

Mohamed Asif Vs. State Represented by Additional Superintendent of Police, C. Branch, Cid, on Other Duty in Cb-cid, Chennai-600 002

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SooperKanoon Citation : sooperkanoon.com/782452

Court : Chennai

Decided On : Mar-09-1998

Reported in : 1998(1)CTC504

Judge : S. M. Sidickk, J.

Acts : [Prevention of Corruption Act, 1988](#) -- Sections 19(3)

Appeal No. : Crl.M.P.No. 7472 of 1997 in Crl.R.C.No. 952 of 1997

Appellant : Mohamed Asif

Respondent : State Represented by Additional Superintendent of Police, C. Branch, Cid, on Other Duty in Cb-cid, C

Advocate for Def. : Mr. M. Babumuthumeeran, Government Adv.

Advocate for Pet/Ap. : Mr. S. Suresh Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. This is an application filed by the petitioner of 4th accused to stay all further proceedings in C.C.No.4/97 on the file of XIII Additional Judge, City Civil Court

(Special Judge), Madras pending disposal of Crl.R.C.No.952 of 1997.

2. The learned counsel for the petitioner contended that the petitioner of 4th accused was a public servant on the date of taking cognisance of the case by the Special Judge, and the Court should not have taken cognisance of the offences for want of previous sanction under Section 19 of the Prevention of Corruption Act of 1988, and in these circumstances all the proceedings in C.C.No.4 of 1997 on the file of XIII Additional Judge, City Civil Court (Special Judge) at Madras should be stayed pending disposal of Crl. Revision Case No.952 of 1997.

3. The learned Government Advocate opposed this stay petition by stating that there is a clear bar to grant stay under Section 19(3)(b) and (c) of the Prevention of Corruption Act of 1988, and so this stay petition has to be dismissed.

4. The matter was examined in detail by me by giving due considerations to the points raised by both the counsel. After hearing the rival contentions of both the counsel on record and perusing the papers and the order of the lower Court, I am of the view that no stay can be granted in respect of this case for the following reasons.

5. Section 19(3)(b) and (c) of Prevention of Corruption Act of 1988 states as follows:-

'19(3). Notwithstanding anything contained in the code of Criminal Procedure, 1973(2 of 1974):-

(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;

(d) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of Revision relation to any interlocutory order passed in any enquiry, trial, appeal or other proceedings'.

6. One of the grounds raised in this Revision Petition is that sanction is required for prosecuting the petitioner of A4 since he was a public servant at the time of

taking cognizance of the offence in this case by the Special Court. I do not propose to go into these questions as to whether the petitioner/A4 was a public servant at the time of taking cognizance of the offence and as to whether sanction is a mandatory requirement for him. If I decide these points on merits in this stay petition, lest it will be commented later that I have decided these questions already on merits in the stay petition and so they are left open to be decided by the appropriate Court at the appropriate stage.

7. However Section 19(3)(b) categorically states that no Court shall stay the proceedings under this Act on the ground of any omission in the sanction granted by the authorities unless it is satisfied that such omission has resulted in the failure of justice. The omission to get previous sanction under Section 19(1) of Prevention of Corruption Act of 1988 will not be a ground to stay the proceedings under this Act. The further condition is that such omission must have resulted in failure of justice, It is not the case of the petitioner in this stay petition that such omission has resulted in failure of justice. Therefore the proceedings in this case cannot be stayed for want of sanction or omission to get sanction.

8. There are two limbs of sub-section 19(3)(c) of Prevention of Corruption Act of 1988 and they should be read disjunctively and not conjunctively. Even assuming that Section 19(3)(b) of Prevention of Corruption Act of 1988 will not apply to the facts of the present case, the first part of next sub- section viz., 19(3)(c) of the said Act makes it clear that no court shall stay the proceedings under this Act on any other ground. So whatever may be the ground of attach in the Criminal Revision Petition in this case, it cannot be a around to stay the proceedings in respect of the case instituted under Prevention of Corruption Act of 1988.

9. In those circumstances I am of the view that the proceedings of this case instituted under the Prevention of Corruption Act of 1988 cannot be stayed on any ground, and there is a clear bar to grant stay of the proceedings in this case by virtue of Section 19(3)(b) and (c) of Prevention of Corruption Act of 1988, and so this petition for stay has to be dismissed, and consequently I answer this point as against the petitioner/4th accused.

10. In the result this Petition for stay is dismissed.

