

iqbal Singh Vs. State, Etc.

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Court : Delhi

Decided On : Sep-10-1976

Reported in : 1977CriLJ501; ILR1977Delhi100

Judge : Prithvi Raj, J.

Acts : Criminal Law (Amendment) Act, 1952 - Sections 6; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 337(2B); [Indian Penal Code \(IPC\), 1860](#) - Sections 20B; [Prevention of Corruption Act, 1947](#) - Sections 5(2)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 84 of 1976

Appellant : iqbal Singh

Respondent : State, Etc.

Advocate for Pet/Ap. : B.B. Lal,; Neelam Grover,; Bishambar Lal,;

Judgement :

Prithvi Raj, J.

(1) The short question which arises for determination in this petition is whether in a case where the accused person's are to be tried for an offence punishable under section 120-B, Indian Penal Code . section 5(2) of the [Prevention of Corruption Act, 1947](#) and sections 161 and 165, Indian Penal Code . triable by a special judge but where pardon has been tendered by a magistrate to an accomplice in

pursuance of the provisions of section 337(1) of the Code of Criminal Procedure, 1898 (herein called 'the Code'), the prosecution is under an obligation to file the charge sheet in the Court of the magistrate having jurisdiction to take cognizance of the case or whether the special Judge can entertain the charge-sheet by taking cognizance of the case in pursuance of the provisions of section 8(1) of the Criminal Law Amendment Act, 1952 (herein called the 'Amendment Act').

(2) Shri B. B. Lal, the learned counsel appearing for the petitioner vehemently contends that in such a case cognizance of the case in the first instance has to be taken by the magistrate competent to entertain the charge sheet. Not to do so, he contends, would be nullifying the salutary provision of sub-section (2-B) of section 337 of the Code which provision was incorporated in the Code by the Amendment Act itself by which a special judge was empowered to take cognizance in a case like the present one without the accused being committed to him for trial. Despite the provisions of section 8(1) of the Amendment Act, the Parliament in its wisdom also incorporated sub-section (2-B) in section 337 of the Code so as not to deprive an accused person of the benefit of cross-examining an approver twice once in the court of the Magistrate taking cognizance and then second time during trial. The benefit so extended to an accused, goes the argument, would seem to consist in (i) that the approver would have to disclose his evidence at the preliminary stage before the trial by a special judge and (ii) that an accused thus not only knows what the evidence is against him but gets an opportunity to rely upon the deposition of the approver before the Magistrate for the purpose of proving the approver's evidence at the trial untrustworthy, if there are contradictions or improvements. That being so, the learned counsel strenuously contends that if the prosecution files the charge-sheet directly before a Special Judge the accused would be deprived of the salutary benefit set out above. The intention of the Parliament being to provide two opportunities to an accused person to cross-examine an approver, it is urged, the prosecution cannot choose to file the charge sheet directly before a special Judge and thus whittle down the mandatory provisions of law envisaged by sub-section (2-B) of section 337.

(3) The above submissions were sought to be reinforced by urging that a perusal of section 337 of the Code and section 8 of the Amendment Act leaves no manner

of doubt that besides the Special Judge, a Magistrate can also take cognizance of offences mentioned in section 6 of the Amendment Act upon a report submitted to him by a police officer, in pursuance of the provisions of section 190 (1-B) of the Code. Reliance for this submission was placed on a Division Bench decision of the Bombay High Court in *State v. Shankar Bau Rau Khirodi*, : AIR1959 Bom437 , wherein it was observed that the important thing to be noted under sub-section (2-B) of section 337 of the Code is that a Magistrate has not only the power to tender a pardon to an accomplice but would have the power to examine him under sub-section (2) even in respect of offences triable exclusively by a Court of Special Judge. On examining the provisions of section 190 of the Code under which any District Magistrate or Sub-Divisional Magistrate or any judicial Magistrate specially empowered in that behalf may take cognizance of any offence upon a report in writing of such facts made by any police officer, it was held that a Magistrate was not deprived of his powers to take cognizance of even offences mentioned in section 6 of the Amendment Act upon a report submitted to him by a police officer.

(4) Referring to the provisions of the various sub-sections of section 337, the learned counsel submits that sub-section (1) thereof empowers the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or any Magistrate of the first Class at any stage of the investigation or inquiry into, or the trial of the offence in the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment (which may extend to seven years) or any offence under any of the following sections of the Indian Penal Code, namely, Sections 161, 165, 165-A, 216-A, 369, 401, 435 and 477-A to tender a pardon to any person supposed to have been directly or indirectly concerned in or privy to the offence, with a view to obtaining his evidence, on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :- provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be

inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

(5) SUB-SECTION (1) of section 337, it is submitted, concerns with empowering a Magistrate to tender pardon during investigation or enquiry in respect of offences enumerated therein or which are exclusively triable by the High Court, or Court of Session subject to the rider that such a power cannot be exercised where the offence is under inquiry or trial unless he is the Magistrate making the enquiry or holding the trial or where the offence is under investigation he has jurisdiction in the place where the offence might be enquired.

(6) SUB-SECTION (1-A) requires the Magistrate tendering pardon under sub-section (1) to record his reasons for doing so, and shall, on application made by the accused, furnish him with a copy of such record, provided that the accused shall pay for the same unless the Magistrate for some special reasons thinks fit to furnish it free of cost.

(7) SUB-SECTION (2), the learned counsel submits, is very important in that every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. It is vehemently contended that according to sub-section (2) it is incumbent that a person who is tendered pardon shall be examined for the first time as a witness in the court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. That being so, it is urged, examining an accused twice to whom pardon has been tendered, is 'a must' being an essential requirement of law which the prosecution in the present case cannot pypass in choosing to file the charge-sheet directly before the Special Judge and thus defeat the mandate of law to deprive the accused of his statutory right of cross-examining a person twice to whom pardon has been tendered.

(8) The requirement of law having been clearly set out in subsection (2), the question for consideration, the learned counsel submits, is what was the object that Parliament sought to achieve by introducing sub-sections (2-A) and (2-B) in section 337 when already sub-section (2) was there making it obligatory that every person accepting a tender shall be examined as a witness m the Court of the

Magistrate taking cognizance of the offence and in the subsequent trial, if any. The learned counsel submits that according to sub-section (2-A) in every case where a person has accepted tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be. A bare reading of the aforesaid sub-section, Shri Lal submits, shows that a Magistrate may commit an accused person without examining other witnesses if there exist reasonable grounds for believing that he is guilty of an offence provided that a person who has accepted tender of pardon 'has been examined under sub-section 2'. Shri Lal, therefore, submits that sub-section (2-A) does not dispense with the requirement of law to examine a person to whom pardon was tendered, before the accused persons are committed to stand trial. In this state of law, Shri Lal urges, what is to be seen is what was the necessity for inserting sub-section (2-B) in section 337 of the Code by the Amendment Act, section 8 whereof empowers a special judge to take cognizance of offences enumerated in section 6 of the Amendment Act. Sub-section (2-B) reads as under :-

'In every case where the offence is punishable under section 161 or section 165 or section 165-A of the Indian Penal Code or sub-section (2) of section 5 of the [Prevention of Corruption Act, 1947](#), and where a person has accepted tender of pardon and has been examined under sub-section (2); then, notwithstanding anything contained in subsection (2-A), a magistrate shall, without making any further enquiry, send the case for trial to the Court of the special judge appointed under the Criminal Law Amendment Act, 1952'.

(9) Shri Lal submits that sub-section (2-B) empowers a Magistrate notwithstanding anything contained in sub-section (2-A), to send the case for trial to the Court of the special judge where the offence is punishable under the various sections enumerated in the sub-section without making any further enquiry but not before he had examined the accomplice under sub-section (2) to whom pardon had been tendered. The requirement of law, Shri Lal contends, is mandatory, the accomplice has to be examined under sub-section (2) by a magistrate before the case is sent

for trial to the court of special judge. That being so, the charge sheet has to be filed before a magistrate. The provisions of sub-section (2-B) which initially were to be operative for a period of two years had been incorporated as a permanent measure by the Code of Criminal Procedure (Amendment) Act, 1955.

(10) The importance that Parliament attached to sub-section (2-B) can be gauged, Shri Lal submits, from the fact that it has chosen to retain the said salutary provision in section 306 of the Code of Criminal Procedure, 1973. It is accordingly submitted that sub-section (2-B) has to be given some meaning otherwise one could do without the said sub-section if it was envisaged that the approver was to be examined only once during trial but that apparently was not the intention of Parliament. In the premises, it is strenuously contended that a special judge is to try a case when it is sent to him by a magistrate under sub-section (2-B) of section 337 of the Code on the approver having been examined under sub-section (2) of section 337 and that it is not open to the prosecution to bypass the provision of sub-section (2-B) by filing the charge sheet in the Court of a special judge.

(11) On a surface view the arguments appear to be unassailable but on a little probe in the matter they cannot be sustained. The arguments have to be appreciated not only in the light of the provision contained in sub-section (2-B) of section 337 of the Code but also taking into consideration the provisions of the Amendment Act. Section 6 of the Amendment Act empowers the State Government by notification in the official gazette, to appoint as many special judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely, (a) an offence punishable under section 161, section 165 or section 165-A of the Indian Penal Code (Act XLV of 1860) or Sub-section (2) of section 5 of Prevention of Corruption Act, 1947 (II of 1947); (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(12) SUB-SECTION (2) thereof prescribes the qualifications of a person eligible for appointment as a special judge. Section 7 of the said Act reads as under :- 7. Cases triable by special judges : (1) Notwithstanding anything contained in the Code of Criminal Procedure Code (Act V of 1898) or in any other law the offences

specified in sub-section (1) of section 6 shall be triable by special judges only. (2) Every offence specified in sub-section (1) of section 6 shall be tried by the special judge for the area within which it was committed, or where there are more than one for such area, by such one of them as may be specified in this behalf by the State Government. (3) When trying any case, a special judge may also try any offence other than an offence, specified in section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same time.

(13) Section 8 of the Amendment Act prescribes the procedure and powers of the special Judge. It envisages- (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, 1898 (Act V of 1898), for the trial of warrant cases by magistrates. (2) A special judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof ; and any pardon so tendered shall, for the purposes of section 339 and 339A of the Code of Criminal Procedure, 1898, be deemed to have been tendered under section 338 of that Code. (3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1898 shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special judge; and for the purposes of the said provisions, the court of the special judge shall be deemed to be a court of session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a special judge shall be deemed to be a public prosecutor. It is, therefore, evident from a perusal of the aforesaid section of the Amendment Act that the court of a special judge is a creature of the statute invested with powers to take cognizance of the offences enumerated under section 6 of the Amendment Act without the accused being committed to him for trial. Committal proceedings envisaged by the provisions of the Code have been eliminated with an eye on speedy trial.

(14) The special judge derives his powers from the provisions of the Amendment Act. He, therefore, can take cognizance of an offence triable by him without the accused being committed by a magistrate, the said bar stood removed by sub-section (1) of section 8 of the Amendment Act which clothes the special judge with the authority to take cognizance of an offence.

(15) It would be instructive to note here decision of a Division Bench of the Bombay High Court in *Parasnath Pande and another v. State*, : AIR1962 Bom205 . In that case a contention was raised that except for the purpose of sub-section (3-A) of section 8 of the Amendment Act, a special judge stands in the position of a sessions Judge trying a case without the aid of a jury or assessors. Further, it was contended that in any case, a special judge cannot be considered to be a magistrate and if that is so, he is not capable of taking cognizance of the offences under section 190, Criminal Procedure Code. There was a good deal of argument as to whether section 190, Criminal Procedure Code, applies to a special judge. The contention was repelled observing that the opening part of subsection (1) of section 8 of the Amendment Act, viz., 'A special judge may take cognizance of offences.....' is obviously of a positive character clothing the special judge with authority to take cognizance of an offence and that no limitation has been placed on him as to how he should do it. It was observed that he may act on a report submitted by a police officer. He may act on a private complaint or he may also act on the basis of any information derived from any source and that his powers in the matter of taking cognizance 'are wide and untrammelled'.

(16) Case, *State v. Shanker Baurau Khirodi* (supra) is of no assistance to the petitioner. All that the said authority lays down is that a magistrate is not incompetent to take cognizance of offences mentioned in section 6 of the Amendment Act which are triable by a special judge. The question whether under the provisions of subsection (2-3) of section 337 of the Code it is obligatory on the prosecution in a case where pardon had been tendered to an accomplice to file the charge-sheet in the court of a magistrate so that he may examine the accomplice to comply with the provisions of sub-section (2) of section 337. as is now sought to be urged in the instant case, was not under consideration in that case.

(17) It is beyond the pale of controversy that the Court of a special judge being a creature of the Amendment Act has unfettered powers to take cognizance of a case in terms of section 8(1) of the said Act. In the event of a special judge taking cognizance, the jurisdiction of a magistrate to take cognizance is ousted in which case the provision of complying with the requirements of sub-section (2) or (2-B) of section 337 would not arise.

(18) The provisions of sub-section (2), (2-A) and (2-B) would not apply if the cognizance is taken by a special judge. In terms of section 8(3) of the Amendment Act, the provisions of the Code shall apply to the proceedings before a special judge so far they are not inconsistent with the provisions of the Amendment Act. It being within the province of a special judge to take cognizance of a case, there being no limitation on him as to how he shall take cognizance, the powers being 'wide and untrammelled', there is no merit, in the grievance of the petitioner that the police should have filed the charge-sheet in the court of a magistrate and not before the special judge. Such a plea is not warranted on a reading of the provisions of the Code, viz., section 337, 190 and 193 and of section 8 of the Amendment Act. It may bear mention here that section 190 of the Code prescribes three modes of taking cognizance by the magistrates specified in the said section while section 193 of the Code prescribes the mode for taking cognizance of offences by courts of Sessions envisaging in sub-section (1) thereof that except as otherwise expressly provided by the Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it, by a magistrate duly empowered in that behalf, a fetter which stands removed in the case of a special judge who is empowered to take cognizance directly by virtue of section 8 of the Amendment Act.

(19) Case *Inder Mohan and others v. The State* (1972) 2 Del 213; *P. Apparao and others v. State* : AIR 1967 Ori 82 ; and the *State v. Chokkiah alias Kishore and another*, 1975 (2) APLJ 200, relied upon by the learned counsel for the petitioner dealt with an altogether different point, namely, the effect of the omission to examine an approver in the course of the enquiry for commitment. The same was held to be a contravention of the provisions of sub-section (2) of section 337 of the

Code, the proceedings before the committal court were accordingly held void, there being no valid commitment.

(20) Shri Lal, however, strenuously contends that the provisions of the various sections of the Amendment Act should be so read as to harmonise with one another unless it would be impossible to effect reconciliation between the various provisions. It was accordingly submitted that sub-section (2-B) was incorporated in section 337 of the Code by the Parliament by section 5 of the Amendment Act while the provision pertaining to the power of the State Government to appoint special judges, cases triable by special judges and procedure and powers of the special judges are to be found in subsequent sections, viz., sections 6 to 8 of the Amendment Act. While enacting the above said provisions the Parliament was not oblivious of subsection (2-B) and in permitting the cognizance of offences mentioned in section 6 of the Amendment Act without the accused being committed to a special judge for trial, the Parliament did not intend to render subsection (2-B) negatory.

(21) There is no substance in this contention. It is well-settled and a recognized rule of interpreting a statute that its various provisions ordinarily are to be understood in a sense in which they best harmonise with the object of the statute and which effectuates the object of the legislature as was observed by their Lordships of the Supreme Court in *M/s. New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*, : AIR 1963 SC1207 .

(22) The object and reasons in enacting the Amendment Act incorporating sections 6 to 8 thereof was to provide for speedy trial of offences mentioned in section 6. It is for this reason that special judge was empowered to take cognizance of offences without the accused being omitted to him for trial. In other words, commitment proceedings were dispensed with in respect of trials arising out of offences enumerated in section 6 of the Amendment Act.

(23) Section 8 of the Amendment Act being a specific provision entitling a special judge to take cognizance of cases enumerated in section 6 thereof, shall prevail over a more general provision like sub-section (2-B) of section 337. It is, therefore, futile to contend that in so interpreting the provisions of section 8 of the

Amendment Act would be in a way in conflict with the provisions of sub-section (2-B) of section 337 of the Code. The words of section 8 of the Amendment Act being clear, the Court has to give effect to the natural meaning to the words used in it. There being no ambiguity in it, effect has to be given to its provisions, The petitioner, therefore, cannot make a grievance that in filing a charge-sheet before a special judge the provisions of subsection (2-B) of section 337 have been violated in any manner or his alleged right of cross-examining an accomplice twice had been abridged. There being no infirmity in the impugned order, the petition accordingly fails and is hereby dismissed.

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