

Vasavan Vs. State of Kerala

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Court : Kerala

Decided On : Nov-09-2005

Reported in : 2006CriLJ1179; 2006(1)KLT52

Judge : J.B. Koshy and; K.R. Udayabhanu, JJ.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 5, 13(1), 13(2), 19(3) and 27; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 6, 190, 239, 307, 308, 308(1) to (5), 326, 475 and 482; Indian Penal Code (IPC) - Sections 120B and 420; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 9; Criminal Law (Amendment) Ordinance, 1944 - Ordinance 38

Appeal No. : Crl. M.C. Nos. 3455-3457 of 2005

Appellant : Vasavan

Respondent : State of Kerala

Advocate for Def. : Sujith Mathew Jose, Public Prosecutor

Advocate for Pet/Ap. : T.A. Shaji and; T.V. Neema, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

J.B. Koshy, J.

1. These cases were referred to the Division Bench by the learned single Judge expressing a doubt whether petition under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') will lie in a proceeding exclusively triable by a Special Judge constituted under the Prevention of Corruption Act. Section 482 of Cr.P.C. reads as follows:

Saving of inherent power of High Court: Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The above section confers no new powers to the High Court. It merely safeguards all existing powers possessed by the High Court to secure ends of justice at the time of framing the Code as held by the Privy Council in *Lala Jairam Das and Ors. v. Emperor* (AIR (32) 1945 PC 94). The inherent powers of the Courts to do justice is protected by this section. Power of the High Court under Section 482 Cr.P.C. is very wide and it can be exercised when there is abuse of the process of any court or when it is necessary to exercise the same to secure ends of justice. Though power is very wide, it should be used sparingly as held in *Dr. Sarda Prasad Sinha v. State of Bihar* : 1977 CriLJ1146 . But, the contention raised is that powers under Section 482 Cr.P.C. is applicable only to criminal courts as Criminal Procedure Code itself is applicable only to criminal cases and special court is not a criminal court.

2. Section 6 of the Code of Criminal Procedure provides as follows:

6. Classes of Criminal Courts: Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:

(i) Courts of Session;

(ii) Judicial Magistrate of the first class and, in any metropolitan area, Metropolitan Magistrate;

(iii) Judicial Magistrate of the second class; and

(iv) Executive Magistrates.

It was pointed out that a court of special Judge is not a Court falling within Section 6 Cr.P.C. We are of the opinion that now it is beyond controversy that special court set up under the PC. Act is a criminal court.

3. Constitution Bench of the Supreme Court in A.R. Antulay v. Ramdas Srinivas Nayak and Anr. : 1984 CriLJ647 wherein it was observed that special Courts are criminal courts. At paragraph 27, it was held as follows:

To take the cases of corruption out of the maze of cases handled by Magistrates, it was decided to set up special courts. Section 6 conferred power on the State Government to appoint as many special Judges as may be necessary with power to try the offences set out in Clauses (a) and (b). Now if at this stage a reference is made to Section 6 of the Code of Criminal Procedure which provides for constitution of criminal courts, it would become clear that a new court with a new designation was being set up and that it has to be under the administrative and judicial superintendence of the High Court. As already pointed out, there were four types of criminal courts functioning under the High Court. To this list was added the Court of a special Judge. Now when a new court which is indisputably a criminal court because it was not even whispered that the Court of special Judge is not a criminal court

(emphasis supplied)

Thereafter, it was observed as follows: Shorn of all embellishment, the Court of a special Judge is a court of original criminal jurisdiction. As a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hidebound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied.

(emphasis supplied)

Again, at paragraph 28, the matter was clarified beyond doubt as follows:

28. Section 9 of the 1952 Act would equally be helpful in this behalf. Once Court of a special Judge is a court of original criminal jurisdiction, it became necessary to provide whether it is subordinate to the High Court, whether appeal and revision against its judgments and orders would lie to the High Court and whether the High Court would have general superintendence over a Court of special Judge as it has over all criminal courts as enumerated in Section 6 of the Code of Criminal Procedure. The Court of a special Judge, once created by an independent statute, has been brought as a court of original criminal jurisdiction under the High Court because Section 9 confers on the High Court all the powers conferred by Chapters XXXI and XXXIII of the Code of Criminal Procedure, 1898 on a High Court as if the Court of special Judge were a Court of Session trying cases without a jury within the local limit of the jurisdiction of the High Court. Therefore, there is no gainsaying the fact that a new criminal court with a name, designation and qualification of the officer eligible to preside over it with powers specified and the particular procedure which it must follow has been set up under the 1952 Act. The court has to be treated as a court of original criminal jurisdiction and shall have all powers as any court of original criminal jurisdiction has under the Code of Criminal Procedure, except those specifically excluded.

4. The next contention is that even if special Court is a criminal court and provisions of Code of Criminal Procedure are applicable except the provisions those are expressly excluded, Section 482 is not applicable as only appeals and revision petitions are specifically stated to be maintainable under Section 27 of the [Prevention of Corruption Act, 1988](#). Section 27 of the Prevention of Corruption Act reads as follows:

27. Appeal and revision: Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court as if the Court of the Special Judge were a Court of Sessions trying cases within the local limits of the High Court.

The above provisions were made not to exercise the inherent jurisdiction of the High Court which is saved under Section 482. Section 5 of the P.C.Act states that for certain provisions Special Judge shall be deemed to be a 'Magistrate' and for certain other purpose, it shall be deemed to be a 'Sessions Court'. Such a deeming provision is made because Special Judge is not a 'Sessions Judge' as such.

5. Section 5 of the P.C.Act reads 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 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 Sub-sections (1) to (5) of Section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under Section 307 of that Code.

(3) Save as provided in Sub-section (1) or Sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge, and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Sessions and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings

before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944).

Therefore, as held in *Antulay's case*:. The net outcome of this position is that a new court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific questions brought before it as court of original criminal jurisdiction, it had to refer to the Code of Criminal Procedure undaunted by any designation claptrap. When taking cognizance, a Court of Special Judge enjoyed the powers under Section 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Session. The entire argument inviting us to specifically decide whether a Court of a special Judge for a certain purpose is a Court of Magistrate or a Court of Session revolves round a mistaken belief that a special Judge has to be one or the other, and must fit in the slot of a Magistrate or a Court of Session. Such an approach would strangle the functioning of the court and must be eschewed. (para 27) In the above state of affairs, it was necessary to clarify under Section 27 that for the purpose of appeal or revision to the High Court, Special Court can be considered as if it is a Court of Session. Power under Section 482 Cr.P.C. is not protected under Section 27 of PC Act even impliedly. Section 5 expressly makes Cr.P.C. applicable to the proceedings of the special Judge except in the contingencies where the provisions of P.C.Act is inconsistent with the Code.

6. In *Satya Narayan Sharma v. State of Rajasthan* : 2001 CriLJ4640 , the Apex Court held that in view of Section 19(3)(b) of the Prevention of Corruption Act, it is not proper for the High Court to stay the trial but in appropriate proceedings hearing can be expedited and court can exercise jurisdiction under Section 482

Cr.P.C. (See paragraph 27). But, the Court also held that Section 19(3)(b) prohibiting stay of proceedings is restricted to sanction aspect alone, (para 26). Section 19(3)(b) is as follows:

19. Previous sanction necessary for prosecution:

XXX XXX XXX(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

XXX XXX XXX(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

But, Section 19(3)(c) imposes a specific bar against stay of proceedings on any other grounds.

7. Judgment of the Apex Court in Dinesh Dutt Joshi v. State of Rajasthan and Anr. : 2001 CriLJ4697 also shows that powers under Section 482 can be used on the proceedings of a special Judge under the P.C.Act. In that case, an order of discharge was quashed by the Court under Section 482. Apex Court though held that Section 482 can be used (para 6), but, while setting aside an order of discharge, the High Court should have issued a notice to the accused. In Manoranjan Prasad Choudhary v. State of Bihar : (2002)10SCC688 , though High Court refused to interfere under Section 482, Apex Court set aside the proceeding under the PC Act for want of sanction. All those decisions show that the High Court can exercise power under Section 482 in appropriate cases in a proceeding pending before the Special Judge under the PC Act and we answer the reference in the affirmative.

8. With reference to the facts of this case, petitioners were charged with offence under Section 13 (2) read with Section 13(1)(d) of the PC Act and Section 420 and 120B of IPC. They were managing committee members of a co-operative bank. They filed petition under Section 239 of Cr.P.C. for discharge. They approached this Court under Section 482 to dispose of the above petitions filed.

9. While making the reference order, the learned single Judge has observed that the reference will not stand in the way of continuing the proceedings before the court below. It is submitted that all the petitioners were discharged.

In the above circumstances, the matter has become infructuous. All the Criminal M.Cs. are dismissed as infructuous.

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