

CASE NO.:  
Appeal (crl.) 981 of 2001

PETITIONER:  
SATYA NARAYAN SHARMA

Vs.

RESPONDENT:  
STATE OF RAJASTHAN

DATE OF JUDGMENT: 25/09/2001

BENCH:  
S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

Heard parties.

This Appeal is against an Order dated 25th April, 2001. By this Order a Criminal Miscellaneous Petition, under Section 482 of the Criminal Procedure Code, for quashing an Order dated 8th July, 1994 passed by a Special Judge constituted under the Prevention of Corruption Act (hereinafter called the said Act) has been dismissed.

On 8th July, 1984 the Trial Court took cognizance against the Appellant for offences punishable under Sections 420, 467, 468 and 471 of the I.P.C. and Section 5(2) of the said Act. The Appellant then approached the High Court with Miscellaneous Petition No. 578 of 1984 and got a stay of the trial. Having obtained a stay of the trial the Miscellaneous Petition was got adjourned. from time to time. By this method the Appellant has successfully delayed trial for 7 years.

We find that what has happened in this case is happening in a large number of matters. Corruption in public offices is becoming rampant. When public servants are sought to be prosecuted under the said Act, by filing revisions under Section 397 Criminal Procedure Code or by filing petitions under Section 482 Criminal Procedure Code, stay of the trials are obtained and parties successfully manage to delay the trials. The stays are granted by Courts without considering and/or in contravention of Section 19(3)(c) of the said Act. This has an adverse effect on combating corruption amongst public servants. It has therefore become necessary to reiterate the law. We have thus heard this Petition only on the question of law as to whether or not trials under the Prevention of Corruption Act could be stayed.

Mr. Shishodia submitted that by virtue of Section 27 of the said Act, the High Court can exercise all the powers of appeal and revision under the Criminal Procedure Code as if the Court of the Special Judge were a Court of Sessions. He further submitted that Sections 22 and 23 of the said Act make it clear that the Criminal Procedure Code would apply to proceedings before the Special Judge in relation to an offence punishable under the said Act.

Mr. Shishodia submitted that the inherent jurisdiction of the High

Court under Section 482 of the Criminal Procedure Code was distinct from its revisional jurisdiction. He submitted that the Special Court (under the said Act) was subordinate to the High Court. He submitted that the inherent power, vested in a High Court was not circumvented by the limitations which are there whilst exercising revisional powers. He submitted that the power to pass an interim order, like a stay order, was part of the inherent power of the Court. He submitted that this must necessarily be so as otherwise the Court could not effectively exercise the jurisdiction vested in it.

In support of this last submission, he relied upon the case of Income Tax Officer vs. M.K. Mohammed Kunhi, 1969 (2) S.C.R. 65. This was a case under the Income Tax Act. Certain amounts were imposed as penalty upon the assessee for concealment of income and for furnishing inaccurate particulars. The assessee preferred appeals and prayed for stay of recovery of the penalties. The Tribunal declined to grant stay on the ground that it had no power to do so. The High Court held that the Tribunal had the inherent power to stay and directed the Tribunal to dispose of the application for stay in accordance with law. In appeal by the Income Tax Officer, this Court confirmed the findings of the High Court that the Tribunal had power to stay recovery. This Court held that the power of stay was incidental to the appellate jurisdiction of the Court. It must immediately be noted that there was no statutory provision barring grant of stay.

Mr. Shishodia further submitted that both the High Courts and this Court have time and again exercised inherent jurisdiction under Section 482 Criminal Procedure Code to quash proceedings even under the said Act. He submitted that it takes a number of years for matters to reach hearing. He submitted that it was absolutely necessary that, during the pendency of such proceedings, there should be a stay of the trial. He submitted that otherwise there would be an anomalous position inasmuch as the trial may conclude before the High Court has examined the legality of the charge itself.

Mr. Shishodia next submitted that the expression "no court" in Section 19 of the said Act would not include the High Court. He submitted that it only apply to a Court which had revisional jurisdiction over the Special Court. He submitted that many of the Judges of the Special Court were Assistant Sessions Judges. He submitted that the revisional power would thus be exercised by the Sessions Court.

Mr. Shishodia next submitted that Section 19(3)(c) applies only to the revisional powers as exercised under Section 397 Criminal Procedure Code and not to the inherent jurisdiction, which a High Court exercises under Section 482 Criminal Procedure Code.

On the other hand the learned Solicitor General points out the Statement of Objects and Reasons of the Prevention of Corruption Act, 1988. The relevant portion of the Statement of Objects and Reasons of the Prevention of Corruption Act, 1988 reads as follows :

"2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Act seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The Act inter alia, envisages widening the scope of the definition of the expression "public servant", incorporation of

offences under sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of a revision on interlocutory orders have also been included." (emphasis supplied)

The learned Solicitor General Salve submitted that inherent jurisdiction of a Court could not be exercised if there was a specific provision for redressal of the grievances of the aggrieved party or against an express bar of law engrafted in any other provision. He further submitted that inherent jurisdiction had to be very sparingly exercised only to prevent abuse of process of any Court or to secure the ends of justice. In support of this submission he relied upon the cases of Madhu Limaye vs. The State of Maharashtra reported in 1977 (4) S.C.C. 551, Janata Deal vs. H.S. Chowdhary & others reported in 1992 (4) S.C.C. 305 and Indra Sawhney vs. Union of India and others reported in 2000 (1) S.C.C. 168. We have heard the parties. Section 19(3)(c) of the said Act reads as follows :

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

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(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

It is thus to be seen that this Section provides:

(a) that no court should stay the proceedings under the Act on any ground and

(b) that no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. To be noted that (b) above is identical to Section 397(2) of the Criminal Procedure Code which deals with revisional power of the Court. If Section 19 was only to deal with revisional powers then the portion set out in (b) above, would have been sufficient. The legislature has, therefore, by adding the words no court shall stay the proceedings under this Act on any other ground clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a Court is exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code. There is another reason also why the submission that, Section 19 of the Prevention of Corruption would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words Notwithstanding anything contained in the Code. Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of Madhu Limaye vs. The State of Maharashtra reported in 1977 (4) S.C.C. 551, Janata Deal vs. H.S. Chowdhary & others, reported in 1992 (4) S.C.C. 305 and Indra Sawhney vs. Union of India and others reported in 2000 (1) S.C.C. 168, the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law. We see no substance in the submission that Section 19 would not

apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.

Thus in cases under the Prevention of Corruption Act there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned Court to expedite the hearing of that petition. However merely because the concerned Court is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.

In this Appeal we see no reason to interfere with the impugned Order. The Appeal stands dismissed. We clarify that merits of the case have not been argued before us. We are thus not expressing any opinion on the merits of the case.

As the trial has already been delayed, we direct that now the trial be taken up for hearing on a day to day basis and the same be concluded within a period of 6 months from today.

It has been brought to our attention that in a large number of cases stays have been granted by the High Courts in matters under the Prevention of Corruption Act, even though there is a specific bar against the grant of any stay. We therefore direct the Registrars of all the High Courts to list all cases in which such stay is granted before the Court concerned so that appropriate action can be taken by that Court in the light of this decision. The Registrar of this Court is directed to send a copy of this order to the Registrars of all the High Courts.

There shall be no Order as to costs.

J.  
(S. N. VARIAVA)

September 25, 2001.