

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C. No. 1546/08 & Crl M. A. No. 5701-02/08**

Date of decision : 09.05.2008

ANIL KUMAR DHYANI Petitioner
! Through : Mr. Satish Tamta, Adv. with
Ms. Ruchi Kapur, Adv.

Versus

\$ C.B.I. Respondent
^ Through : Mr. Harish Gulati, standing
counsel for CBI with
Mr. Anindya Malhotra, Adv.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Present petition has been filed by the petitioner seeking stay of the proceedings pending before the Special Judge CBI, Patiala House, Delhi, as he is aggrieved of the proceedings conducted by the

Additional Sessions Judge on 2.5.2008 when he recorded the evidence of two witnesses summoned by the CBI without having any power as a Special Judge, as no notification under Section 3 of The Prevention of Corruption Act (hereinafter referred to as the Act) has been issued empowering the concerned ASJ to hold trial in cases under the Act.

2. Section 3 of the Act reads:

“Section 3. Power to appoint special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:--

- (a) any offence punishable under this Act; and
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a)

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).”

3. By virtue of Section 3 of the said Act the Central Government or the State Government by way of a

notification in the Official Gazette can appoint Special Judge or judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try an offence punishable under the said Act, and to try any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the Act. Section 3 (2) lays down qualifications to be fulfilled before a person can be appointed as a Special Judge. As per this section, only a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure is qualified to be appointed as a Special Judge.

4. Learned standing counsel for CBI admits that no notification under Section 3 of the Act has so far been published appointing Mr. R.K. Yadav as Special Judge to deal with offences covered under the Act.
5. The petitioner in the present petition is facing trial for offences under Sections 420/477A/201 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act in CC No. 28/2007. The offences

under Section 13(2) read with 13(1)(d) being offences under the Act are triable by a Special Judge so appointed. Learned counsel for the petitioner states that he had raised this issue before the trial court that the learned ASJ had yet not received the powers to hold trial for the offences under the Act and therefore, evidence of the witnesses present on that date could not be recorded by him. However, his request was declined.

6. Under these circumstances, the evidence recorded by the Additional Sessions Judge on 2.5.2008 is void ab initio as the same has been recorded without any powers or jurisdiction by the learned judge. Hence, proceedings conducted by the learned judge on 2.5.2008 are liable to be quashed in view of the provisions of law. If the learned judge is allowed to proceed with the trial of the cases without the notification under Section 3 of the Act, it would have far-reaching effect on the trial of other cases as well. The power and jurisdiction of the court to record evidence without getting the powers if not challenged at any stage in any of the proceedings

conducted by him since after his joining and taking over the charge of the court previously presided over by Ms. I.K. Kochhar, Special Judge, CBI would be under challenge at a later stage, may be even after the trial is complete.

7. Similar question came up before this court in Crl. M.A. 5438/2008 in Crl. M.C. No. 1775/2006 titled as Dharambir v. CBI and it was pointed out by the learned counsel for the CBI that the formal notification notifying Dr. R.K. Yadav as Special Judge, CBI has not yet been issued by the appropriate government under the PCA and perhaps Dr. R.K. Yadav began functioning as a Special Judge, CBI in anticipation of the formal notification being issued. Considering this fact and also in view of the previous judgment dated 11.3.2008 passed by the court, in the said petition, the matters were transferred to the court of Ms. I.K. Kochhar, now judge incharge Patiala House Courts, to hear on charge and frame the charges and then transfer the said cases from the stage after framing of charge to Dr. R.K. Yadav for further proceedings in accordance with law.

8. Hence, the evidence recorded by the learned Additional Sessions Judge and the proceedings conducted on 2.5.2008 by Dr. R.K. Yadav, Additional Sessions Judge are hereby quashed. On receipt of notification giving him powers to act as a Special Judge, he shall re-summon the witnesses and proceed with the trial of the case in accordance with law.

9. Petition stands disposed of accordingly. Attested copy of the order be sent to the trial court. Copy under the Signature of the Court Master be given Dasti as well.

**ARUNA SURESH
(JUDGE)**

**May 09, 2008
jk**