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Jitendra Kumar Singh Vs. the State (Through Cbi)

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Court : Delhi

Decided On : Apr-21-2006

Reported in : 129(2006)DLT620; 2006(88)DRJ788

Judge : Badar Durrez Ahmed, J.

Acts : Prevention of Corruption Act, 1988 - Sections 13(1) and 13(2); Indian Penal Code (IPC) - Sections 120B, 420, 407, 468 and 471; Code of Criminal Procedure (CrPC) , 1973 - Sections 397 and 482

Appeal No. : CRL REV (P) No. 535/2005

Appellant : Jitendra Kumar Singh

Respondent : The State (Through Cbi)

Advocate for Def. : R.M. Tiwari, Adv.

Advocate for Pet/Ap. : Rajiv Nayyar, Sr. Adv. and; Kawal Nain, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This revision petition has been occasioned because of the death of one of the co-accused (Mr P.K. Samal) who was a public servant. The charge-sheet in this matter was filed on 16.05.2000 against the said Mr P.K. Samal, the present

petitioner (J.K. Singh) and others under Sections 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 120-B/420/407/468/471 IPC. On 12.11.2001, cognizance was taken. The order on charge was passed on 15.03.2003 and formal charges were framed on 25.03.2003 under the aforesaid sections against all the accused.

2. It is the contention of the learned Counsel for the petitioner that on 20.06.2003, Mr P.K. Samal, who was the only public servant amongst the array of accused persons, had died and as a result of which it became necessary that the charges framed against the remaining accused be modified as a consequence of the death of the said public servant. His contention was that after the death of Mr Samal, the charges under the Prevention of Corruption Act, 1988 no longer survived against the remaining accused. He cited the decision of a learned Single Judge of this Court in the case of Kartongen Kemi Och Forvaltning AB v. State through CBI 2004 [1] JCC 218 where, under similar circumstances, it was indicated that when public servants and other private individuals are arrayed as co-accused and some of the offences are under the Prevention of Corruption Act, 1988 coupled with other offences under the IPC, on the death of a public servant, the offences under the Prevention of Corruption Act, 1988 cannot be proceeded with. It has also been pointed out by Mr Rajiv Nayyar, the learned senior counsel, who appears for the petitioner, that an application had been filed before the Special Judge on 28.04.2004 indicating that consequent upon the death of the said public servant, the charges were required to be re-framed by deleting the charges under the Prevention of Corruption Act, 1988. However, as no orders were being passed on that application, a petition under Section 482 of the Code of Criminal Procedure, 1973, namely, Crl.M.C. 1395/2004 was filed before this court. Certain miscellaneous applications were also moved in that petition. While disposing of the petition, this Court by an order dated 14.05.2004, directed that the application of the petitioner pending before the Special Judge be disposed of, in the first instance, preferably on 20.05.2004 and it was also directed that if the court felt it necessary, it could add, alter or amend the charges and proceed in accordance with law. Mr Nayyar submits that even after the said order was passed way back on 14.05.2004, the application has not been disposed of by the trial court. This, according to him, would amount to an irregularity in the proceedings and,

thereforee, would fall within the ambit of Section 397 of the Code of Criminal Procedure, 1973 enabling the court to call for the record and pass appropriate orders thereon.

3. Mr Tiwari, who appears for the CBI, submits that there is no doubt that consequent upon the death of the public servant (Mr Samal), there is a necessity for modification of the charges with reference to the offences under the Prevention of Corruption Act, 1988. He submits that this, however, ought to be done by the court below. He, however, submitted that he would have no objection to a direction being given to the court below to modify the charges accordingly insofar as the offences under the Prevention of Corruption Act, 1988 are concerned. He further submits that insofar as the other offences under the IPC are concerned, they shall, however, remain the same.

4. Accordingly, I find that the appropriate order to be passed in this case would be to direct the trial court to modify and / or alter and/or amend the charges in view of the discussion above. Thereafter, the matter be placed before the Chief Metropolitan Magistrate, who may assign the matter to the concerned court. The trial court record be sent back immediately.

This petition stands disposed of dusty.

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