

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1245 of 2015 ()

(AGAINST THE ORDER IN CRL.M.P.338/2014 IN CC 12/2014
OF SPL.COURT(SPE/CBI)-III, ERNAKULAM)

REVISION PETITIONERS:

1. K.P.JAMES, KANJIRATHINGAL HOUSE, ALAGAPPA NAGAR P.O.,
AMBALLOOR, TRICHUR.
2. A.MANIKANDAN, AYIKKARA HOUSE, VATTANTHARA P.O.,
AMBALLOORE, THRISSUR.
3. K.P.MARGERI, KANJIRATHINGAL HOUSE,
ALAGAPPA NAGAR P.O., AMBALLOOR, TRICHUR.
4. P.JAYAN, PURAKKAT HOUSE, VATTANATHARA DESOM,
AMBALLOOR, TRICHUR.
5. C.R.JANARDHANAN
CHIRAKKAL HOUSE, MAVINCHODU DESOM, KALOOR
TRICHUR.

BY ADVS.SRI.S.RAMESH BABU (SR.)
SRI.P.RAVINDRA NATH
SRI.N.KRISHNA PRASAD
SRI.IMAM GRIGORIOS KARAT
SRI.K.R.SAJITH
SRI.SALISH ARAVINDAKSHAN

RESPONDENT:

INSPECTOR OF POLICE
CENTRAL BUREAU OF INVESTIGATION, ACB, COCHIN-682 017.

BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
04-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1245 of 2015

Dated this the 4th day of December 2015

O R D E R

The revision petitioners are the accused in C.C. No.12 of 2014 on the files of the Special Court (SPE/CBI)-III, Ernakulam. The revision petitioners filed Crl.M.P. No.338 of 2014 before the court below under Section 239 of the Code praying for discharge. The court below dismissed the said application. Aggrieved by the said order, this revision petition has been filed.

2. Heard both sides.

3. The prosecution allegation is that the first accused, who was the Manager of Ind Bank Housing Limited,

Ernakulam during the period from 1994 to 1998, entered into a criminal conspiracy with the other accused for obtaining housing loans by submitting forged documents by cheating the Bank. On the basis of the criminal conspiracy, accused Nos.2, 3 and 4 filed housing loan applications, which were sanctioned by the first accused by corruption and illegal means by mis-using his official position. Further, the accused Nos.5 and 6 also joined in the conspiracy and they personated them as different persons and executed the loan agreement as guarantors. By doing so, the accused persons induced the bank to deliver an amount of Rs.2,00,000/- to accused Nos.2, 3 and 5 as housing loan, knowing that it would be used for the purpose other than the purpose for which the loan was

sanctioned. On the said allegations, it was alleged that the accused committed the offences under Sections 419, 420, 468 and 471 I.P.C. read with Section 120B I.P.C. and Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act.

4. It is not disputed that the first accused alone is the public servant in this case. It was reported by the prosecution before the Court on 22.9.2014 that the first accused died. There is no dispute that the charge was not framed by the learned Special Judge against the first accused and other accused till the death of the first accused. In the said circumstances, the learned counsel for the revision petitioners has submitted that the trial before the special court is bad in law and consequently, the

learned special Judge was duty bound to transfer the case to the Chief Judicial Magistrate for trial in accordance with law. The learned counsel for the revision petitioners relied on the decision of the Apex Court in **State through C.B.I. New Delhi v. Jitender Kumar Singh** (2014 (1) KLT 666 (SC)), to buttress his submission. The Apex Court, in the above said decision considered the question whether on the death of the sole public servant, the Special Judge would cease to have jurisdiction to continue with the trial against the private persons for non-PC offences.

5. The Apex Court in **Jitender Kumar Singh** (supra) held in paragraph 36 thus:-

“Therefore, trying a case by a Special Judge under S.3(1) is a *sine-qua-non* for exercising jurisdiction by the Special Judge for trying any offence,

other than an offence specified in S.3. “Trying any case” under S.3(1) is, therefore, a jurisdictional fact for the Special Judge to exercise powers to try any offence other than an offence specified in S.3”

6. The Apex Court further held in **Jitender Kumar Singh** (supra) in paragraph 43 thus:-

“Consequently, once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the P.C. Act to proceed against non-PC offences along with PC offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him.”

7. It is clear from the above passage that even if the sole public servant dies subsequent to the framing of charge by the Special court, that will not divest the

jurisdiction of the Special Judge or vitiate the proceedings pending before him. Once a charge is framed in a case, the Special Judge has no power under the Code to discharge the accused and therefore, the trial has to come to its logic end.

8. The Apex Court in **Jitender Kumar Singh** (supra) in paragraph 45 held thus:

“We may now examine Criminal Appeal No.161 of 2011, where the F.I.R. was registered on 2.7.1996 and the charge-sheet was filed before the Special Judge on 14.9.2001 for the offences under Sections 120B, 420 I.P.C. read with Sections 13(2) and 13(1) of the P.C. Act. Accused 9 and 10 died even before the charge-sheet was sent to the Special Judge. The charge against the sole public servant under the P.C. Act could also not be framed since he died on 18.2.2005. The special Judge also could not frame any charge against non-public servants. As already indicated, under sub-section (3) of Section 4, the special Judge could try non-PC offences

only when “trying any case” relating to P.C. offences. In the instant case, no P.C. offence has been committed by any of the non-public servants so as to fall under Section 3(1) of the P.C. Act. Consequently, there was no occasion for the special Judge to try any case relating to offences under the P.C. Act against the Appellant. The trying of any case under the P.C. Act against a public servant or a non-public servant, as already indicated, is a *sin-qua-non* for exercising powers under sub-section (3) of Section 4 of P.C.Act. In the instant case, since no P.C. offence has been committed by any of the non-public servants and no charges have been framed against the public servant, while he was alive, the Special Judge had no occasion to try any case against any of them under the P.C. Act, since no charge has been framed prior to the death of the public servant. The jurisdictional fact, as already discussed above, does not exist so far as this appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-P.C. Offences.”

9. Thus, it is very clear from the above passage that if the public servant dies prior to the framing of the charge,

the special court loses its jurisdiction to try the case. The court below observed that there was no allegation of conspiracy to commit the offences under the PC Act in **Jitender Kumar Singh** (supra). However, it is clear from the above mentioned passage that the offences alleged in the case decided by the Apex Court, included criminal conspiracy to commit the offence under the P.C.Act as well. In the said circumstances, the court below erred in finding that the court below had jurisdiction to try the case.

10. In this juncture, it is apposite to mention that all the courts in India are bound by the law declared by the Apex Court under Article 141 of the Constitution of India.

11. A three Judge Bench of the Apex Court in

Director of Settlements v. M.R. Apparao and another

(AIR 2002 SC 1598) held in paragraph 7 thus:

“So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by

Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court.”

12. The above decision would make it clear that all courts in India are bound to follow the law declared by the Apex Court. In this case, the Apex Court clearly declared law on the subject in question. In view of the law declared

by the Apex Court in **Jitender Kumar Singh** (supra), the special court lacks jurisdiction to try the offence as the public servant died prior to the framing of charge by the Special court. In the said circumstances, the court below ought to have transferred the case to the Chief Judicial Magistrate concerned as provided under Section 228(1)(a) of the Code. For the said reason, the order impugned cannot be sustained and consequently, I set aside the same.

In the result, this revision petition stands allowed, setting aside the order impugned and the matter is remitted to the court below for transferring the case to the Chief Judicial Magistrate concerned, as provided under Section 228(1)(a) of the Code.

Crl.R.P. No.1245 of 2015

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The parties are directed to appear before the court
below on 15.1.2016.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/30.11.2015

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PA to Judge