

Basant Singh Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Oct-18-1984

Reported in : 1985CriLJ1500

Judge : M.M. Punchhi, J.

Appellant : Basant Singh

Respondent : State of Punjab

Judgement :

ORDER

M.M. Punchhi, J.

1. Formally admitted. To be disposed of simultaneously with the consent of the parties.
2. The Special Court, Patiala established under the Terrorist Affected Areas (Special Courts) Act, 1984 vide its order dt. 17th Sept., 1984 returned a cross case to the Court of the Chief Judicial Magistrate, Ropar though originally sent to it by the Additional Sessions Judge, Ropar along with a cross case exclusively triable by the Special Court. The point which requires consideration is whether the act of the Special Court was right in law.

3. The skeletal facts are these. On March 12, 1984, offences were committed. Two cross cases sprung up. The petitioner herein Basant Singh along with others was accused of having committed an offence under Section 307, I. P. C. Such an offence obviously is exclusively triable by the Special Court established under the aforesaid Act. At the instance of Basant Singh, a cross case was instituted against Ajit Singh and four others under Sections 326/324/323/34, I. P. C. The latter offence being exclusively triable by a court of a Magistrate 1st Class presented the difficulty of two contradictory findings being arrived at. For that reason the chief Judicial Magistrate, Ropar committed the said case to the Court of Session so as to be tried by that Court along with the case of the petitioner committed to it under Section 307, I. P. C. Since the Court of Session had to transfer one case to the Special Court, it transferred the other case also to avoid contradictory findings. The learned Special Judge has returned one case as said before and has kept with itself the other case on the interpretation of sub-sections (1) and (2) of Section 8 of the Act, The learned Judge observed as follows:

A bare perusal of Section 8 referred to above leads to the conclusion that it is only while trying scheduled offence of which the accused is charged that he may be tried for any other offence. Section 8 referred to above does not talk of trial of cases merely on the ground that connected case is being tried for commission of scheduled offence.

Then the learned Judge took aid of Section 16(1) of the Act and observed:

Although there is no specific provision in the Cri. P. C. authorising Sessions Court trying a Sessions case to try cross cases which ordinarily should have been tried by a Magistrate, however, in order to avoid conflicting judgment or exercising inherent powers such Court shall try such cases simultaneously. A Special Court which has been created under the Ordinance does not possess such inherent powers. In view of Section 8 referred to above, it is held that the present case is to be tried by a Magistrate in the ordinary Court as none of the offences is a scheduled offence and under the Ordinance this Court has no jurisdiction to take cognizance of this case.

It seems to me that the learned Special Court was not correctly advised in this regard. Sub-section (4) of Section 10 provides the answer which reads:

Subject to the other provisions of this Ordinance, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(Emphasis supplied)

4. Then again Section 323 of the Cr. P. C. provides that if in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions herein-before contained and thereupon the provisions of Chap. VIII shall apply to the commitment so made. Thus, under the order of a Magistrate a particular trial can be committed to a Court of Session. Once it is so committed, the Court of Session is entitled to hold a Sessions trial. Now Sub-section (2) of Section 16 of the Terrorist Affected Areas (Special Courts) Act, 1984 provides that in particular and without prejudice to the generality of the provisions contained in Sub-section (1), the provisions of Sections 326 and 475 of the Code shall, as far as may be, apply to the proceedings before a Special Court, and for the purpose any reference in those provisions to a Magistrate shall be construed as a reference to the Special Court. In Section 326 of the Cr. P. C. the words used are 'Judge' or a 'Magistrate' which were inserted for the word 'Magistrate'. Such user in Sub-section (2) of Section 16 would include the Judge also. Thus, the Sessions Judge transferring a cross case to the Special Court would be doing so under Section 326, Cr. P. C. and the Special Court would be entitled under Sub-section (4) of Section 10 to exercise in relation thereto all the powers of a Court of Session even if it is not relating to a scheduled offence but is relating to any offence and the latter Court shall try such an offence as if it were a Court of Session as far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session. These provisions make ample room for the Special Court to receive these cross cases as a Court of Session and try them as such so as to

avoid any conflicting decisions between two cases i.e. one triable by a Special Court strictly and the other triable by a Court of Session. Of course cross cases normally arise out of the same occurrence; the offence in one has a colour of defence in the other. The law cannot be presumed to have left a lacuna in that regard. The provisions of the Terrorist Affected Areas (Special Courts) Act have to be read and interpreted in that light as I have done heretofore.

5. For the foregoing reasons, this petition is allowed. The impugned order of the Special Court, Patiala is set aside and the case transferred by it to the file of the Chief Judicial Magistrate, Ropar is ordered to be put back in the Court of the Special Court but as a Court of Session for the purpose. Order accordingly.

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