

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.3446 OF 2013

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 seeking to quash the proceedings against the petitioner/A-2 in C.C.No.7 of 2007 on the file of the learned Special Judge for C.B.I. Cases at Visakhapatnam.

2. Heard both sides and perused the record.

3. The offences alleged against A-1 are punishable under Sections 120-B read with Sections 420, 468 and 471 I.P.C. read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "P.C.Act") and the offences alleged against the petitioner/A-2 are under Sections 120-B read with Sections 420, 468 and 471 I.P.C.

4. Learned counsel for the petitioner/A-2 would contend that A-1 is a public servant, who passed away on 03.02.2011, and the case against him was abated on 25.04.2011; that the petitioner/A-2 is a private person and not a Government servant and therefore, no criminal proceedings against him can be continued and ultimately, prayed to quash the proceedings in C.C.No.7 of 2007 on the file of the learned Special Judge for C.B.I. Cases at Visakhapatnam.

5. On the other hand, learned Special Public Prosecutor for C.B.I. Cases appearing for the respondent would contend that in the instant case, the C.B.I. Court had framed the charges on

08.12.2009 i.e., much before the death of A-1 and passing of the order of abatement and therefore, the trial has to go on. He relied on a decision reported in **State through Central Bureau of Investigation, New Delhi vs. Jitender Kumar Singh**¹.

6. In view of the submissions made by the learned counsel on both sides, it is appropriate to refer to the findings of the Apex Court in the above referred decision, wherein it is held at para Nos.42 and 43 as under:

“42. First, we may deal with Criminal Appeal No.943 of 2008. CBI, in this appeal, as already indicated, submitted the charge-sheet on 1-11-2001 for the offences against A-1, who was a public servant, as well as against non-public servants. The learned Special Judge had, on 25-3-2003, framed the charges against the accused persons under Section 120-B read with Sections 467, 471 and 420 IPC and also under Sections 13(1)(d) and 13(2) of the PC Act and substantive offences under Sections 420, 467 and 471 IPC and also substantive offences under Sections 13(1)(d) and 13(2) of the PC Act against the public servants. Therefore, charges have been framed against the public servant as well as non-public servants after hearing the prosecution and defence counsel, by the Special Judge on 25-3-2003 in respect of the PC offences as well as non-PC offences. As already indicated, under sub-section (3) of Section 4, when trying any case, a Special Judge may also try any offence other than the offence specified in Section 3 and be charged in the same trial. The Special Judge, in the instant case, has framed charges against the public servant as well as against the non-public servant for the offences punishable under Section 3(1) of the PC Act as well as for the offences punishable under Section 120-B read with Sections 467, 471 and 420 IPC and, therefore, the existence of jurisdictional fact, that is, “trying a case” under the PC Act has been satisfied.

43. The Special Judge after framing the charge for the PC and non-PC offences posted the case for examination of the prosecution witnesses, thereafter the sole public servant died

¹ (2014) 11 Supreme Court Cases 724

on 2-6-2003. Before that, the Special Judge, in the instant case, has also exercised his powers under sub-section (3) of Section 4 of the PC Act and hence cannot be divested of the jurisdiction to proceed against the non-public servant, even if the sole public servant dies after framing of the charges. On death, the charge against the public servant alone abates and since the Special Judge has already exercised his jurisdiction under sub-section (3) of Section 4 of the PC Act, that jurisdiction cannot be divested due to the death of the sole public servant.”

In the aforesaid judgment, the Hon’ble Apex Court held that on the death of a sole charged public servant, the case against the public servant alone stands abated and as the learned Special Judge has already exercised his jurisdiction under sub-section (3) of Section 4 of the P.C. Act, the jurisdiction cannot be divested due to the death of the sole public servant.

7. It is appropriate to refer to Sections 3 and 4 of the P.C. Act.:

“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).

4. Cases triable by special Judges.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge

appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.”

So, when charges were framed by the learned Special Judge exercising jurisdiction under sub-section (3) of Section 4 of the P.C. Act, the jurisdiction vested with the Special Judge would not divest due to the death of the public servant (A-1 in the instant case), which took place much before taking cognizance and framing of charges.

8. In view of the above circumstances, the learned Special Judge for C.B.I. Cases, Visakhapatnam has jurisdiction to proceed with the trial of the case against the petitioner/A-2 in respect of the offences for which charges are framed. The Criminal Petition do not merit consideration to quash the proceedings as prayed for and fails.

9. Accordingly, the Criminal Petition is dismissed.

10. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 09.08.2018
AMD

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