
(1998) 05 AHC CK 0096

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 166 of 1998

Satyendra Babu Agnihotri

APPELLANT

Vs

State (through C.B.I.)

RESPONDENT

Date of Decision : 27-05-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 408, 482

Citation : (1998) 05 AHC CK 0096

Hon'ble Judges : Palok Basu, J and R.K.Mahajan, J

Final Decision : Dismissed

Judgement

Palok Basu, J.—Salyendra Babu Agnihotri has filed this petition which purports to be under Section 482 Cr. P.C. containing the following prayer:

"The proceedings of the criminal case No. 10 of 1998, R.C. 32 (A)/96, Lucknow under Sections 120B/420/467/468/471, I.P.C and 13 (2) read with Section 13(2), 13(1) (d) Prevention of Corruption Act, 1988 pending in the Court of Special Judge, AntiCorruption (West) U.P. Lucknow be quashed and nonbailable warrant issued against the applicant be also quashed."

2. Sri Nandit Srivastava, learned counsel for the applicant has been heard at length who has argued the matter with ability. In opposition Shri Vireshwar Nath Government Advocate assisted by Shri A.K. Srivastava, Special Counsel for C.B.I., has been heard.

3. In order to appreciate the arguments only two facts need to be stated. First, in one of the Government departments known as Ayurveda and Unani Department under the Medical and Health Ministry of the State of U.P. there was alleged embezzlement by withdrawing excess amount without there being any budgetary allotment in the year 1993-94 which tentatively has been estimated by the audit report to be of about Rs. 48 crores. Second, the matter was made subject matter of an F.I.R. lodged by Yashverdhan Sinha, (a Secretary in that department) which was lodged at P.S. Kotwali Hazratganj, Lucknow which covered the entire gamut

of the embezzlement/illegal withdrawals. Having noticed this huge embezzlement through a writ petition and further that the matter's importance was being apparently ignored, the State Government was asked by this Court as to why the matter should not be investigated by the C.B.I. Thereafter, by a notification of Lie State Government the entire investigation has been handed over to the C.B. I. After due investigation the parent or the principal chargesheet in this case has been filed being numbered as 1 of 1997 in the Court of Special Judge (Centre), Lucknow. This has been followed by several supplementary chargesheets relating to various accused posted differently at different places. One such supplementary chargesheet making the applicant also an accused, is the subject matter of this 482 application.

4. The applicant Satyendra Babu Agnihotri alleges to have been in the employment of the State Government, having been posted as Regional Ayurvedic and Unani Officer, Lucknow in the year 1993 and set averments in para 8 of the petition.

5. In the State of U.P., the State Government has admittedly appointed three Special Judges in the State of U.P. The territorial jurisdiction of those three Judges has been notified by relevant notifications of the State Government as under:

(1) Special Judge (Centre), Lucknow having jurisdiction for districts Lucknow, Kanpur City and Kanpur Dehat.

(2) Special Judge (West), Lucknow having territorial jurisdiction over 37 districts.

(3) Special Judge (East), Dehradun having territorial jurisdiction over the remaining districts of the State of U.P.

6. The applicant moved an application challenging the aforesaid supplementary chargesheet making him also an accused, on the following three grounds:

(i) Cognizance cannot be taken by the Special Judge (West), Lucknow because cognizance could have been taken only by the Special Judge (Centre), Lucknow.

(ii) The District Judge, Lucknow had no power to transfer the case No. 1 of 1997 from the Court of Special Judge (Centre), Lucknow to the Court of Special Judge (West), Lucknow.

(iii) The applicant could not have been proceeded with through the instant chargesheet which should be taken by an independent chargesheet and not a supplementary chargesheet.

7. The Special Judge (West), Lucknow heard the counsel for the C.B.I and Shri Nandit Srivastava and he passed a well reasoned order running into six closely typed pages and rejected the arguments of the applicant. Shri Nandit Srivastava who had appeared for the accused before the trial Court has also argued the same points before this Court with ability. Shri Vireshwar Nath has vehemently opposed the arguments raised by the accused counsel.

8. As already noted have, in this case the C.B.I. has filed the principal chargesheet against 7 accused persons which included the then concerned Cabinet Minister of the State of U.P. and I.A.S. Officer, the then Secretary of the Department. The two principal accused specified above, raised some objections in the Court of Special Judge (Centre) with regard to cognizance. In due course the Special Judge seems to have been made some requests for security i.e. in order to protect himself while going ahead with the principal chargesheet. The accused then raised objections about fair trial in this case before the said Special Judge (Centre), Lucknow, by filing an application under Section 408, Cr. P.C. for transfer of the case to another Court, before the District and Sessions Judge, Lucknow. The Sessions Judge allowed the transfer application and directed the said case i.e. No. 1 of 1997, i.e. the principal chargesheet case to be transferred from the Court of Special Judge (Centre), Lucknow to the Court of Special Judge (West), Lucknow. This judicial order is in vogue till date and has thus conferred jurisdiction on the Special Judge (West), Lucknow. It is further admitted fact that 10 supplementary chargesheets had been filed in the meantime by the C.B.I., in which various other accused have been nominated on the strength of material collected from further investigations which have all been transferred by the order of the District Judge to the Court of Special Judge (West), Lucknow. (see averments made in para No. 9 of the application/affidavit). This has been done apparently because the principal chargesheet case had already been transferred to Special Judge (West), Lucknow by a transfer order passed by Sessions Judge on the judicial side.

9. It was pointed by Shri Vireshwar Nath, Government Advocate that all these ten supplementary chargesheets were in fact, filed by the C.B.I. before the Special Judge (Centre), Lucknow and since the principal case was transferred by the judicial order of District and Sessions Judge, Lucknow from the Court of Special Judge (Centre), Lucknow to the Court of Special Judge (West), Lucknow, the Sessions Judge transferred these ten supplementary chargesheets also to the Court of Special Judge (West), Lucknow. Both these Special Judges at Lucknow are of the rank of Additional Sessions Judge. It was further pointed out that several remand files of accused in other supplementary chargesheets have also been transferred in the meantime by the District and Sessions Judge from the Court of Special Judge (Centre) to the Court of Special Judge (West), Lucknow. In fact, it is admitted to Shri Nandit Srivastava himself and is mentioned in the impugned order that one remanded file relating to one of the accused in the instant supplementary chargesheet namely Dr. Singh of Azamgarh, was already transferred by the Sessions Judge to the Court of Special Judge (West), Lucknow.

10. In view of what has been stated above there is absolutely no force in any of the arguments raised by Shri Nandit Srivastava. Cognizance of the entire case through the parent or the principal chargesheet has been taken initially by the competent Court which has been transferred by a judicial order of the Sessions Judge, Lucknow inasmuch as supplementary chargesheet matters filed till then before Special Judge (Centre) Lucknow have also been transferred by the

Sessions Judge to the Court of special Judge (West), Lucknow. Filing of a supplementary chargesheet in the parent case does not amount to seeking cognizance for a different offence. It is only when some different offender may come to light during investigation that supplementary chargesheets are filed for trial of those accused also with the accused who are nominated in the principal charge sheet. The Hon'ble Supreme Court has settled the law once for all that the Courts take cognizance of the offence and not the offenders.

11. The judicial order of the District Judge passed under Section 408, Cr. P.C. transferring the principal chargesheet case and the subsequent supplementary chargesheets from the Court of Special Judge (Centre), Lucknow to the Court of Special Judge (West), Lucknow permitted and authorised under the law. Consequently the C.B.I. was within its rights to file a supplementary chargesheet relating to the applicant so in the Court of Special Judge (West), Lucknow, which was and is seized with the case as the principal chargesheet is pending in this Court for trial according to law. The learned trial Judge has rightly rejected the application for the applicant.

12. No other point has been argued.

13. The application consequently fails and is hereby dismissed with the directions that all steps should be taken forthwith to arrest the offenders.