

**(1997) 02 CAL CK 0028**

**In the Calcutta High Court**

**Case No :** Criminal Revisional Jurisdiction Criminal Rev. No. 2578 of 1994 with  
Criminal Rev. No. 1646 of 1994

Sadhan Kumar Boral and Another and Chittaranjan Das and  
Others

**APPELLANT**

**Vs**

The State of West Bengal

**RESPONDENT**

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**Date of Decision :** 21-02-1997

**Acts Referred:**

Constitution of India, 1950 — Article 254  
Criminal Law (Amendment) Act, 1952 — Section 6  
Criminal Procedure Code, 1973 (CrPC) — Section 401  
General Clauses Act, 1897 — Section 8  
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468  
Prevention of Corruption Act, 1947 — Section 13(1), 5(1)(d), 5(2)  
Prevention of Corruption Act, 1988 — Section 26, 3, 3(1), 4  
West Bengal Criminal Law Amendment (Special Courts) Act, 1949 — Section 13, 2,  
2(2), 9(1)

**Citation :** (1998) 1 CALLT 186 : (1997) CriLJ 2117

**Hon'ble Judges :** Nripendra Kumar Bhattacharyya, J

**Bench :** Single Bench

**Advocate :** Mr. Biswanath Sanyal and Mr. Jaharlal Roy, for the Appellant;

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## **Judgement**

N.K. Bhattacharyya, J.—The Criminal Revision Case No. 2578 of 1994 is directed against the proceeding in Case No. 3 of 1993 pending in the court of the learned Judge, 3rd Special Court, Calcutta and the Criminal Revision Case No. 1646 of 1994 is directed against the proceeding in Case No. 10 of 1993 pending in the court of the learned Judge, 1st Special Court, Alipore.

2. In both the cases the revision has been filed for quashing of the proceeding u/s 401 read with section 582 of the Code of Criminal Procedure.

3. That in case No. 3 of 1993 upon which the Criminal Revision Case No. 2578 of 1994 has arisen, the petitioner No. 1 in that petition was an officer and the petitioner No. 2 was an employee of the State Bank of India. Netaji Subhas Road Branch, Calcutta. In 1988 for offences u/s 5(2) read with section 5(I)(d) of the

Prevention of Corruption Act, 1947 corresponding to 13(2) read with section 13(1) of the Prevention of Corruption Act, 1988 along with the offences under sections 120B/420/ 419/467/468/471 of the Indian Penal Code a charge sheet was submitted before the 3rd Special Court, Calcutta on 22-3-93 and thereupon the learned Judge, Special Court took cognizance of the offence on 22-3-93.

In Criminal Revision Case No. 1646 of 1994 which has arisen out of Case No. 10 of 1993 pending in the court of the learned Judge, 1st Special Court, Alipore, the petitioners in that petition are all officers of the UCO Bank and posted in different branches of that Bank. For offence u/s 120B/ 420/468/477A of the Indian Penal Code and 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, 1947 corresponding to section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 charge-sheet was submitted before the court of the learned Judge, 1st Special Court, Alipore and cognizance was taken thereupon.

4. Earlier in both the cases the proceedings were challenged regarding the said two Special Court Cases on the grounds that the accused persons are not public servant and against the order on that point of the learned Judge, Special Court. This court was moved and this court took the view that they are not public servant.

5. The matter was challenged before the apex court and the apex court took the view that the accused persons are public servants. Now in these two cases the accused persons have come challenging the proceeding on a different ground.

6. According to the accused persons the Special Courts which are now trying the matters have no jurisdiction and power to try the same and taking cognizance in these matters by the matters Special Judges is bad in law.

7. According to Mr. Sanyal, the Special Judge being appointed by notification u/s 2 of West Bengal Special Courts Act, 1949 for trying the offences mentioned in that Act is not competent to try the offences or to take cognizance under the Prevention of Corruption Act, 1988, which Act came into force in the year, 1988.

8. It was contended that the Criminal Law (Amendment) Act, 1952, a Central Act, came into force and section 6 of that Act provided for appointment of Special Judge for trying the offences under the Prevention of Corruption Act.

9. By introduction of section 13 in the West Bengal Special Courts Act, 1949 there was virtual exclusion of application of Criminal Law (Amendment) Act, 1952 and that had prevented the application of the said Act in West Bengal. So no Judge was appointed u/s 6 of 1952 Act and the old appointment of the Judges of the Special Court by notification u/s 2 of the West Bengal Special Courts Act, 1949 continued.

10. The Prevention of Corruption Act, 1988 a Central Act, came into force in 1988. By that Act and particularly u/s 13 of that Act the Prevention of Corruption Act, 1947 and the Criminal Law (Amendment) Act, 1952, stood repealed.

11. A conjoint reading of section 3 and 4 of the Prevention of Corruption Act, 1988 clearly indicates that an offence punishable under the Act, 1988 can be tried only by a Special Judge appointed u/s 3 of the said Act and not by any other court, notwithstanding anything contained in any other law for the time being in force.

12. Section 26 of 1988 Act protects the appointment of Special Judges who were earlier appointed as special Judges u/s 6 of the 1952 Act.

13. That protection has not been extended to the appointment of special Judges appointed by a notification u/s 2 of the West Bengal Special Courts Act, 1949

14. Section 4 of the Prevention of Corruption Act, 1988 clearly expressed that notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force the offences under the said Act shall be tried by Special Judges only and the term Special Judges is in reference of section 4 of 1988 Act, meaning the Special Judges who have been appointed u/s 3 of that Act or whose appointment under the repealed Criminal Law (Amendment) Act, 1952 has been protected u/s 26 of the 1988 Act.

15. It has further been contended that section 8 of the General Clauses Act cannot override a Constitutional Provision namely Article 254 of the Constitution of India.

16. 1988 Act being a Central Legislation and subject matter relates to concurrent list of the 7th schedule of the Constitution of India which was enacted by the Parliament will prevail and have an overriding effect over any existing provision of the West Bengal Special Courts Act, 1949 in case of conflict or militancy between them irrespective of the fact whether the West Bengal Special Courts Act, 1949 had received the assent of the President earlier.

17. This point has already been decided earlier by two decisions of this court in the case of H.D. Barman v. CBI/SPE/Cal. through the State of West Bengal, reported in 1993 (II) CHN 141 and also in the case of J.N. Dum v. CBI through the State of West Bengal, reported in 1995 01 CHN 113 wherein it has been held that taking cognizance of an offence under 1988 Act by a Special Judge appointed by notification u/s 2 of West Bengal Special Courts Act, 1949 is not permissible under the law and such the order of taking cognizance is bad, illegal and without jurisdiction.

18. As this is the settled law now I am the opinion and view that the order of taking cognizance by the impugned orders by the Special Judge are bad, illegal and without Jurisdiction and cannot be sustained in law.

19. Mr. Chaitanya Chandra Mukerjee, the learned Advocate for CBI has taken a further point that by notification No- 6614-J the Government of West Bengal has appointed the Special Judges under sub-section (2) of section 2 read with sub-section (1) of section 9 of the West Bengal Criminal Law Amendment (Special Courts) Act 1949 (West Bengal Act XXI of 1949, as amended, and functioning as

such Judges as Special Judges under the Prevention of Corruption Act, 1988) for the purpose of trial of offences as enumerated in Clauses (a) and (b) of sub-section (1) of section 3 of the Prevention of Corruption Act, 1988 that has been done in exercise of a power conferred by sub-section (1) of section 3 of the Prevention of Corruption Act, 1988 as such taking cognizance of an offence by such Judge is protected.

20. According to Mr. Mukherjee by the notification the appointment of Special Judges, who were appointed by the notification u/s 2 of the West Bengal Special Courts Act, 1949 and under sub-section (1) of section 9 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, and functioning as such are protected and empowered to try the offences under the Prevention of Corruption Act, 1988.

21.1 find no justification in the submission of Mr. Mukherjee inasmuch as by the notification in effect retrospective operation of section 3 of the Prevention of Corruption Act, 1988 the appointment of the Special Judges u/s 2 of 1949 Act is sought to be regularised by introduction of section 3 of the 1988 Act with retrospective effect is illegal and not permissible under the law.

22. The same could have been done by a Central legislation and not by notification. Notification can not override the provisions of the law. Notification is nothing but a fiat and the fiat cannot override the law. That is the settled principle of law and as such I overrule the contention of Mr. Chaitanya Chandra Mukherjee.

23. I, accordingly, allow the revisions and quash the orders impugned and the proceedings.

24. Revision allowed