

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.664 of 2017

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

1) Assailing the order passed in C.F.Nos.2754 & 2754-A dated 23.09.2016 in FIR No. RC-02/2015/NIA/HYD, the Deputy Superintendent of Police/Chief Investigation Officer, National Investigation Agency, Hyderabad, preferred the present Appeal under Section 21 of the National Investigation Agency Act, 2008 (for short "the Act").

2) The circumstances, which lead to filing of the present application, are as under:-

A chare-sheet came to be filed under Section 173 of Cr.P.C., before the court of I Additional Metropolitan Sessions Judge, Visakhapatnam/Special Court for NIA Cases, showing one Saddam Hussain as A-1. Thereafter, a supplementary charge-sheet came to be filed under Section 173(8) Cr.P.C., against one Amirul Hoque showing him as A-3. A request was made before the said Court to take cognizance against A-1 and A-3 only, who are in judicial custody. An objection was raised by the Court below stating as to how two separate charge-sheets can be filed leaving two other accused i.e.,

A-2 and A-4. A representation was made by the Public Prosecutor stating that a separate charge-sheet would be filed against A-2 and A-4 after apprehending them. After hearing the Public Prosecutor, the trial court passed the impugned order returning the charge-sheet filed against A-1 and A-3; with a direction to file charge-sheet against all the accused by showing A-2 and A-4 as absconding. Challenging the same, the present appeal is filed under Section 21 of the N.I.A Act.

3) In spite of service of notice on the respondents, who are in Jail, they did not choose to engage any counsel.

4) Learned counsel for the appellant mainly submits that in the absence of any material being gathered so far against A-2 and A-4, filing of a charge-sheet against them would not arise. He pleads that Section 45 (1) of the Unlawful Activities (Prevention) Act, 1967 mandates taking cognizance on filing of the charge-sheet. When the sanction could not be obtained against A-2 and A-4, the question of filing a charge-sheet against A-2 and A-4 showing them as absconding would not arise. He would further submit that the issue on hand is covered by a Full Bench decision of the Patna High Court in **Shankar Ram v. The State**¹.

5) It is to be noted here that a charge-sheet came to be filed against A-1 and A-3 for the offences punishable under Sections 489-B and 489-C of IPC and Sections 16, 18, 18B and 20 of the Unlawful

¹ AIR 1986 Patna 276

Activities (Prevention) Act, 1967. Further, A-3 was also held responsible for the offence under Section 18B of the Unlawful Activities (Prevention) Act, 1967. The charge-sheet further states that A-3 is also liable for the offences punishable under Sections 489B and 489C of the IPC. The averments in the charge-sheet show that the officers of DRI, Regional Unit, Visakhapatnam seized Fake Indian Currency Notes (FICN) of face value of Rs.5,01,500/-, from the possession of A-1, who is a resident of Manikpur village, Barpeta District, Assam, while he was on Platform No.4 of Visakhapatnam railway station. He was travelling to Bangalore by Train No.12510 Guwahati-Bengaluru superfast express. On interrogation A-1 confessed that the Fake Indian Currency Notes were smuggled into India from Bangladesh and he was carrying them to Bengaluru, for delivery. He confessed about the involvement of A-3 as well, in the commission of offence. It may not be necessary to go into the complicity of the accused in the crime, since the issue is "Whether the Court was right in returning the charge-sheet, filed against A-1 and A-3?".

6) A perusal of column No.12 of the charge-sheet indicates particulars of the accused, against whom the investigation is pending under Section 173(8) Cr.P.C. In the said column, the names of A-2 and A-4 were mentioned, showing them as absconding. In order to prosecute the accused, the Court can take cognizance of the offence

under the Unlawful Activities (Prevention) Act, 1967 only after obtaining sanction of the Central Government or from any of the authorized officers of the Central Government on its behalf. It would be relevant to refer to Section 45 of the Act, which is as under:-

7) **45. Cognizance of offences:- (1) No court shall take cognizance of any offence-**

(i) under Chapter III without the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf;

(ii) Under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

8) A reading of Section 45 of the Act makes it clear that no court shall take cognizance without the previous sanction of the Central Government for the offences provided under Chapter III or without the previous sanction of the Central Government or as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government or as the case may be the State Government where the offences are under Chapter IV and VI of the Act. Such being the position, the question of filing any charge-sheet against the absconding accused, without there being any material till date, would not arise. The point is that if the prosecution has to wait till the apprehension of A-2 and A-4 and till material is collected against them for filing the charge-sheet, A-1 and A-3 who are in Jail

would be entitled for default bail on failure of the prosecution to file charge-sheet within the stipulated time.

9) After considering the provisions of Sections 173, 174 and 167(2) Cr.P.C., the Full Bench of the Patna High Court in **Shankar Ram's case (one supra)** held as under :-

"22. In the wake of the aforesaid findings the answers to the three questions, referred to the Full Bench, noticed in paragraph 4, may now be recorded. Accordingly, the answer to question No.(1) is rendered in affirmative and it is held that the submission of final form after completion of the investigation in respect of offences alleged against some of the accused persons within the statutory period mentioned in the proviso to S.167(2) of the Code and keeping the investigation alive against co-accused is permissible.

23. The answer to question No.(2) is rendered in the negative and it is held that the accused persons against whom the investigation has concluded are not entitled to get the benefit of the proviso to S.167(2) on the ground that it has not concluded against those who are also suspected to have committed the offence alleged.

24. The answer to question No.(3) is rendered in the affirmative and it is held that the final form submitted against some of the accused within the statutory period can be held to be a police report within the meaning of S.173(2) of the Code; whatever may be said in respect of any supplementary police report submitted against other accused against whom investigation had not concluded."

10) It is also to be noted here that the learned Special Judge, while returning the charge-sheet filed against A-1 and additional charge-sheet filed against A-3, directed the authorities to file one charge-sheet against all the accused showing A-2 and A-4 as absconding accused. It is to be noted here that in column No.12 of the charge-sheet, the investigation agency has showed A-2 and A-4 as absconding

and the investigation being pending against them under Section 173(8) Cr.P.C.

11) Hence, we are of the view that the facts in Shankar Ram's case and the findings arrived at therein, apply equally to the case on hand. In view of the legal position laid down by the Full Bench of the Patna High Court; by taking into consideration Section 173(8) Cr.P.C., and in view of the fact that a sanction under Section 45 of the Act is required to be taken against each accused basing on the material available against them before filing charge-sheet, we feel that filing of a separate charge-sheet, by keeping the investigation alive, against co-accused, is permissible under law.

12) Accordingly, the Criminal Appeal is allowed by confirming the interim order dated 24.07.2017 passed by this Court in CrI.A.M.P.No.1360 of 2017. Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

Dt:05.12.2017
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