

YasIn K. Shaikh Vs. State (Through C.B.i., Bambolim, Goa) Through P.P.

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Court : Mumbai Goa

Decided On : Oct-08-2012

Judge : A.P. Lavande

Appeal No. : Criminal Revision Application No.14 of 2012

Appellant : YasIn K. Shaikh

Respondent : State (Through C.B.i., Bambolim, Goa) Through P.P.

Judgement :

Oral Judgment:

Heard Mr. Arun Bras De Sa, learned Advocate for the petitioner and Mr. J. Vaz, learned Special Public Prosecutor for the respondent.

2. Rule. By consent heard forthwith.

3. By this revision application, the petitioner takes exception to the order dated 26.8.2011 passed by the Special Judge, North Goa, Panaji in Special Case No.7/2009 to the extent learned Special Judge framed charge against the petitioner under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ('the Act' for short).

4. The chargesheet was filed by CBI against the petitioner and two other accused who were working as Senior Manager and Officer of Canara Bank, Ponda Goa

before the Special Judge for the commission of offences punishable under Section 120-B, read with Sections 420, 468 and 471 of I.P.C. and under Section 13(2) read with Section 13(1)(d) of the Act.

5. Learned Special Judge after hearing learned counsel for the accused and learned Special Public Prosecutor ordered framing of charge against all the accused under Section 120-B, read with Sections 420, 468 and 471 of I.P.C. and under Section 13(2) read with Section 13(1)(d) of the Act.

6. The limited grievance made by the petitioner in this revision application is that the petitioner not being a public servant could not have been charged for the substantive offences under the Act which can be only committed by the public servant.

7. This position has been fairly conceded by Mr. Vaz, learned Special Public Prosecutor appearing for the respondent. Mr. Vaz further submitted that the petitioner herein is liable to be charged under Section 13(2) read with Section 13(1)(d) of the Act with the aid of Section 109 of the I.P.C. inasmuch as materials on record clearly disclose that the petitioner after entering into conspiracy with other two accused, abetted commission of offences by accused nos. 1 and 2 under the Act.

8. I find merit in the submission of Mr. Vaz.

9. In view of the above, the order framing charge dated 26.8.2011 passed by Special Judge, North Goa, Panaji to the extent it frames charge against the petitioner under Section 13(2) read with Section 13(1)(d) of the Act is set aside and the petitioner herein stands charged under Section 13(2) read with Section 13(1)(d) of the Act read with Section 109 of the I.P.C. The charge under Sections 120B read with Sections 420, 468 and 471 of I.P.C. stands.

10. I have been informed that the trial has already begun but notwithstanding commencement of the trial, there is no bar for learned Special Judge to frame fresh charge only against the petitioner herein. Accordingly, learned Special Judge to frame fresh charge against the petitioner herein in the light of the observations

made herein. It is made clear that the charge already framed against accused nos.1 and 2 shall stand. Liberty to the petitioner herein to recall any of the witnesses already examined after framing of the fresh charge, if he so desires.

11. Revision Application stands disposed of.

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