

Raman Kumar and ors. Vs. State (Central Bureau of Investigation) and anr.

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Court : Delhi

Decided On : Oct-09-1987

Reported in : 1988(1)Crimes423; 33(1987)DLT318

Judge : D.P. Wadhwa, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(2); [Indian Penal code, 1860](#)
- Sections 420; Criminal Law Amendment Ordinance, 1944 - Sections 3

Appeal No. : Criminal Miscellaneous Appeal Nos. 149 of 1986 and 238 and 261 of 1987

Appellant : Raman Kumar and ors.

Respondent : State (Central Bureau of Investigation) and anr.

Advocate for Pet/Ap. : B.G. Singh,; S. Lal and; Mukesh Kher, Advs

Judgement :

D.P. Wadhwa, J.

(1) These two applications have been filed in the Criminal Revision 149/86 which had been disposed of by order of Jagdish Chandra, J. on June 1, 1987, It is not necessary to deal with the facts given in the order dated June 1, 1987 except to state that the court considered the provisions of sections 3 and 4 of the Criminal Law Amendment Ordinance, 1944. Certain properties had been seized from the

petitioners in the Criminal revision as cases under sections 420/467/468/471 and section 120B.I.P.C. and section 5(2) of the Prevention of Corruption Act had been registered against them. This court held that these properties could be attached only under the provisions of sections 3 and 4 of the a fore said ordinance. It, however, granted time to the C.B.I./State Government to move an appropriate application before the District Judge under sections 3 and 4 of the Ordinance after obtaining necessary authorisation from the State Government with order that if no such application for attachment is made within three months from the date of the order, the properties seized and accounts frozen would stand released. C.B.I. has filed an application Cr. Misc. No. 238/87 for enlarging the time of three months granted under order of June 1, 1987. Notice was issued of this application to counsel for the petitioners as well as to the State Bank of India. State Bank of India had been made a co-respondent in the Criminal revision as it was defrauded of huge amounts running into lakhs of rupees by the petitioners in conspiracy with each other. Counsel for the State Bank of India supported this application. The petitioners instead of filing their reply filed other application, it being Cr. Misc. 261/87, questioning the maintainability of the application by the C.B.I. Notice of this application was also issued to the C.B.I. as well as to the State Bank of India and their replies have been taken on record. In the application filed by the petitioners (Cr. Misc. No. 261/87) the main contention is that the order dated June 1, 1987 could not be reviewed or modified and that section 362 of the Code of Criminal Procedure was a complete bar and this court could not exercise jurisdiction to enlarge time. In the application in para 6 it has been mentioned that a Single Judge could not stop the operation of an order passed by a brother Judge and that no Judge of this court could either modify or in any way annul the operation of the order dated June 1, 1987. All these averments appear to be rather unnecessary and superfluous. Perhaps these were made in anger on account of the interim order dated August 27, 1987 by which notice of Criminal Misc. 238/87 was issued and it was also directed that in the meanwhile, property in question would not be released. It has been contended by Mr. S. Lal, Special Public Prosecutor for the C.B.I, that he was not aware of the order dated June 1, 1987. He said this order came to the notice of the C.B.I, only in the first week of August 1987. His argument was that in any case three months period will start running

only from the date of the knowledge of the order by the C.B.I. Though, he also contended that this Court has jurisdiction to enlarge the time as well. June 1, 1987 happened to be a day when there was summer vacation of the High Court and only Vacation Judges were doing the work. The last order in the criminal revision is dated 8.10.1986 by which the criminal revision was adjourned to 23.10.1986 and thereafter the order dated June 1, 1987 was pronounced. It was stated by Mr. Kher, learned counsel for the state Bank of India that arguments were concluded on 23rd October 1986 and judgment reserved Mr. Bawa who appeared for the petitioners in the criminal revision admitted that it was in fact a few months earlier that arguments had been heard. As per practice of this Court if judgment is reserved and pronounced on a subsequent day it appears in the daily cause list and that would be a notice to all concerned that the judgment will be announced on that day. This principle, however, cannot apply when the judgment is announced during vacation. The pronouncement of the judgment in the criminal revision is, no doubt, mentioned in the cause list of June 1, 1987 but that list is not circulated among the members of the bar and it will be too much to say that counsel for the C.B.I. would be taken to have notice of the judgment on June 1, 1987. Mr. Bawa said he was present when the judgment was announced. That is no reason to assume that counsel for the C.B.I. and the State Bank of India would also have known that the judgment was to be announced on that day. No notice that judgment would be announced on June 1, 1987 was given to the counsel for the parties and even after the judgment was announced they were not informed that the judgment had been announced. In the notification issued before the Summer Vacation various directions are issued. The Vacation Judges do only urgent matters and limitation does not run for the purpose of institution of both civil and criminal cases. I would, therefore, accept the contention of Mr. Lal that C.B.I. had no notice of the judgment dated June 1, 1987 till the first week of August 1987. This averment has been made on affidavit. It is not, however, mentioned as to on which particular day during the first week of August 1987 did the C.B.I. come to know of the order in the criminal revision. Lest the prejudice is caused to the petitioner in the criminal revision I would take it that the C.B.I. had knowledge of the judgment on 3.8.1987 as 1.8.1987 was Saturday and the following day was Sunday. Three months period will have to be taken from that day. This would,

thereforee expire on 3rd November, 1987 before which date the property seized and accounts frozen would not stand released in terms of the order dated June 1, 1987. The application before the District Judge under sections 3 and 4 of the Ordinance had to be filed within three months i.e. on or before 3.11. 1987 and orders obtained. Three months period is not meant for the C.B.I. to obtain authorisation from the State Government. It is stated that to get authorisation various formalities have to be gone into and that State Government has since been approached for the purpose. The fact remains that sections 3 and 4 of the Ordinance do not prescribe any time and I must say it was a concession given to the C.B.I. to get the orders from the District Judge within three months period. I see no reason on the facts of the present case to grant any further time to the C.B.I. I must, however, accept the contention of Mr. Bawa that the order dated June 1, 1987 would be a final order within the meaning of section 362 of the Code and court has no jurisdiction to alter or review the same. The question posed, however, was would the enlargement of time amount to altering or reviewing the order particularly when section 3 of the Ordinance does not prescribe any time. I, however, need not go into this question as the stay order in the criminal revision is operative till 3.11.1987 as held by me. In the circumstances it is unnecessary to refer to various authorities cited at the bar.

(2) There is yet another aspect of the matter. State Bank of India filed a suit in this court, it being Suit No. 2025/86, against the petitioners in the criminal revision and this court on an interim application did order the C.B.I. not to deliver possession of the properties in its possession to the defendants. therein. It is stated that this order is still in operation. Mr. Kher said that it might be clarified that in view of the order of civil court the property in question will not be released. I do not think it is necessary for me to state the obvious. However, Mr. Bawa admitted that though under the order dated June 1, 1987 the properties stand released but the petitioners would be able to get possession of the same after the stay granted by the civil court is vacated.

(3) These applications thereforee, stand disposed of in terms of the observations made above.

(4) I will record that at the conclusion of the arguments another application being Cr. Misc. 296/87 was filed by the State Bank of India. It was submitted that a special Leave Petition against the order dated June 1, 1987 had been filed in the Supreme Court on 26.9.1987 which was likely to come up for hearing shortly and present proceedings should be stayed. Mr. Kher stated at the Bar that the Special Leave Petition . is likely to be heard during this month itself. Since I have already held that the stay under the order dated June 1,1987 would be operative till 3.11.1987 I do not think any orders are required on this application and would dismiss the same.

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