

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1143 of 2014

Durgesh Kalyan Nayak ***Petitioner***
None
-versus-
Republic of India. ***Opposite Party***
Mr. Manish Dhir, Proxy counsel on behalf of
Mr. Sarthak Nayak, Advocate for the C.B.I.

**CORAM:
JUSTICE M.S. RAMAN**

ORDER

18.11.2022

Order No.

10.

1. Questioning the jurisdiction of the Special Judge, CBI, Bhubaneswar, this petition has been filed under Section 482 of the Code of Criminal Procedure with the following prayer;

“Under the facts and circumstances stated above, this Hon’ble Court may graciously be pleased to set aside the impugned order dated 17.12.13, under Annexure-4, passed by the learned Special Judge, C.B.I. in SPE No.02 of 2005 arising out of R.C. No.37(A)/2002 and quash the proceedings initiated against the petitioner and further be pleased to pass any other order/orders as may be deemed fit and proper.”

2. The petitioner was aggrieved by rejection of his petition filed under Section 227 of Cr.P.C. vide order dated 17th December, 2013 passed by the learned Special C.J.M. (CBI), Bhubaneswar in S.P.E. No.2 of 2005.

3. This Court vide order dated 3rd April, 2014 passed the following interim order in Misc. Case No.910 of 2014;

“In the interim, further proceeding in S.P.E. Case No.02 of 2005, arising out of R.C. Case No.37(A) of 2002, pending before the learned Special Judge, CBI, Bhubaneswar shall remain stayed till the next date.”

Further order was passed by this Court on 1st May, 2014 which is extracted hereunder:

“Learned counsel for the petitioner submits that as the accused-petitioner has not been charged of any offences under the Prevention of Corruption Act, learned Special C.J.M.(CBI), Bhubaneswar, who is a Special Judge, has no jurisdiction to take cognizance of the offences under Sections 420/120-B IPC against the accused-petitioner.

Learned counsel for the CBI submits that the Special Judge (CBI), Bhubaneswar, is not the designated Special Judge under the P.C. Act and therefore he has jurisdiction to take cognizance of the offences under the I.P.C. It is accordingly submitted that as the accused-petitioner has been charged of offences under Sections 420/120-B IPC, learned court below has the jurisdiction to take cognizance of the said offences and try the same.

In view of the above dispute, Registrar (Admn.) of this Court is directed to submit his views by way of a report with regard to the jurisdiction of the Special Judge (CBI), Bhubaneswar, regarding taking of cognizance of the offences under the I.P.C.

Interim order dated 03.04.2014 to continue till the next date.”

4. Pursuant to the aforesaid order, a report has been placed on record by the Registrar (Admn.) of this Court, which reads as thus:

“Kind orders dtd. 01.05.2014 passed in CRLMC No.1143 of 2014 may kindly be seen.

In the aforesaid order I have been directed to submit my views by way of a report with regard to the jurisdiction of the Spl. Judge (C.B.I.), Bhubaneswar regarding taking of cognizance of the offences under the I.P.C.

In this connection, the notification of Govt. of Odisha, Law Department bearing No.1596 dtd. 4th February, 1999 regarding appointment of Special Judge, Bhubaneswar U/s.3(1) of the Prevention of Corruption Act, 1988 to try offences committed in the State of Odisha and investigated by the Delhi Special Police Establishment placed at Flag 'A' may kindly be seen.

As per the aforesaid notification the Govt. of Odisha has appointed the Addl. District & Sessions Judge, Bhubaneswar in the Judgeship and Sessions Division of Khurda as Special Judge, Bhubaneswar to try all offences triable by a Special Judge U/s.4 of the P.C. Act, 1988 committed in the State of Odisha and investigated by C.B.I.

Further, by virtue of Notification No.51404 dtd. 21.09.1988 of the Home Department, Govt. of Odisha, the State Govt. in consultation with the High Court of Orissa have appointed the Addl. Chief Judicial Magistrate, Bhubaneswar as a Special Court for the trial of CBI cases under the Delhi Special Police Establishment Act, 1946 having jurisdiction throughout the State of Odisha (Flag 'B').

It is provided in Section 3 of the Prevention of Corruption Act, 1988 as follows:

“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) ”.

Further it is provided in Section 4 of the P.C. Act, 1988 as follows:

“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) xxxxx xxxxxx xxxxxx

(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.”

In Section 5 of the Prevention of Corruption Act, 1988, it is provided as follows:-

“5. Procedure and powers of Special Judge. – (1) 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 of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) xxxxx xxxxx xxxxx

Placed for favour of kind consideration.”

5. The Government of Odisha in Law Department issued the following Notification on 4th February, 1999;

“Government of Orissa

Law Department.

NOTIFICATION

Dated, the 4th February, 1999

No.B-105/99/1596/L., In exercise of the powers conferred by sub-section (1) of Section 3 of the Prevention of Corruption Act, 1988 (49 of 1988), the State Government do hereby appoint the Additional

District and Sessions Judge, Bhubaneswar in the Judgeship and Sessions Division of Khurda as Special Judge, Bhubaneswar to try all offences, triable by a Special Judge, under section 4 of the said Act, committed in the State of Orissa and investigated by the Delhi Special Police Establishment.

By Order of the Governor”

6. This Court *vide* order dated 7th December, 2017 observed that none appeared at the time of call and allowed this matter to be placed on another date. Subsequently, when the matter was taken up on Board on 24th September, 2022, the following order was passed;

“2. None appears for the petitioner at the time of call, but Mr. S. Nayak, learned counsel appearing for the opposite party submits that copy of the CRLMC and Misc. Case have not yet been served on opposite party.

3. Hence, the petitioner is directed to serve the copy of CRLMC and Misc. Case on the opposite party, if not served earlier.”

7. Today, when the matter is taken up, Mr. Manish Dhir, Proxy counsel on behalf of Mr. Sarthak Nayak, learned Advocate appearing for the C.B.I. submits that the order dated 24th September, 2022 has not been complied with as yet. Finding no alternative, taking into consideration the aforesaid report of the Registrar (Admn.) of this Court, it is directed that the Court concerned may proceed with the aforesaid case in accordance with law. Interim order dated 3rd April, 2014 as extended from time to time is vacated.

8. As the material placed before this Court by the Registrar (Admn.) of this Court clearly indicates the

competency and jurisdiction of the Court concerned, this Court finds no reason to keep the matter pending any further. Since the further proceeding has been stayed since 2014 by this Court and the same is now vacated today, the learned trial Court may proceed with the aforesaid case and conclude as expeditiously as possible.

9. With the aforesaid observation, the CRLMC stands disposed of.

10. A copy of this order be communicated to the Court below forthwith.

MRS



(M.S. Raman)
Judge