
(2014) 12 SC CK 0039

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 2512-2513 of 2014 (Arising out of SLP (Crl.)
Nos. 2521-2522 of 2014)

Union of India (UOI) and Others

APPELLANT

Vs

T. Nathumuni

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482, 8(1)
Delhi Special Police Establishment Act, 1946 — Section 5(3)
Prevention of Corruption Act, 1988 — Section 13(1), 17, 19, 3

Citation : (2015) 1 JCC 425

Hon'ble Judges : Shiva Kirti Singh, J;M. Yusuf Eqbal, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Sr. Advocate, T.A. Khan, Farrukh Rasheed and B.V. Balaram Das, Advocates for the Appellant; J.C. Gupta, Dhanh Singh, Ram Shankar for R.V. Kameshwaran, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

M. Yusuf Eqbal, J.—Leave granted. The present appeals are directed against the common judgment and order dated 5.7.2013 passed by the Madurai Bench of Madras High Court in Crl. O.P. No. 1943 & 6464 of 2010, whereby the High Court set aside the order passed by the Trial court permitting a Sub-Inspector of Police to investigate the matter under the Prevention of Corruption Act.

2. The facts giving rise to the present appeals are that on the basis of a complaint from one S. Muniraj a case being RC 50(A)/2009 was registered by Central Bureau of Investigation, ACB, Chennai against Respondent - T. Nathamuni, Inspector of Income Tax on the allegation that the accused had demanded an amount of Rs. 5,000/- from the complainant. A trap was laid and allegedly the accused was caught red handed while accepting the bribe amount. Initially, the case was investigated by Mr. Lawrence, Inspector of Police and owing to some administrative reasons, the Superintendent of Police, Central

Bureau of Investigation, Anti Corruption Branch, Chennai filed petition dated 22.9.2007 Under Section 17 of the Prevention of Corruption Act, 1988 (in short, "the Act") before the Court of Special Judge CBI cases, Madurai seeking permission for investigation of the case by Shri G.A. Suriya Kumar, Sub-Inspector of Police, instead of Mr. Lawrence, Inspector of Police.

3. The Special Judge for CBI cases, Madurai vide order dated 24.09.2009 allowed the aforesaid petition permitting GA. Suriya Kumar, Sub-Inspector of Police to investigate the case. After completion of investigation, charge sheet dated 01.12.2009 was filed in the Court of Special Sessions Judge for CBI cases, Madurai and the Court took cognizance and assigned it CC No. 7/2009.

4. During the course of trial, the Respondent moved the High Court preferring criminal original petition Under Section 482 of Code of Criminal Procedure (in short, "Cr.P.C.") to quash the entire proceedings in CC No. 7/2009 on the ground that there is correction in the FIR and sanction was not accorded by proper authority. Respondent also preferred another petition to call for the records and to quash the order dated 24.09.2009 passed by the Special Judge, Madurai in Crl. M.P. No. 549 of 2009 permitting Shri G.A. Suriya Kumar, Sub-Inspector of Police to investigate the case.

5. The High Court vide its impugned order dated 5.7.2013 set aside aforesaid order of the Trial Court on the ground that Section 17 of the Act provides that if the officer not below the rank of Inspector of Police is authorized by the Government, such officer can investigate the case without permission of the Court. There is no specific provision in Section 17 of the Act that the Sub-Inspector of Police is also empowered to investigate the case with the permission of the Court. The High Court further observed that the Special Court without assigning any reason in the order permitted the Sub-Inspector of Police to investigate the matter and the same is not in accordance with law.

6. Hence, these appeals by special leave by the Union of India as well as the State.

7. We have heard learned Counsel for the parties. Mr. K. Radhakrishnan, learned senior Counsel appearing for the Appellant submitted that the High Court has failed to appreciate that Special Judge granted permission to aforesaid Sub-Inspector of Police, CBI, Chennai to investigate the case and after completion of the investigation, charge sheet was filed and cognizance was taken. Learned Counsel contended that the High Court interpreted Section 17 of the Act erroneously. The provisions of Section 17(a) of the Act prescribe that without the permission of the Court, the investigation of the case below the rank of Inspector of Police shall not be done. But in this case, the investigation was done with the order of the Court. Learned Counsel submitted that by virtue of Section 5(3) of the Delhi Special Police Establishment Act any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector is made officer-in-charge of police station and, therefore, they have the power to investigate into the

offences mentioned in the notification Under Section 3 of the Act within their respective limits and they can exercise all the functions of the Officer-in-charge of the police station.

8. Per contra, it has been submitted on behalf of the Respondent that criminal prosecution was initiated on a complaint given by the Secretary of Rajapalayam Town Co-operative Housing Society, Rajapalayam relating to an enquiry in connection with evasion of payment of income tax for the house building owned by him. However, investigation has been conducted without prior sanction of the competent authority as required Under Section 19 of the Act. In the present case, sanction had been given by Commissioner of Income Tax after completion of investigation. It is contended that the powers of the High Court Under Section 482 is wide and full enough to interfere in this case where the lower court made investigation without proper sanction as is mandated Under Section 19 of the Act and also where investigation is done by a person below the rank of Inspector of Police as mandated Under Section 17 of the Act. It is further submitted by the Respondent that the Court has no power to grant permission to police officer below the rank of Inspector of Police, without any specific or general order of the Government to that effect for such an officer. It was further submitted by the counsel that the accused has all justification in challenging the faulty procedure in investigation. Since provisions of Section 17 and 19 are held mandatory, once protections under the Act are taken away, public servants cannot carry out their public duties without fear or fervor.

9. While setting aside order of the trial court, the High Court has observed that reading of Section 17 of the Act discloses that if the Officer not below the rank of the Inspector of Police is authorized by the Government, such officer can investigate the case without permission of the Court.

10. In the instant case, the only question that needs to be considered is as to whether the order passed by the Magistrate permitting the Sub-Inspector, CBI, Chennai to investigate the matter can be sustained in law. The only ground taken by the Respondent in the quashing petition before High Court is that as per the provisions of Section 17 of Prevention of Corruption Act, 1988, no officer below the rank of Inspector of Police is authorized by the Government to investigate the case without permission of the Court. Further, Section 17 does not confer any power to the Court to grant permission to Sub-Inspector of Police to investigate the case. Hence, order passed by the Magistrate permitting the Sub-Inspector of Police to investigate the case is without jurisdiction and against the mandatory provisions of Section 17 of the Act as well as Article 21 of the Constitution of India. Before answering the question we would like to refer to Section 17 of the Prevention of Corruption Act, 1988 which reads as under:

"17. Persons authorised to investigate.--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,--

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such Under Sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant: Provided further that an offence referred to in Clause (e) of Sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

11. It is clear that in the case of investigation under the Delhi Special Police Establishment Act, an officer below the rank of Inspector cannot investigate without the order of a competent Magistrate. In the present case, order of the Special Judge was obtained by filing an application. That order dated 24.9.2009 shows that it was passed on request and in the interest of justice, investigation pursuant to such order did not suffer from want of jurisdiction and hence, in the facts of the case, the High Court erred in law in interfering with such investigation more so when it was already completed.

12. The question raised by the Respondent is well answered by this Court in a number of decisions rendered in a different perspective. The matter of investigation by an officer not authorized by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by Sub-Inspector, CBI who, after completion of investigation, submitted charge-sheet. It was only during the trial, objection was raised by the Respondent that the order passed by the Magistrate permitting Sub-Inspector, CBI to investigate is without jurisdiction. Consequently, the investigation conducted by the officer is vitiated in law. Curiously enough the Respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. It is well settled that invalidity of investigation does not vitiate the result unless a miscarriage of justice has been caused thereby.

13. In the case of M.C. Sulkunte Vs. State of Mysore, , the main question raised by the Appellant in an appeal against the order of conviction was that the sanction to investigate the offence given by the Magistrate was not proper in as much as he had not recorded any reason as to why he had given permission to the Inspector of Police to investigate the offence of criminal misconduct of obtaining illegal gratification. Considering Section 5(A) of the Act Their Lordships

observed:

"15. Although laying the trap was part of the investigation and it had been done by a Police Officer below the rank of a Deputy Superintendent of Police, cannot on that ground be held that the sanction was invalid or that the conviction ought not to be maintained on that ground. It has been emphasised in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation. The observations in *The State of Madhya Pradesh Vs. Mubarak Ali*, , to the effect that when the Magistrate without applying his mind only mechanically issues the order giving permission the investigation is tainted cannot help the Appellant before us."

14. In the case of *Muni Lal Vs. Delhi Administration*, , this Court was considering the question with regard to the irregularity in investigation for the offence under the Prevention of Corruption Act. Following earlier decisions, this Court held:-

"4. From the above proposition it follows that where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the Appellant, that there was an irregularity in the investigation and that Section 5-A of the Act, was not complied with in substance, the trial by the Special Judge cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of illegal investigation. The learned Counsel for the Appellant has been unable to show us how there has been any miscarriage of justice in this case and how the accused has been prejudiced by any irregular investigation."

15. In the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , this Court while considering Section 5A of the Act, held as under:

"125. It has been ruled by this Court in several decisions that Section 5-A of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination, the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. See (1) *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, ; (2) *Major E.G. Barsay Vs. The State of Bombay*, ; (3) *Munna Lal Vs. State of Uttar Pradesh*, ; (4) *S.N. Bose Vs. State of Bihar*, ; (5) *Muni Lal Vs. Delhi Administration*, , (6) *Khandu Sonu Dhobi and Another Vs. State of Maharashtra*, . However, in *Rishbud* case and *Muni Lal* case, it has been ruled that if any breach of the said mandatory proviso relating to investigation is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders as may be called for to rectify

the illegality and cure the defects in the investigation."

16. In the case of A.C. Sharma Vs. Delhi Administration, , provisions of Section 5A were again considered by this Court and held as under:

"15. As the foregoing discussion shows the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. In H.N. Rishabud and Inder Singh v. State of Delhi (supra) it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination of the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Prevention of Corruption Act, 1952. This decision was followed in MunnaLal v. State of U.P. where the decision in The State of Madhya Pradesh Vs. Mubarak Ali, was distinguished. The same view was taken in the The State of Andhra Pradesh Vs. N. Venugopal and Others, and more recently in Khandu Sonu Dhobi v. State of Maharashtra (supra). The decisions of the Calcutta, Punjab and Saurashtra High Courts relied upon by Mr. Anthony deal with different points: in any event to the extent they contain any observations against the view expressed by this Court in the decisions just cited those observations cannot be considered good law."

17. As noticed, on the basis of the permission accorded by the Magistrate, the Sub-Inspector, CBI proceeded with the investigation and finally submitted charge-sheet. It was only after that, said order of Magistrate was questioned by the Respondent by filing a criminal petition in the High Court. The learned Single Judge, appreciating the submission made by the learned Counsel, held that since the special court without assigning any reason permitted Sub-Inspector of Police to investigate the matter, the order is not in accordance with law and disposed of the petition giving liberty to the prosecution to file a fresh petition before the court seeking permission to get the matter investigated by a competent officer. As discussed earlier, the High Court erred in overlooking the gist of order of Special Judge permitting the Sub-Inspector to investigate. Further, having regard to the fact that no case of prejudice or miscarriage of justice by reason of investigation by the Sub-Inspector of Police is made out, the order of the High Court cannot be sustained in law. For the reasons stated above, these appeals

are allowed and the order passed by the High Court is set aside. The concerned Court shall now act with utmost expedition.