

K.B. Debnath Vs. the State

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Court : Kolkata

Decided On : Feb-12-1976

Reported in : 1976CriLJ1869

Judge : P.C. Borooah and ;H.N. Sen, JJ.

Appellant : K.B. Debnath

Respondent : The State

Advocate for Pet/Ap. : Mr. Dutta

Judgement :

H.N. Sen, J.

1. The Rule obtained by the accused petitioner is directed against an order dated December 16, 1974 passed by Shri C. Samaddar, Fifth Additional Special Judge, Calcutta rejecting the prayer of the accused petitioner for copies of the statement of witnesses and documents.

2. The petitioner, who was the Manager of Employees' State Insurance Corporation having its office at 61, Diamond Harbour Road, Calcutta, was arrested by C.B.I., S.P.E., Division Calcutta on 9-7-73 in connection with case No. C.B.I./S.P.E. R.C. No. 49/72 under Sections 120-B/409, 420, 419, 467, 407, Indian Penal Code and was produced before the Sub-divisional Judicial Magistrate, Ali-

pore, 24 Parganas but was released on bail.

3. Upon a police report filed by one Shri D. Bagchi, D.S.P., C.B.I., S.P.E. Calcutta through Shri K. L. Varma, Public Prosecutor, the learned Judge on the basis of the allotment order received prior thereto, took cognisance of the offence under Sections 409/120-B of the Indian Penal Code and under Section 5 (2) of the Prevention of Corruption Act, 1947 against all the accused persons including the accused petitioner and summoned the accused including the petitioner. The petitioner entered appearance and filed a petition on 16-12-74 before the learned Judge, Special Court asking for copies of the statements of witnesses and documents on which the Prosecution wanted to rely under Section 251-A of the Code of Criminal Procedure, 1898. The learned Judge rejected the said prayer holding that the case will not proceed under Section 251-A of the Code of Criminal Procedure, 1898 but under Section 244 and subsequent sections of Chapter XIX of the Code of Criminal Procedure, 1973 which are the corresponding sections of Section 252 onwards of the Code of Criminal Procedure, 1898.

4. Mr. Someraj Dutta, learned Advocate appearing for the petitioner has urged before us that the order of the learned Judge was wrong and erroneous and should be set aside inasmuch as after incorporation of Section 7-A in Act II of 1947 as amended by the Anti-Corruption Laws Amendment Act, 1964 (Act 40 of 1964), the procedure to be followed would be the procedure laid down in Section 251-A of the Code of Criminal Procedure, 1898 and as such, the learned Judge ought to have granted the prayer made by the petitioner for copies. It was further submitted that the provisions laid down in the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 being inconsistent with the Provisions laid down in Prevention of Corruption Act, 1947 will be impliedly repealed and should be treated as void under Article 254(2) of the Constitution of India. Mr. Manas Ranjan Chakravarty, learned Advocate appearing for the State, however, supported the impugned order passed by the learned Special Judge and has submitted before us that there was no conflict between the provisions laid down in the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and the provision laid down in Section 7-A of the Prevention of Corruption Act, 1947 as amended.

5. Mr. Someraj Dutta, learned Advocate appearing for the petitioner did not dispute that the case was triable before the Special Court. The offence charged against the accused petitioner was an offence under Section 409/120-B of the Indian Penal Code and also under Section 5 (2) of the Prevention of Corruption Act, 1947. The schedule to the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 indicated that all such offences charged against the petitioner were offences triable by the Special Judge under the Schedule. Even if it were not so, trial of any other offence with any scheduled offence was permissible under Section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. Section 5 of the above Act laid down specifically that no matter whether cognizance is taken under Clause (a) or under Clause (b) of Sub-section (1) of Section 190 of the Code of Criminal Procedure, 1898, the trial of the accused persons should be under the procedure laid down for trial of warrant cases by Magistrates instituted otherwise than on a police report. In other words, the procedure laid down in Section 5 of the above Act, specifically declares that the trial should proceed under the Warrant procedure as laid down in Section 252 onwards of the Code of Criminal Procedure, 1898 and the corresponding sections of the new Code are Section 244 onwards. The West Bengal Criminal Law Amendment (Special Courts) Act, 1949 thus prescribes the procedure to be followed by Special Judge in respect of offences under the Schedule thereto and was a complete Code in itself to that extent. Even though an offence under Section 5 made punishable under Section 5 (2) of the Prevention of Corruption Act, 1947 was made a scheduled offence, Section 10 provided that the provision of the Prevention of Corruption Act, 1947 was applicable to trial under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. The object of incorporating such a provision in Section 10 was obviously to avail of the benefit of presumption under Section 4 of the Prevention of Corruption Act, 1947 after complying with the mandatory requirements as to investigation and sanction necessary for such prosecution.

6. Mr. Someraj Dutta drew our attention to Section 7-A of the Prevention of Corruption Act, 1947 which was inserted by Act 40 of 1964 and on the basis thereof he urged before us that Section 251-A of the Code of Criminal Procedure, 1898 would be the procedure which should be followed when the trial is for any

offence under Section 5 of the Prevention of Corruption Act, 1947 and being so, there was a conflict between the Prevention of Corruption Act - a Central Act and the provision laid down in Section 5 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 which was a State Act and as the cases covered the same field, the Central Act would prevail and the provision laid down in the State Act would be impliedly repealed and must be treated as void and inoperative.

7. We are unable to accept the above contentions put forward before us by Mr. Dutta learned Advocate appearing for the petitioner. The Prevention of Corruption Act does not appear to be a complete Code in itself. It merely provided how an offence under Section 165-A of the Penal Code is to be treated as a cognisable offence for the purpose of the Code of Criminal Procedure, 1898 notwithstanding anything contrary contained therein. Then it provided a special procedure for the purpose of investigation notwithstanding anything contained in the Code of Criminal Procedure, 1898.

8. The Central Act thus merely provided how cognisance of the offence is to be taken and how the investigation under the Act is to be made. The procedure to be followed for any offence under Section 5 of the Act has not been laid down specifically in any part of the Act itself. Since the offence under Section 5 of the Prevention of Corruption Act has been made a scheduled offence in the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and the procedure laid down in Section 8 of the said Act would be the procedure to be followed in respect of such offence even under the Prevention of Corruption Act, 1947 there is no question of superseding the said provision by incorporation of Section 7-A of the Prevention of Corruption Act, 1947. Section 7-A of the Prevention of Corruption Act (Act II of 1947) as amended, reads as follows:

7-A. The provisions of the Code of Criminal Procedure, 1898 shall, in their application to any proceeding, in relation to an offence punishable under Section 161, Section 165 or Section 165-A of the Indian Penal Code or under Section 5 of this Act have effect as if-

(a) In Sub-section (8) of Section 251-A, for the words 'The accused shall then be called upon,' the words 'The accused shall then be required to give in writing at

once or within such time as the Magistrate may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely, and he shall then be called upon' had been substituted.

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9. It would appear from the language of the section that there would be a limited application of Section 251-A of the Code of Criminal Procedure, 1898 and that subject to the modification as specified in the section itself. If there is no question of applying the provisions of Section 251-A of the Code of Criminal Procedure, 1898 in any given case, there would be no question of application of Section 7-A of the Prevention of Corruption Act, 1947 at all. That being so, we are of the view that there is no question of any conflict between the Central Act and the State Act in regard to the procedure to be followed in respect of offences detailed in the schedule to the State Act. In other words, there is no question of any implied repeal of Section 5 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 by incorporation of Section 7-A of the Prevention of Corruption Act, 1947 since amended. Thus any offence under Section 5 of the Prevention of Corruption Act may very well co-exist along with any offence specified in the schedule to the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and on that score, there is even no question of Section 5 of the Prevention of Corruption Act impliedly repealing the provision of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. Such being the position, it is clear that in the application of Section 5 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 the procedure to be followed is that as laid down in Section 252 of the old Code onwards and the corresponding Sections of the new Code are Section 244 onwards. Since there is no scope for application of Section 251-A of the old Code except for the limited contingency indicated in Section 7-A of the Prevention of Corruption Act, 1947, the petitioner was not entitled to obtain copies of the statements of witnesses and the documents upon which the Prosecution sought to rely and the refusal of the said prayer by the learned Judge was just and proper.

10. The Rule is accordingly discharged.

11. Let the records be transmitted forthwith.

P.C. Borooah, J.

12. I agree.

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