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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.778 of 2018

Order Reserved on : 24.7.2018

Order Passed on : 6.10.2018

Manoj Singh Thakur, son of Late Mohar Singh Thakur, aged about 57 years, resident of Sr. MIG-285, Sector 2, Dindayal Upadhyay Nagar, Tahsil and District Raipur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Anti Corruption Bureau/Economic Offence Wing, Chhattisgarh, Raipur

--- Respondent

For Applicant : Shri B.P. Sharma with Shri Anjinesh Shukla
and Shri M.L. Sakat, Advocates
For Respondent/State : Shri Satish Gupta, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The present revision is directed against the order dated 4.7.2018 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988')/1st Additional Sessions Judge, Raipur in Special Criminal Case No.2 of 2018, whereby, the Learned Judge, holding that he is a Special Judge/an Additional Sessions Judge not a Magistrate within the meaning of Section 437 of the Code of Criminal Procedure, 1973 (2 of 1974) (henceforth 'the Code'), rejected the application filed by the Applicant under Section 437(6) of the Code and held that the Applicant is not entitled to be considered for grant of bail under Section 437(6) of the Code.
2. A charge-sheet for offence punishable under Section 13(1)(e) read

with Section 13(2) of the Act of 1988 was filed against the Applicant. Charges were framed by the Trial Court and the first date for taking evidence was fixed for 28.4.2018. On 4.7.2018, an application under Section 437(6) of the Code was filed on behalf of the Applicant on the ground that the trial could not be concluded within 60 days from 28.4.2018, therefore, the Applicant is entitled to get benefit of bail under the provision contained in Section 437(6) of the Code. Vide the impugned order dated 4.7.2018, the Learned Special Judge/Additional Sessions Judge rejected the application on the ground that the provision of Section 437(6) of the Code is applicable to the Court of a Magistrate only and not to the Court of a Special Judge because, as contained in Section 3(2) of the Act of 1988, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge is appointed as a Special Judge to hear the cases relating to the offences punishable under the Act of 1988.

3. Learned Counsel appearing for the Applicant submitted that while trying an offence punishable under the Act of 1988, a Special Judge exercises jurisdiction and conducts trial of an accused in warrant cases as contained in sub-section (1) of Section 5 of the Act of 1988 and not as per the procedure prescribed for a trial before a Court of Session under Chapter 18 of the Code. The Special Judge conducts trial as per Chapter 19 of the Code, i.e., as per Sections 238 to 243 and Sections 248 to 250 of the Code and thus, in trial of warrant cases, the provision of Section 437(6) of the Code is applicable. He further submitted that in **(2012) 1 SCC 500 (Bangaru Laxman v. State)**, the Supreme Court has held that a Special Judge trying the offences under the Act of 1988 has dual

power of a Sessions Judge as well that of a Magistrate. Such a Special Judge conducts the proceedings under the Code both prior to filing of a charge-sheet as well after the filing of charge-sheet for holding a trial. The Supreme Court further held about concurrent jurisdiction of a Special Judge as well as of a Judicial Magistrate. Learned Counsel for the Applicant further submitted that as contained in sub-section (1) of Section 5 of the Act of 1988, a Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code, for the trial of warrant cases by the Magistrates. Thus, it is clear that for the purpose of trial, a Special Judge appointed under the Act of 1988 acts as a Magistrate and exercises his jurisdiction and hence, provision of Section 437(6) of the Code is applicable to a Special Judge appointed under the Act of 1988. Therefore, the ground on which the Special Judge, in the instant case, has rejected the application under Section 437(6) of the Code is not in accordance with law.

4. Learned Counsel appearing for the State submitted that the provision of Section 437(6) of the Code is applicable to the Court of a Magistrate only and as contained in sub-section (3) of Section 5 of the Act of 1988, the Court of a Special Judge shall be deemed to be a Court of Sessions Judge. Therefore, provision of Section 437(6) of the Code is not applicable to the Court of a Special Judge appointed under the Act of 1988. Thus, the Special Judge has rightly rejected the application under Section 437(6) of the Code.

5. I have heard Learned Counsel appearing for the parties and perused the material available with utmost circumspection.
6. The provisions of Section 437 of the Code of Criminal Procedure run thus:

“437. When bail may be taken in case of non-bailable offence.—(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall

record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.”

7. According to sub-section (2) of Section 3 of the Act of 1988, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge can only be appointed as a Special Judge for hearing the cases under the Act of 1988. As contained in sub-section (1) of Section 5 of the Act of 1988, a Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code, for the trial of warrant cases by the Magistrates and as contained in sub-section (3) of Section 5 of the Act of 1988, the provisions of the Code, shall, so far as they are not inconsistent with the Act of 1988, apply to the proceedings before a Special Judge; and for 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. In **Bangaru Laxman case** (supra), it has been observed by the Supreme Court thus:

“40. Reference in this connection can also be made to the decision of the Supreme Court in the case of *State of Tamil Nadu v. V. Krishnaswami Naidu and another*, 1979 4 SCC 5. In that case the question was whether the Special Judge has the power of remand. This court, by referred to Section 3(32) of the General Clauses Act, 1897 defining a Magistrate, held that Magistrate will include a Special Judge. Therefore, a Special Judge shall be a Magistrate for the purposes of Section 167 of the Code even though the word 'Special Judge' is not mentioned in Section 167 (see para 7, pg. 8 of the report).

41. It is therefore clear that, on the ratio of *V. Krishnaswami* (supra), the Special Judge has been given a very important magisterial function, namely the power of remand. Compared to that, the power to grant pardon is an ancillary power. Therefore, under the scheme of the Code, read with Section 5(2) of the PC Act, and in light of the consistent view of this Court, a Special Judge will include a Magistrate. On the same parity of reasoning a Special Judge, unless specifically denied, will have the power to grant pardon. Here there is no question of specific denial, rather Section 5(2) of the P.C. Act clearly confers this power subject to the deeming clause, the limited purpose of which has been discussed above.

42. Thus, on a harmonious reading of Section 5(2) of the P.C. Act with the provisions of Section 306, specially Section 306(2)(a) of the Code and Section 26 of the P.C. Act, this Court is of the opinion that the Special Judge under the P.C. Act, while trying offences, has the dual power of the Session Judge as well as that of a Magistrate. Such a Special Judge conducts the proceedings under the court both prior to the filing of charge sheet as well as after the filing of charge sheet, for holding the trial.”

8. While dealing with a question whether a Special Judge appointed under the Act of 1988 is entitled to exercise powers conferred on a Sessions Judge by Section 438 of the Code, Full Bench of the Patna High Court, in **1993 Cri.L.J. 2436 (In the matter of Shri Ravi Nandan Sahay, Sessions Judge, Patna)**, has held that the Special Judge is entitled to exercise all the powers of Sessions Judge as provided under the Code in relation to the proceedings under the Act of 1988 in so far as they are not in consistent with the provisions of the Act of 1988 and consequently the Special Judge under the Act of 1988 has got exclusive power to entertain an application for anticipatory bail or regular bail made by an accused against the allegation of having committed an offence under the Act of 1988.
9. As contained in Section 437(1) of the Code, when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail.
10. Thus, it is clear that the power given in Section 437(1) of the Code is not to be exercised by a High Court or a Court of Session. As contained in Section 437(6) of the Code, if, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be

recorded in writing, the Magistrate otherwise directs. Meaning thereby, only in a case which is triable by a Magistrate, benefit of Section 437(6) of the Code can be extended to the accused. No doubt, as contained in sub-section (1) of Section 5 of the Act of 1988, a Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code, for the trial of warrant cases by the Magistrates.

11. From the above itself, it is clear that a Special Judge appointed under the Act of 1988, while trying the accused persons, shall follow the procedure prescribed by the Code, for the trial of warrant cases by the Magistrates and for this limited purpose only, the Special Judge shall be deemed to be a Magistrate. According to sub-section (3) of Section 5 of the Act of 1988 also, a Court of Special Judge shall be deemed to be a Court of Session.
12. As already discussed above, in the matter of **Shri Ravi Nandan Sahay** (supra), Full Bench of the Patna High Court, has held that the Special Judge is entitled to exercise all the powers of Sessions Judge as provided under the Code in relation to the proceedings under the Act of 1988 in so far as they are not in consistent with the provisions of the Act of 1988 and consequently the Special Judge under the Act of 1988 has got exclusive power to entertain an application for anticipatory bail or regular bail made by an accused against the allegation of having committed an offence under the Act of 1988.
13. Thus, the Special Judge is fully empowered to entertain the application under Sections 438 and 439 of the Cr.P.C. for grant of

anticipatory or regular bail to the accused.

14. Therefore, in my considered opinion, provision of Section 437(6) of the Code shall be applicable exclusively to the Court of a Magistrate. As already discussed above, according to sub-section (1) of Section 5 of the Act of 1988, a Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code, for the trial of warrant cases by the Magistrates. The powers relating to trial of warrant cases conferred upon the Special Judge are procedural and he shall be deemed to be a Magistrate for that limited purpose only. Though provisions of Sections 438 and 439 of the Code apply to the proceedings before a Special Judge appointed under the Act of 1988, provision of Section 437(6) of the Code does not apply to the proceedings before him. Thus, I find that the Special Judge has rightly rejected the application of the Applicant preferred under Section 437(6) of the Code.

15. Consequently, the revision is dismissed. The impugned order dated 4.7.2018 is affirmed.

Sd/-
(Arvind Singh Chandel)
JUDGE