

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1626/2011**

% Reserved on: 14th March, 2012
Decided on: 20th April, 2012

DR. A S NARAYANA RAO Petitioner
Through Mr. Pankaj Batra, Adv.

versus

CBI Respondent
Through Mr. P.K. Sharma, SC for CBI.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present petition challenges the order dated 15th October, 2011 passed by the Learned Special Judge disposing of the application of the Petitioner holding that the Learned Special Judge had no jurisdiction under Section 156(3) Cr.P.C. to direct registration of FIR and investigate the offences to Director CBI.

2. Learned counsel for the Petitioner contends that the Petitioner had laid ample evidence on record to show that the accused mentioned in the complaint committed offences under Section 7, 8, 12 & 13 of the Prevention of Corruption Act, 1988 (in short PC Act). The impugned order is illegal as no reasoning has been given by the Learned Special Judge to come to the aforesaid conclusion. The order of the Learned Special Judge is contrary to the law laid down by the Hon'ble Supreme Court in *A.R. Antulay Vs. Ramdas Srinivas Nayak & Anr.* AIR 1984 SC 718. Since the Learned

Special Judge exercises the original jurisdiction in the criminal cases, he has the jurisdiction akin to the one with the Magistrate under Section 156(3) Cr.P.C. This issue has been considered at length in *Satyanand & Anr. Vs. Prakash Chand Jain & Anr. 2007 (1) MPLJ 291*. Since the Learned Special Judge exercises jurisdiction under Section 190 Cr.P.C., it has the jurisdiction to direct registration of FIR under Section 156(3) Cr.P.C. On the facts of the case Petitioner has placed on record sufficient material to show that a prima facie case for proceeding for the abovementioned offences against the accused is made out, thus the Learned Special Judge ought to have directed registration of FIR by the CBI. Further, it is the discretion of the Petitioner whether to go for registration of FIR or to proceed in as a complaint case. Thus, the impugned order be set aside and directions be given to the Respondent to register FIR against the accused persons.

3. Learned Standing Counsel for the CBI on the other hands contends that on 9th January, 2009 the alleged meeting took place. On 29th January, 2009 a complaint was received from Mr. Swaminathan that the Petitioner was demanding bribe of Rs. 10 lakhs. After verification and recording of the conversation, the Petitioner was caught red-handed in a trap case while accepting Rs. 1 lakh. As per the conversation recorded, the balance amount of Rs. 9 lakhs was to be paid at Dubai. Thereafter, the Petitioner, in order to take revenge from the complainant, filed a complaint before the Learned Special Judge on 11th August, 2010 and before the CBI on 15th February, 2011 and 18th April, 2011. The charge-sheet against the Petitioner was filed on 26th June, 2010. During investigation, as it was revealed that the other persons had received hospitality from V. Swaminathan the complainant in

the case against the Petitioner, an inquiry was conducted and a report was sent to the office of Director General of Foreign Trade for suitable action against the officers. However, the competent authority of those officials did not deem it fit to take any action on the report. Hence, no case for registration of FIR is made out. Relying on *CBI Vs. State of Rajasthan 2001 SCC (Crl) 524* it is stated that no Trial Court can direct registration of FIR to the CBI in exercise of its jurisdiction under Section 156(3) Cr.P.C. Even the High Court can direct registration of FIR by the CBI only sparingly in cases involving national and international ramifications.

4. I have heard learned counsel for the parties at length. The Petitioner was working as Director S&T, RAW, Cabinet Secretariat. One M/s. Titanium Tantalum Products Ltd., Chennai had applied for export license for SCOMET items to Qatar for FOB value of Euro 268528 vide their application dated 23rd August, 2008. Their export license was approved by the Inter-Ministerial Working Group (IMWG) in their meeting held on 9th January, 2009 at Chennai and only NOC from Cabinet Secretariat was pending. The concerned file was sent to Dr. Rao, the Petitioner herein for his order on front of NOC. For this, the Petitioner demanded Rs. 8 lakhs bribe from the complainant V. Swaminathan, Joint Vice President of M/s Titanium Tantalum Products Ltd., Chennai for giving NOC. In this regard telephonic conversation was also recorded on 29th January, 2009 which establishes the demand of bribe of Rs. 8 lakhs. The Petitioner was arrested red-handed while accepting part bribe amount of Rs. 1 lakhs at Room No. 101, Hotel India Place Guest House, Arya Samaj Road, Karol Bagh, Delhi at around 7.20 PM on 2nd February, 2009. After obtaining the sanction, the

CBI filed charge-sheet against the Petitioner for trial under Section 7 and 13(2) read with 13(1)(d) PC Act. During search of the office of the Petitioner the concerned file of M/s. Titanium Tantalum Products Ltd. was also recovered.

5. During investigation of the case against the Petitioner, it was found that a meeting of IMWG was held in Chennai on 9th January, 2009. The purpose of meeting was the inspection of the company of the complainant prior to the issue of necessary clearance by DGFT. Six officers had gone in this regard to Chennai between 8 to 10th January, 2009 and had availed of the hospitality of V. Swaminathan. One of the officer even went to Tirupathi Balaji in a taxi provided by V. Swaminathan. CBI sent a report to the office of Director General of Foreign Trade for taking suitable action against the concerned officers as their conduct was unbecoming. However, it appears that no action thereon has been taken. This is the grievance of the Petitioner in the complaint filed before the learned Special Judge seeking registration of FIR. According to the Petitioner, the conduct of the officers amount to offences under Section 7, 8, 12 & 13 of the PC Act and the learned Special Judge on the complaint of the Petitioner ought to have given a direction to the CBI to register FIR.

6. The issue before this Court is whether the learned Special Judge is competent to give a direction under Section 156(3) Cr.P.C. to the CBI for registration of FIR and to investigate thereon. The Court of Special Judge is constituted under Section 3 of the PC Act & enjoys all powers which a Court of original jurisdiction enjoys. The Hon'ble Supreme Court in *A.R. Antulay* (supra) held as under:

“27. It is, however, necessary to decide with precision and accuracy the position of a special Judge and the Court over which he presides styled as the Court of a special Judge because unending confusions have arisen by either assimilating him with a Magistrate or with a Sessions Court. The Prevention of Corruption Act, 1947 was enacted for more effective prevention of bribery and corruption. Years rolled by and experience gathered showed that unless a special forum for the trial of such offences as enumerated in the 1947 Act is created, the object underlying the 1947 Act would remain a distant dream. This led to the enactment of the Criminal Law Amendment Act, 1952. The Statement of Objects and Reasons accompanying the Bill refers to the recommendations of the Committee chaired by Dr. Bakshi Tek Chand appointed to review the working of the Special Police Establishment and to make recommendations for improvement of laws relating to bribery and corruption. To take the cases of corruption out of the maze of cases handled by Magistrates, it was decided to set up special courts. Section 6 conferred power on the State Government to appoint as many special Judges as may be necessary with power to try (he offences set out in Clauses (a) and (b). Now if at this stage a reference is made to Section 6 of the CrPC which provides for constitution of criminal courts, it would become clear that a new court with a new designation was being set up and that it has to be under the administrative and judicial superintendence of the High Court. As already pointed out, there were four types of criminal courts functioning under the High Court. To this list was added the court of a special Judge. Now when a new court which is indisputably a criminal court, because it was not even whispered that the Court of special Judge is not a criminal court, is set up, to make it effective and functionally oriented, it becomes necessary to prescribe its powers, procedure, status and all ancillary provisions. While setting up a court of a special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification prescribed was that the person to be appointed as special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge. These three

dignitaries are above the level of a Magistrate. After prescribing the qualification, the Legislature proceeded to confer power upon a special Judge to take cognizance of offences for the trial of which a special court with exclusive jurisdiction was being set up. If a special Judge has to take cognizance of offences, ipso facto the procedure for trial of such offences has to be prescribed. Now the Code prescribes different procedures for trial of cases by different courts. Procedure for trial of a case before a Court of Sessions is set out in Chapter XVIII; trial of warrant cases by Magistrates is set out in Chapter XIX and the provisions therein included catered to both the types of cases coming before the Magistrate, namely, upon police report or otherwise than on a police report. Chapter XX prescribes the procedure for trial of summons cases by Magistrates and Chapter XXI prescribes the procedure for summary trial. Now that a new criminal court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of courts under Section 6 Cr.P.C. by bringing it on level more or less comparable to the Court of Sessions, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Section 8(1) itself that it is not a Court of Sessions because it can take cognizance of offences without commitment as contemplated by Section 193 Cr.P.C. Undoubtedly in Section 8(3) it was clearly laid down that subject to the provisions of Sub-section (1) and (2) of Section 8, the Court of special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. In contra-distinction to the Sessions Court this new court was to be a court of original jurisdiction. The Legislature then proceeded to specify which out of the various procedures set out in the Code, this new court shall follow for trial of offences before it. Section 8(1) specifically says that a special Judge in trial of offences before him shall follow the procedure prescribed in the CrPC for trial of warrant cases by Magistrates. The provisions for trial of warrant cases by the Magistrate are to be found in Chapter XXI of 1898 Code. A glance through the provisions will show that the provisions therein included catered to both the situations namely, trial of a case initiated

upon police report (Section 251A) and trial of cases instituted otherwise than on police report (Section 252 to 257). If a special Judge is en-joined with a duty to try cases according to the procedure prescribed in foregoing provisions he will have to first decide whether the case was instituted upon a police report or otherwise than on police report and follow the procedure in the relevant group of sections. Each of the Sections 251A to 257 of 1898 Code which are in pari materia with Sections 238 to 250 of 1973 Code refers to what the Magistrate should do. Does the special Judge, therefore, become a Magistrate? This is the fallacy of the whole approach. In fact, in order to give full effect to Section 8(1), the only thing to do is to read special Judge in Sections 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by incorporation. Similarly, where the question of taking cognizance arises, it is futile to go in search of the fact whether for purposes of Sections 190 which conferred power on the Magistrate to take cognizance of the offence, special Judge is a Magistrate? What is to be done is that one has to read the expression 'special Judge' in place of Magistrate, and the whole thing becomes crystal clear. The Legislature wherever, it found the grey area clarified it by making specific provision such as the one in Sub-section (2) of Section 8 and to leave no one in doubt further provided in Sub-section (3) that all the provisions of the CrPC shall so far as they are not inconsistent with the Act apply to the proceedings before a special Judge. At the time when the 1952 Act was enacted what was in operation was the CrPC, 1898. It did not envisage any Court of a special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new criminal court which was being set up. therefore, it conferred power (taking cognizance of offences), prescribed procedure (trial of warrant cases by a Magistrate) indicated authority to tender pardon (Section 338) and then after declaring its status as comparable to a Court of Sessions proceeded to prescribe that all provisions of the CrPC will apply in so far as they are not inconsistent with the provisions of the 1952 Act. The net outcome of this position is that a new court of original jurisdiction was set up and

whenever a question arose as to what are its powers in respect of specific questions brought before it as court of original criminal jurisdiction, it had to refer to the CrPC undaunted by any designation claptrap. When taking cognizance, a Court of special Judge enjoyed the powers under Section 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Sessions. The entire argument inviting us to specifically decide whether a court of a special Judge for a certain purpose is a Court of Magistrate or a Court of Sessions revolves round a mistaken belief that a special Judge has to be one or the other, and must fit in in the slot of a Magistrate or a Court of Sessions. Such an approach would strangle the functioning of the court and must be eschewed. Shorn of all embellishment, the court or a special Judge is a court of original criminal jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide-bound by the terminological status description of Magistrate or a Court of Sessions. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied.”

7. Thus, as held by their Lordship's the Special Judge has all powers under the Code, which are vested in the Court of original jurisdiction except the ones specifically prohibited. Thus since the jurisdiction under Section 156(3) Cr.P.C. is not specifically denied, the Special Judge has the jurisdiction to direct registration of FIR under Section 156(3) Cr.P.C. as a Court of original jurisdiction which the Magistrate has. However, the moot question in view of the decision of *CBI Vs. State of Rajasthan(supra)* is whether the Special Judge can direct registration of FIR to CBI and whether the officer of CBI would be an officer in-charge of Police Station within the

territorial jurisdiction of the Special Judge concerned. Their Lordships in *CBI Vs. State of Rajasthan(supra)* held that a Magistrate under Section 156(3) Cr.P.C. has no jurisdiction to order CBI to register FIR and investigate thereon. This was the predicament before the Learned Special Judge. According to him, since CBI was not a Police Station within its jurisdiction it could not direct registration of FIR under Section 156(3) Cr.P.C. in view of the decision of the Hon'ble Supreme Court in *CBI Vs. State of Rajasthan(supra)*.

8. Section 3, 4 & 5 of the PC Act provide for the power to appoint Special Judges, cases triable by the Special Judge and the procedure and power of the Special Judge. Sub-Section 3 & 4 of Section 5 provides as under:

“5. Procedure and powers of special Judge . —

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.”

9. The jurisdiction of the Special Judge is to try cases committed within its jurisdiction whether investigated by the local Police or the CBI. Thus, the

officer of the CBI files a report under Section 173 Cr.P.C. before the Special Judge as an officer in-charge of the Police Station. Once the officer of the CBI files the charge-sheet under Section 173 Cr.P.C. before the learned Special Judge as an officer in-charge, he would be deemed to be the officer in-charge of the Police Station to whom under Section 156(3) Cr.P.C. the learned Special Judge can give directions to register FIR. Thus, to this extent, the finding of the learned Special Judge that in view of the decision of the Hon'ble Supreme Court in *CBI Vs. State of Rajasthan* the Special Court has no jurisdiction to direct registration of FIR under Section 156(3) Cr.P.C. to the CBI in a case of corruption is erroneous.

10. However, I find no merit in the contention of the Complainant that on a complaint filed before the learned Special Judge it is the discretion of the complainant to proceed under Section 156(3) Cr.P.C. or under Section 200 Cr.P.C. Section 190 Cr.P.C. is amply clear and provides this discretion to the learned Special Judge. On receipt of the complaint, it is for the learned Special Judge to proceed in the manner he thinks fit under Section 190 Cr.P.C. In *Mohd. Yousuf Vs. Smt. Afaq Jahan and Anr. (2006) 1 SCC 627* their Lordships held that:

“10. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the

officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge or the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

The above position was highlighted in *Suresh Chand Jain v. State of M.P. and Anr.* : 2001CriLJ954 .

11. In *Gopal Das Sindhi and Ors. v. State of Assam and Anr.* AIR 1961 SC 966 it was observed as follows:

"When the complaint was received by Mr. Thomas on August 3, 1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under Section 156(3) of the Code to the Officer Incharge of Police station Gauhati for investigation. Section 156(3) states "Any Magistrate empowered under Section 190 may order such investigation as above-mentioned". Mr. Thomas was certainly a Magistrate empowered to take cognizance under Section 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Sections 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not

taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance.""

11. Thus in view of the aforesaid discussion, the impugned order is set aside. The matter is remanded back to the Learned Special Judge, who will consider as to whether the present case is a fit case for directing registration of FIR under Section 156(3) Cr.P.C. to the Anti-Corruption Branch or CBI or to proceed in accordance with the complaint case procedure as the Petitioner claims that he is in possession of the entire evidence. While directing registration of FIR to the CBI, the learned Special Judge will bear in mind the law laid down by the Hon'ble Supreme Court in *State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others*, 2010 (3) SCC 571 and *T.C. Thangaraj vs. V. Engammal and others*, 2011 (8) Scale 488 that only in cases with national and international ramification or relating to Central Govt. Employees, the CBI

will be directed to register FIR and in other cases the directions can be issued to the Anti Corruption Branch for investigation.

12. Petition is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

APRIL 20, 2012

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