

(2011) 04 GAU CK 0035
In the Gauhati High Court
Case No : Criminal Revn No. 4 (SH) of 2009

Shri Sushil Kumar Gupta

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(1), 19(3)
Prevention of Terrorism Act, 2002 — Section 34
Special Courts Act, 1979 — Section 11, 11(1)

Citation : (2011) 5 GLR 785

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : S.P. Mahanta and R.M. Kharsyntiew, for the Appellant; S. Jindal, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—This criminal revision is directed against the order dated 28-1-2009 passed by the learned Special Judge, Shillong in Special Case No. 6 of 2004 framing charges against the Petitioner u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution is that the officials of the Criminal Bureau of Investigation (CBI) registered a case being Crime No. RC GWH 2004A 0022 against the Petitioner for the offences punishable u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 ("the Act" for short) on 28-9-2004 and thereafter submitted the charge sheet before the learned Special Judge, Shillong to stand the trial. According to the prosecution, the Petitioner while working as Senior Manager (Civil) Hospital Services Consultancy Corporation (India) Ltd., Shillong during the period 1-1-1994 to 5-8-2004 was in

possession of assets disproportionate to his known sources of income to the extent of " 37,36,129.70p and that he had never declared any movable or immovable assets held either in his name or in the name of his family members to his Department. At the beginning of the check period i.e. on 1-1-1994, he was in possession of assets only to the tune of ".1,48,000/-,but had acquired huge movable and immovable assets either in his name or in the name of his family members during the check period, the total value whereof was found to be worth " 50,59,767.60p as shown in Statement-B whereas his total income from all known sources during the check period was only to the tune of " 27,80,783.07p. The expenditures incurred by him under different heads during the check period were worked out to a tune of " 16,05,145.17p as detailed in Statement-C and Statement-D respectively. According to the prosecution, the Petitioner has been found to be in possession of assets grossly disproportionate to his known sources of income to the tune of " 37,36,129.70 which were acquired by corrupt and illegal means during the check period, which could not be satisfactorily accounted for by him. This was how he came to be charge-sheeted. The learned Special Judge after hearing both the parties passed the impugned order framing the charges as noted above.

3. Though a number of contentions have been advanced by Mr. S.P. Mahanta, the learned Counsel for the Petitioner to assail the impugned order, I will first straightaway deal with the preliminary objection raised by Mr. V.K. Jindal, the learned Counsel for the Respondent, on the maintainability of this revision. If the preliminary objection is sustained, it will not be necessary to deal with the other contentions of the learned Counsel for the Petitioner. There is no express provision for revision against an order framing a charge against an accused under the penal sections of the Act. To appreciate the controversy, I will refer to the relevant provisions of Section 19(3) of the Act:

19.(1) [*] [*] [*] (2) [*] [*] [*] (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,? (a) [*] [*] [*] (b) [*] [*] [*] (c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. (4) [*] [*] [*]

(Underlined for emphasis)

4. The marginal note of Section 19, at the first blush, conveys the idea that this provision is about prosecution sanction but that is not so as revealed by Section 19(1)(c). The first limb of Section 19(1)(c) interdicts any Court from staying the proceedings on any other ground. The second limb of Section 19(1)(c), with which we are now concerned, bars any Court from exercising the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. In other words, no revision lies against an interlocutory order passed in any inquiry, trial, appeal or other proceedings. This then begets the question as to what is the meaning of "interlocutory order". If an order is not an interlocutory order but is otherwise a final order passed in any inquiry, trial or

other proceedings, revision will lie against such an order. The Apex Court in *V.C. Shukla v. C.B.I.*, 1980 Supp. SCC 92, the case cited by the learned senior counsel for the CBI, has an occasion to consider the meaning of the term "interlocutory order" in the context of Section 11(1) of the Special Courts Act, 1979. In that case, an appeal u/s 11(1) of the Special Courts Act, 1979 was filed against the order passed by the Special Judge for framing a charge against the accused u/s 120-B IPC read with Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947 and also u/s 5(2) read with Section 5(1)(d) of the said Act. After considering a number of decision including English decisions, the Apex Court held that an order framing the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term "interlocutory order" as used in Section 11(1) of the Special Courts Act, 1979. The relevant observations are found at paragraphs 34 and 35 of the judgment, which are as follows:

34... Thus, on a consideration of the authorities mentioned above, the following propositions emerged:

- (1) that an order which does not determine the right of the parties but only one aspect of the suit or trial is an interlocutory order;
- (2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other word, if an order is not final order, it would be an interlocutory order;
- (3) that one of the tests generally accepted by the English courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue, because, in our opinion, the term "interlocutory order" in the Code of Criminal Procedure has been used in a much wider sense so as to include even intermediate or quasi-final orders;
- (4) that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and put an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;
- (5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Article 136 of the Constitution against an order framing charges against the accused. Thus, it cannot be said that by now allowing an appeal against an order framing charges, the Act works serious injustice to the accused.

35. Applying these tests to the order impugned we find that the order framing of the charges is purely interlocutory order as it does not terminate the proceedings but the trial goes on until it culminates in acquittal or conviction. It is true that if

the Special Court would have refused to frame charges and discharged the accused, the proceedings would have terminated but that is only one side of the picture. The other side of the picture is that if the Special Court refused to discharge the accused and framed charges against him, then the order would be interlocutory because would still be alive. Mr. Mridul tried to repel the argument of the Solicitor General and explained the decisions, referred to above, on the ground that the English decisions as also the Federal Court's decisions made the observations while interpreting the provisions of the Government of India Act or the provisions of the Constitution where the word "final" order was expressly used. It was urged that the same construction would not apply to the present case where the word "order" is not qualified by the word "final". With due respect to the learned Counsel, in our opinion, the distinction sought to be drawn is a distinction without any difference. This Court as also the Federal Court have clearly pointed out that so far as the tests to be applied to determine whether an order is final or interlocutory, apply as much to a civil case as to a criminal case. Furthermore, as already indicated, it is impossible to spell out the concept of interlocutory order unless it is understood in contradistinction to or in contrast with a final order. This was held in a number of cases referred to, including Madhu Limaye case which has been expressly stressed by us in an earlier part of the judgment. For these reasons, therefore, the contention of the learned Counsel for the Appellant on this aspect of the matter fails and is hereby overruled.

No doubt, the aforesaid observations were made in the context of the term "interlocutory order" used in the Special Courts Act, 1979 and not under the provision of Section 19(3)(c) of the Prevention of Corruption Act, 1988, I do not find any reason for not applying the tests for determination of the same expression used in the latter Act. This was also the view taken by the Delhi High Court in Dharambir Khattar Vs. Central Bureau of Investigation, (a case cited by the learned senior counsel for the CBI) when it construed this expression appearing in Section 19(3)(c) of the Act. After thoroughly reviewing the decisions rendered by the Apex Court and the various High Courts of India and a well-researched work, the Delhi High Court made instructive observations in paragraphs 22 of the judgment which read thus:

22. Coming to the present case, this Court has no hesitation in holding that the ruling in V.C. Shukla in the context of the words "interlocutory order" in Section 11 SCA would apply on all fours. As already noticed, there is very little distinction between Section 11 SCA and Section 19(3)(c). The opening words of Section 19(3), like Section 11 SCA, constitutes a non-obstinate clause that keeps out the Code of Criminal Procedure out entirely. It evidences the legislative intention not to permit a revision petition against interlocutory orders passed by the Special court notwithstanding the position to the contrary under the CrPC. When the Legislature expressly excludes the applicability of Code of Criminal Procedure by a non-obstante clause, it would not be possible for a court to overlook it and examine whether the order on charge is in the context of Section 397 Code of

Criminal Procedure an order that is subject to revision. In other words, if one were to accept the arguments of the learned Counsel for the accused, then the obstinate portion of Section 19(3) of the PCA would be rendered redundant. It must be remembered that this is not a petition challenging the validity of Section 19(3)(c) of the PCA. On the other hand, the Petitioners are only seeking to interpret Section 19(3)(c) PCA to permit a revision petition against an order on charge by the Special Court.

The Delhi Court also examined therein the permissibility of invoking Article 226 and 227 of the Constitution and of Section 482 Code of Criminal Procedure to challenge an order of framing of a charge and held that it was impermissible. This what it said in paragraph 24 of the same judgment:

24. In the present petition, it was urged that notwithstanding the above legal position, the powers of this Court under Articles 226 and 227 of the Constitution and Section 482 CrPC remained untrammelled. In other words, it was submitted that in appropriate cases, the said provisions could be invoked notwithstanding the statutory bar to challenge an order on revision passed by the Special Court. In the considered view of this Court, this argument although attractive, also does not survive after the authoritative pronouncement of the Supreme Court in *State v. Navjot Sandhu* (supra). There a similar argument raised in the context of Section 34 POTA was negative. An order by the Special Judge POTA regarding call interception was challenged in the High court by a petition under Articles 226 and 227 of the Constitution read with Section 482 CrPC. The Supreme Court held that the High Court ought not to have entertained the petition at all. It noticed the judgments in *Madhu Limaye v. State of Maharashtra* and *Satya Narain Sharma v. State of Rajasthan*. ...

The conclusion of the Delhi High Court is found at paragraph 32 of the judgment, which read:

32. To conclude this part of the discussion, it is held that in the context of Section 13(3)(c) the words "no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial..." includes an interlocutory order in the form of an order on discharge or an order framing charge. On a collective reading of the decisions in *V.C. Shukla* and *Satya Narayan Sharma*, it is held that in terms of Section 19(3)(c) PCA, no revision petition would be maintainable in the High Court against order on charge or an order framing charge passed by the Special Court.

5. With due respect to the Hon''ble Delhi High Court, I have read and re-read the aforesaid observations together with the other paragraphs on the scope of Section 19(3)(c) PCA and have no reason to disagree with the Hon''ble Judges of the Delhi High Court. In fact, in my humble opinion, the decision unambiguously and correctly lays down the law on this aspect of the matter. Consequently, I hold that this Court has no jurisdiction to entertain this revision u/s 19(3)(c) PC Act against the impugned order on framing of charges against the Petitioner u/s

13(2) read with Section 13(1)(e) of the PC Act as such an order is necessarily an interlocutory order.

6. The result of the foregoing discussion is that this revision petition is not maintainable and is, accordingly, dismissed. The learned Special Judge, Shillong shall now proceed with the trial of the case without further delay and will make an attempt to dispose of the case within six months from the date of receipt of this judgment. There shall, however, be no order as to costs.