

Cbi Vs. Bimal Kumar Das

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Court : Kolkata

Decided On : Jun-28-2006

Reported in : (2006)3CALLT512(HC),2006(4)CHN403

Judge : Arun Kumar Bhattacharya, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 3, 3(2), 4, 13(1), 13(2), 19(1), 26, 26A, 26A(2), 30(1) and 30(2) ; ;[Prevention of Corruption Act, 1947](#) - Section 5 ; ;West Bengal Criminal Law Amendment (Special Courts) Act, 1949 - Sections 2(1), 2(2) and 13; ;Criminal Law Amendment Act, 1952 - Sections 3 and 5 to 10 ; ;West Bengal Amendment Act of 1994; ;Indian Penal Code (IPC) - Sections 420, 468, 471 and 477A; ;Code of Criminal Procedure (CrPC) - Sections 228, 300, 401 and 482; ;[Constitution of India](#) - Article 20(2)

Appeal No. : C.R.R. No. 2565 of 2002

Appellant : Cbi

Respondent : Bimal Kumar Das

Advocate for Def. : Balaram Neogi, Adv.

Advocate for Pet/Ap. : Ranjan Roy, Adv.

Disposition : Application allowed

Judgement :

Arun Kumar Bhattacharya, J.

1. The hearing stems from an application under Section 401 read with Section 482 Cr. PC filed by the petitioner praying for revision of the order dated 11.07.2002 passed by the learned Judge, Second Special Court, Calcutta in Special Case No. 2/96 arising out of RC 11(A)/ 1991-Cal under Sections 420/468/471/477A IPC/13(1)(d) read with Section 13(2) of the [Prevention of Corruption Act, 1988](#).

2. The circumstances leading to the above application are that on the basis of a source information on 26.02.91 that the O.P. Bimal Kumar Das, an officer of United Commercial Bank. Rajabazar Branch, Kolkata had introduced on 11.07.1989 one Ganesh Chandra Mazumder and Jagadish Chandra Ghosh to open savings bank account No. 8533 with the said branch where the transaction through the said account till 24.09.90 was Rs. 2,500/-and between 10.11.90 and 10.12.90 a sum of Rs. 1,80,000/- was falsely shown to have been deposited in the said account in the ledger by the O.P. by depositing cheques and for clearing by the O.P., that subsequently Rs. 1,20,000/- was withdrawn by false instruments resulting in cheating the bank to the extent of said amount of Rs. 1,20,000/- and by similar method a sum of Rs. 1,89,300/- was withdrawn from savings bank account No. 8588 of the said branch standing in the joint name of Bijoy Kumar Dey and Smt. Anju Dey, RC 11(A)/1991-Cal under Sections 420/468/471/477A IPC/13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, hereinafter referred to as the said Act, was registered against the said O. P. After obtaining sanction on 19.12.91 from the General Manager (Offg.) (Personnel) of the United Commercial Bank, Kolkata under Section 19(1)(c) of the said Act and after completion of investigation chargesheet was submitted on 31.03.93 whereupon the learned Court took cognizance on 02.04.93 and issued process. The O.P. filed an application on 08.12.94 for discharge on the ground of void and invalid cognizance in view of the decision of this Court in H.D. Barman v. State, and the Court dropped the proceeding and discharged the accused by order dated 28.02.95 holding that the order of taking cognizance was void and invalid. A fresh police report similar to the one dated 31.03.93 was submitted on 04.07.96 and the Court after taking cognizance issued process. On the date of framing of charge on 11.07.2002 the learned Court discharged the O.P. on the grounds that in view of

the earlier order of discharge a fresh chargesheet or a second chargesheet is not permissible, that the prosecution did not prefer any revision against the said order of discharge, that the procedural law does not envisage filing of a fresh case relying upon the documents of previous case and that the accused could not be subjected to double jeopardy on account of his discharge in the earlier case.

3. Being aggrieved by, and dissatisfied with, the said order, the petitioner has come up before this Court.

4. Mr. Roy, learned Counsel for the petitioner, on referring the case of State of U.P. v. Sadan K. Bormal, reported in : 2004 CriLJ3034 and on drawing Court's attention to the order of discharge of the O. P. on 28.02.95 in Special Court Case No. 2/93 on the basis of decision of this Court in H.D. Barman v. C.B.I. S.P.E., Calcutta reported in 1995 CCr LR (Cal) 63 contended that if the Court had no jurisdiction to try the offence under the [Prevention of Corruption Act, 1947](#), it could either postpone the case till jurisdiction was conferred upon a Competent Court or return the complaint for presentation before the Competent Court of jurisdiction, but in no circumstance it could drop the proceeding and discharge the accused specially when offences under the IPC are also involved. Relying upon the cases of State of West Bengal v. K.R. Chatterjee, reported in 1999(4) AICLR (Cal) 568 and Sadan K. Bormal (supra), Mr. Roy contended that the learned Court below erred in law in holding the cognizance taken by his predecessor Judge as bad in law. Mr. Roy further submitted that discharge of the accused which amounted to dismissal of the complaint cannot take away the right of the petitioner to file fresh chargesheet, similar in nature of the first one, before the appropriate forum, on which cognizance was taken and the necessity for such fresh chargesheet arose only due to wrong order of discharge and that in view of the decision in Sadan K. Bormal, the said Court was competent to try the offence. Relying upon the cases of S.A. Venkataraman v. Union of India, reported in : 1954 CriLJ993 and, Assistant Collector of Customs, Bombay v. L.R. Melwani, reported in : 1970 CriLJ885 , Mr. Roy contended that mere discharge of the accused in the above circumstance is not acquittal nor there is any bar to proceed against the O. P. Mr. Neogi, learned Counsel for the O. P., on the other hand, contended that after submission of the first chargesheet, there was no scope for filing a second chargesheet, similar to

that of first one, and there is no scope for reopening of the said order of discharge.

5. Before opening the discussion; and indeed as paving the way for it the chronological events may be summarized as follows: Crime was registered on 26.02.1991, and a chargesheet was submitted on 31.03.93 whereupon cognizance was taken on 02.04.1993. The O.P. /accused was discharged on 28.02.95. The subsequent chargesheet was submitted on 04.07.1996 when cognizance was taken. On the date of consideration of charge on 11.07.2002 accused was discharged by the impugned order.

6. The learned Court below discharged the O.P. mainly on two-fold grounds viz (1) since the O.P./accused was discharged in the earlier two cases i.e. 1/93 and 2/93 on 28.02.95 and no revision was preferred against such order, no fresh chargesheet could be filed on the basis of same fact, sanction order and document and so cognizance taken on the subsequent chargesheet is bad in law and (2) as the accused was discharged in the previous case, proceeding on the basis of second chargesheet amounted to double jeopardy.

7. Now, if the learned Court below was not competent or had no jurisdiction to try the offence, it could not drop the proceeding and discharge the accused which virtually amounted to dismissal of the proceeding though the offences committed did not stand abated nor it meant that the offender would not be tried at all. Again, if the learned Court below had no jurisdiction to try the offence, it had also no jurisdiction to dismiss the complaint, and all that it could do to return the complaint for presentation before the Court of competent jurisdiction or else postpone the case till jurisdiction was conferred upon a competent Court to try the offence. Moreover, offences under the Indian Penal Code were also involved. In this connection, reference may be made to the case of *Sodan K. Bormal* (supra). Furthermore, one of the cardinal principles of procedural law is that a successor Judge cannot sit in appeal or revision over an order passed by his predecessor Judge in the same matter to examine whether cognizance was good or bad in law. Judicial discipline in such a case requires that the party aggrieved with the order of cognizance should move before superior Court for redress. The observation of this Court in the case of *K.R. Chatterjee* (supra) may be relied on.

8. The next question that requires consideration is whether the learned Court below was competent to try the offence. The Special Judges of Calcutta Special Courts were appointed under Sections 2(1) and 2(2) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 for trying the offences under the Prevention of Corruption Act, 1947. Criminal Law Amendment Act, 1952 came into force, Section 6 of which empowered all the State Governments to appoint as many Special Judges as may be necessary for each area or areas specified in the notification for trying offences including the offence under Section 5 of the [Prevention of Corruption Act, 1947](#), but Section 13 of the Criminal Law Amendment (Special Courts) Act, 1949 introduced in 1953 specifically excluded application of the provisions of Sections 5 to 10 of the Criminal Law Amendment Act, 1952 to the State of West Bengal. By Section 30(1) of the [Prevention of Corruption Act, 1988](#), [Prevention of Corruption Act, 1947](#) as also Criminal Law Amendment Act, 1952 were repealed, and by virtue of Sections 3 and 4 of the said Act of 1988, offences under the Act can be tried by a Special Judge appointed under Section 3 of the said Act. Section 30(2) of the said Act of 1988 is the saving clause clearly providing that notwithstanding repeal of the concerned earlier Acts, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, insofar as it is not inconsistent with the provisions of the 1988 Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of 1988 Act. Section 26 of the 1988 Act which deals with 'Special Judges appointed under Act 46 of 1952 to be Special Judges appointed under this Act' provides that every Special Judge appointed under the Criminal Law Amendment Act, 1952 in any area or areas and is holding office on the commencement of this Act shall be deemed to be a Special Judge appointed under Section 3 of this Act for that area or areas and accordingly, on and from such commencement, every Special Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act. Sub-section (2) of Section 26A of the Act of 1988, incorporated by the West Bengal Amendment Act of 1994, conferred validity on the actions of Special Courts appointed even after the Act of 1988 came into effect specifically stipulating therein that the jurisdiction is not limited only to those cases which were actually pending before the Special Judges on the date of coming into

effect of the Act of 1988. It created two fictions viz. (1) that the Special Judges are deemed to have been appointed under Section 3 of the Act of 1988 and (2) all actions are deemed to have been taken by them in accordance with the corresponding provisions of the Act of 1988 as if the West Bengal Amendment Act, 1994 were in force when such actions were taken. Therefore, in view of the above amendment Act of 1994 amending the Act of 1988 inserting Section 26A therein, all actions taken by the Special Courts appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 are validated, as if the West Bengal Amendment Act, 1994 were in force when such action was taken and the said Courts are competent to try offences under the [Prevention of Corruption Act, 1988](#). In this connection, reference may be made to the cases of *Sadan K. Bormal* (supra), *V.A. Bhandak v. State of Karnataka*, reported in 2003 SCC (Cri) 345 and *Sayedul Islam v. CBI* reported in 2001(2) CHN 266. The case of *H.D. Barman* (supra) based on which the order of discharge was passed no longer holds good in view of the said decision. Accordingly, the learned Court below is totally erred in law in holding that the said Court had no jurisdiction and was incompetent to try the offences under the Prevention of Corruption Act.

9. Complaint is the foundation of a criminal proceeding, and cognizance is taken of the offence and not of the offender. The purpose of sanction in respect of offences is merely to afford a reasonable protection to public servant in discharge of official functions and it is necessary to be produced before taking cognizance. So, despite having the jurisdiction when the learned Court below dropped the proceeding resulting in dismissal of the case and discharged the accused, though the offences committed did not stand obliterated nor it meant that the offender would not be tried at all, it gave rise to the necessity for submission of the fresh chargesheet similar to that of the previous one, with same document and sanction order and there appears to be nothing wrong with it in such peculiar circumstances.

10. In regard to the question on double jeopardy, under Article 20(2) of the [Constitution of India](#) no person shall be prosecuted and punished for the same offence more than once. The said Article incorporates within its fold the plea of 'autrefois convict' as known to the British jurisprudence or the plea of 'double jeopardy' as known to American Constitution but circumscribes it by providing that

there should be not only a prosecution but also punishment in the first instance in order to operate as a bar to the second prosecution and punishment for the same offence. Section 300 Cr. PC lays down that a person once convicted or acquitted cannot be tried for the same offence which is based on the maxim *nemo debet bis vexari* thereby meaning that a person cannot be tried a second time for an offence with which he was previously charged. In order to bar the trial of any person already tried, it must be shown that (1) he has been tried by a competent Court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts and (2) he has been convicted or acquitted at the trial. Reference may be made to the cases of S.A. Venkataraman, (supra), L.R. Melwani (supra) and Vijoylakshmi v. Vasudevan, reported in : (1994)4SCC656 . The whole basis of the section is that the first trial should have been before a Court competent to hear and determine the case and to record a verdict of conviction or acquittal. So, if the Court was not competent or lacked jurisdiction, the section has no application. Moreover, there must be a trial of the accused i.e. hearing and determination on merits. In a case exclusively triable by a Court of Sessions, the trial commences after a charge is framed under Section 228, and there is no trial before the charge is framed but an inquiry only. The provisions of the Code upon the question of previous acquittal are different from the principles underlined the English doctrine of *autrefois acquit* in this that the Code makes a clear distinction between 'discharge' and 'acquittal'. Here, though the case was under Sections 420/468/471/477A IPC/13(1)(d) read with Section 13(2) of the [Prevention of Corruption Act, 1988](#), the accused was 'discharged' due to alleged lack of jurisdiction of the Court to try the offence under the Prevention of Corruption Act. In other words, the Court, as it thought, lacked jurisdiction, and there was no 'trial' nor any 'acquittal', and so the question of applying the provision of double jeopardy is out of the way.

11. In the light of the above discussion, the present revisional application be allowed. The impugned order dated 11.07.2002 be set aside.

12. Let a copy of this order along with the LCR be sent down at once to the learned Court below with a direction to proceed with the hearing of the case from the stage of framing of charge and to dispose of the same as expeditiously as

possible preferably within a period of six months for the date of communication of the order without granting unnecessary adjournment to either of the parties.

13. Interim order, if any, stands vacated.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible.

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