a "Court" for the purpose of Section 195 of the Code, can a Compensation Officer be held to be a Court within the meaning of Section 195(1)(b) of the Code ?

5. Prior to the enactment of the Code of Criminal Procedure, 1973, the question as to whether a Tribunal constituted under any Act has been declared by that Act to be a Court for the purposes of Section 195 of the Code was neither material nor relevant, because in the Code of Criminal Procedure, 1898, which was repealed by the Code of Criminal Procedure, 1973, the relevant provision in Section 195 of the Code of Criminal Procedure, 1898, as amended by Act 18 of 1923 was as follows:

In Clauses (b) and (c) of Sub-section (I), the term "Court" includes a Civil, Revenue or Criminal Court but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

The aforesaid provision, which was an inclusive definition of the term court

naturally raised the question as to what else, besides Civil, Revenue or Criminal Court properly so called was covered by the generic term " Court", A observed in Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others, , the interpretative exercise undertaken by the Courts over the years as to the precise meaning of the term "Court" as defined in Section 195(1)(b) of the old Code prior to the introduction of Sub-section (3) of Section 195 of the present Code, reveals an endless oscillation between two views-each verging on a fringe of obscurity and vagueness." In Lalji Haridas Vs. State of Maharashtra and Another, , the Supreme Court held that as proceedings before the Income Tax Officer were deemed to be judicial proceedings u/s 193 of the Indian Penal Code by virtue of Section 37 (4) of the Income Tax Act, 1922, these proceedings must be treated as proceedings in any Court for the purpose of Section 193(1)(b) of the Code of Criminal Procedure, 1898. Following that decision, it has been held by a Division Bench of this Court in Chandra Kishore Jha v. The State of Bihar 1975 BBCJ 656 that as proceedings before a Compensation Officer are deemed to be judicial proceedings u/s 193 of the Indian Penal Code, by virtue of Section 38 (2) of the Bihar Land Reforms Act, 1950, a Compensation Officer is a "Court" for the purposes of Section 195(1)(b) of the Code of Criminal Procedure, 1898. The question as to whether an authority of tribunal constituted by any Central or State Act can be held to be a Court within the meaning of "Section 195(1)(b) of the Code of Criminal Procedure, 1898 came up for consideration before different High Courts and there were conflicting views. In this state of law, when the Law Commission was considering the revision of the Code of Criminal Procedure, 1898, the Law Commission recommended that the definition of the term "Court" contained in Section 195 of the Code of Criminal Procedure, 1898, be revised as follows:

In Clauses (a) and (b) of Sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

The aforesaid recommendation of the Law Commission was based on the reason! contained in para 15,99 of its forty-first report, which were as follows:

We consider that for the purpose of Clauses (b) and (c), "court" should mean a civil court or a revenue court or a criminal court properly so called, but where a tribunal created Dy an Act has all or practically all the attributes of court, it might be regarded as a court only if it is declared by that Act to be a court for the purposes of this section. This would make the position clear to all concerned, and particularly to criminal courts when required to take cognizance of offences falling within the scope of Clause (c). They would then be left with the comparatively easy question whether the judicial body or authority before which the document was produced or given in evidence was a civil court or a revenue court or a criminal court.

To implement the recommendations of the Law Commission, the Code of Criminal

Procedure, 1973 was enacted repealing the Code of Criminal Procedure, 1898, and Sub-section (3) of Section 195 of the Code was enacted exactly in the same way as was recommended by the Law Commission. It was, however, contended on behalf of the applicants that the new provision enacted by Sub-section (3) of Section 195 of the Code of Criminal Procedure, 1973, did not bring about the desired result and it was still necessary to ascertain for the purposes of Section 195 of the Code of Criminal Procedure, 1973, as to whether any authority or tribunal, which was not a Court properly so called, had the trappings or attributes of a Court for deciding as to whether it was or was not a Court within the meaning of Section 195 of the Code of Criminal Procedure, 1973. The contention cannot be upheld. We may, in this connection, usefully refer to the following observation of the Supreme Court in *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, which is as follows:

In that uncertain state of law, the Law Commission observed in para 1599 of its Report that it felt that in any concrete case the question is bound to create problem of interpretation and accordingly suggested a change in law for the purposes of Section 195 of the Code. It felt that the term "Court" for the purposes of Clauses (b) and (c) should mean a Civil, Revenue or a Criminal Court, properly so called but where a tribunal created by an Act has all or practically all the attributes of a Court, it might be regarded as a Court only if declared by the Act to be a Court for the purposes of Section 195. Indubitably, the introduction of the inclusive clause in the definition of "Court" in Sub-section (3) has brought about a change in the law.

The Supreme Court further held that "the decision of the majority in *Lalji Haridas*'s case (*supra*) is no more of academic interest". It therefore, follows that after the enactment of Sub-section (3) of Section 195 of the Code of Criminal Procedure, a tribunal cannot be held to be a Court within the meaning of Section 195(1)(b) of the Code merely because the proceedings before the tribunal are to be deemed to be judicial proceedings. The requisite condition for holding that tribunal a "Court" within the meaning of Section 195(1)(b) of the Code, now, is that the Act under which that tribunal is constituted should contain a provision declaring that tribunal to be a Court for the purposes of Section 195 of the Code. Such a declaration is to be found in various enactments referred to in *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, .

6. Under the circumstances, it must be held that the decision of this Court in *Chandra Kishore Jha v. The State of Bihar* 1915 BBCJ 656 following the decision of the Supreme Court in *Lalji Haridas Vs. State of Maharashtra and Another*, , interpreting the definition of the term "Court" as contained in Section 195 of the Code of Criminal Procedure, 1898, does not hold the field after the change in law brought about by introduction of Sub-section (3) in Section 195 of the Code of Criminal Procedure, 1973. That decision, as observed by the Supreme Court in *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, is now of academic interest. It is, therefore, not necessary for the purpose of this case to deal with

the question as to whether that decision is or is not correct, because in the instant case, the question for consideration is whether a Compensation Officer can be held to be a Court within the meaning of Section 195(1)(b) of the Code of Criminal Procedure, 1973, consequent upon the change in law brought about by the enactment of Sub-section (3) of Section 195 of the Code of Criminal Procedure, 1973. The decision in 1975 BBCJ 656 is attracted only in cases governed by the provisions of the Code of Criminal Procedure, 1898, as amended by Act 18 of 1923. As the present case is indubitably governed by the provisions of the Code of Criminal Procedure, 1973, the question *s to whether a Compensation Officer can be held to be a "Court for the purpose of Section 195 of the Code of Criminal Procedure, 1973 will have to be decided in the light of the provisions of Sub-section (3) of Section 195 of the Code of Criminal Procedure, 1973.

7. Learned counsel for the applicants contended that the Supreme Court in *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, examined the provisions of the Commission of Enquiries Act to ascertain whether the commission of enquiry constituted under that Act had the attributes of a Court. It was, therefore, contended that the enquiry as to whether any authority or tribunal had all or substantially all the trapping or attributes of a Court was still relevant for ascertaining as to whether it was a Court within the meaning of Section 195 of the Code. From a perusal of the judgment of the Supreme Court in *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, , it will however, be clear that the Supreme Court proceeded to examine the relevant provision of the Commission of Enquiry Act in view of the contention raised before it that the Commission of Enquiry was a Civil Court by virtue of the provisions of the Act constituted by the Commission of Enquiry Act, The decision in *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, cannot be construed to mean that in spite of the change in law brought about by Section 195(3) of the Code of Criminal Procedure, 1973 the Supreme Court held that there was still scope for the interpretative exercise as to whether any tribunal or authority, not ordinarily held to be a Court, can still be regarded as a Court for the purposes of Section 195 of the Code, if that tribunal or authority had the attributes or trappings of a Court, even though there was no provision in the Act constituting that authority or tribunal, declaring that authority of tribunal to be a Court for the purposes of Section 195 of the Code, as required by Sub-section (3) of Section 195 of the Code of Criminal Procedure, 1973. The Supreme Court has in unambiguous term held in *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, that the introduction of the inclusive clause in the definition of Court in Sub-section (3) of Section 195 has brought about a change in law. To embark upon the question as to whether a tribunal or authority which is not a Court properly so called acts in a judicial capacity or not in order to ascertain as to whether it can be held to be a Court within the meaning of Section 195 of the Code will frustrate the very object of enactment of Sub-section (3) of Section 195 of the Code of Criminal Procedure, 1973, and will be violative of the well known principle of law governing construction of statutes

that statutes should be given what has become known as a purposive construction, that is to say, that the Court should where possible identify "the mischief which existed before the passing of the statute and then if more than one construction is possible, favour that which will eliminate "the mischief so identified.

8. Our attention was invited to the decision of the Supreme Court in Chandrapal Singh and Others Vs. Maharaj Singh and Another, and it was contended that if the Rent Control Officer under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, could be deemed to be a Civil Court within the meaning of Section 195 of the Code, there was no reason why a Compensation Officer cannot be deemed to be a Civil Court. It is however, necessary to note that in Chandrapal Singh and Others Vs. Maharaj Singh and Another, the Supreme Court did not finally decide the question as to whether the Rent Control Officer was or was not a Court within the meaning of Section 195 of the Code of Criminal Procedure, 1973. This will be clear from the following observation of the Supreme Court:

Whether a Rent Control Officer as a Tribunal would be Comprehended in the expression "Court" as used in Section 195(1)(b)(i) in view of the extended meaning assigned to the expression by Section 195(3) Cr. P. C, would necessitate a closer examination of some other provisions of the Cr. P. C. and some precedents to which our attention was invited including the one in Kamalapati Trivedi Vs. State of West Bengal, , we propose not to examine that aspect in this case, because we are satisfied as would be presently pointed out, that invoking the jurisdiction of the Criminal Court in the facts and circumstances of the case was an abuse of the process of law.

In view of the aforesaid observation it cannot be held that the Supreme Court in AIR 1982 SC 1218 (supra) has decided the question as to whether in absence of any declaration under the relevant Control Act declaring the Rent Control Officer as a Court for the purposes of Section 195 of the Code, the Rent Control Officer can be held to be a Court within the meaning of Section 195 of the Code.

9. The Compensation Officer appointed under the Bihar Land Reforms Act, 1950, is not a Court properly so called. It is not a Civil, Revenue or Criminal Court in the ordinary sense of that term. The Act under which the Compensation Officer is appointed does not contain any provision declaring such officer to be a Court for the purpose of Section 195 of the Code. Under the circumstances, the Compensation Officer cannot be held to be a "Court" within the meaning of Section 195(1)(b) of the Code of Criminal Procedure, 1973. The decision in 1975 BBCJ 656 (supra) is attracted in cases where the provisions of the Code of Criminal Procedure, 1898 are applicable. So far as the present case is concerned, my answer to the question referred to the Full Bench is that a Compensation Officer appointed under the provisions of the Bihar Land Reforms Act, 1950, cannot be held to be a Court within the meaning of Section 195(1)(b) of the Code of Criminal Procedure, 1973.

Let the case be placed before the appropriate Bench for disposal, in the light of the aforesaid answer to the question referred to this Full Bench.