

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

PETITIONER:
SATYA NARAYAN SHARMA

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 25/09/2001

BENCH:
K.T. Thomas

JUDGMENT:

THOMAS, J.

I am in respectful agreement with the judgment drafted by brother Variava J. When Parliament imposed an undiluted ban against granting stay of any proceedings involving an offence under Prevention of Corruption Act 1988 (for short the Act) on any ground whatsoever, no court shall circumvent the said ban through any means. The reasons which prompted the Parliament to divest all the courts in India of the power to stay the proceedings in the trial courts involving any such offence, is to foreclose even the possible chance of delaying such trials on account of any party to such proceedings raising any question before the High Court during the pendency of trial proceedings.

In the Objects and Reasons for bringing the Act with new measures the law-makers declared it in abundantly clear terms that a provision prohibiting the grant of stay is included in the statute for speeding up the proceedings. This can be discerned from the following words:

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 revision on interlocutory orders have also been included.

The prohibition is couched in a language admitting of no exception whatsoever, which is clear from the provision itself. The prohibition is incorporated in sub-section (3) of Section 19 of the Act. The sub-section consists of three clauses. For all the three clauses the controlling non-obstante words are set out in the commencing portion as:

Notwithstanding anything contained in the Code of Criminal procedure 1973.

Hence none of the provisions in the Code could be invoked for circumventing any one of the bans enumerated in the sub-section.

Clause (a) of the sub-section prohibits reversal or alteration of any finding or sentence or order passed by a Special Judge on the ground of absence of, or any error, omission or irregularity in the sanction required for taking cognizance of an offence punishable in the Act, unless in the opinion of the appellate or revisional court a failure of justice has in fact occasioned thereby.

Clause (b) contains the prohibition against stay of proceedings under this Act, but it is restricted to sanction aspect alone. No error, omission or irregularity in the sanction shall be a ground for staying the proceedings under this Act unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice. In determining whether there was any such failure of justice it is mandated that the court shall have regard to the fact whether the objection regarding that aspect could or should have been raised at any earlier stage in the proceedings. We may now point out that merely because objection regarding sanction was raised at the early stage is not a ground for holding that there was failure of justice. If the special judge has overruled the objection raised regarding that aspect it is normally inconceivable that there could be any failure of justice even if such objections were to be upheld by the High Court. Overruling an objection on the ground of sanction does not end the case detrimentally to the accused. It only equips a judicial forum to examine the allegations against a public servant judicially. Hence it is an uphill task to show that discountenance of any objection regarding sanction has resulted in a failure of justice. The corollary of it is this: The High Court would not normally grant stay on that ground either.

It is in clause (c) of the sub-section that the prohibition is couched in unexceptional terms. It reads thus:

No court shall stay the proceedings under this Act on any other ground.

The mere fact that yet another prohibition was also tagged with the above does not mean that the legislative ban contained in clause (c) is restricted only to a situation when the High Court exercises powers of revision. It would be a misinterpretation of the enactment if a court reads into clause (c) of Section 19(3) a power to grant stay in exercise of inherent powers of the High Court.

We are informed that several High Courts, overlooking the said ban, are granting stay of proceedings involving offences under the Act pending before courts of Special Judges. This might be on account of a possible chance of missing the legislative ban contained in clause (c) of sub-section (3) of Section 19 of the Act because the title to Section 19 is previous sanction necessary for prosecution. It could have been more advisable if the prohibition contained in sub-section (3) has been included in a separate Section by providing a separate distinct title. Be that as it may, that is no ground for by-passing

the legislative prohibition contained in the sub-section.

I fully concur with the direction indicated by Variava J. in the judgment that the Registrar of each High Court shall list the cases in which such stay was granted by orders happened to be passed by such High Court and to board all such cases before the appropriate bench without further delay. This is to enable the High Court concerned to dispose of such matters in the light of this judgment.

J

[K.T. Thomas]

September 25, 2001.

JUDIS