SUPREME COURT OF INDIA

Union of India

Vs.

I. C. Lala

Crl.A.Nos.161-163 of 1970

(A. Alagiriswami, I. D. Dua and C. A. Vaidialingam, JJ.)

29.03.1973

JUDGEMENT

ALAGIRISWAMI, J.:-

1. Two of the appellants, Major Lala and Lt. Col. Khanna are Army Officers and the appellant in the 3rd appeal, Gupta is a businessman of Gauhati. All of them were put up for trial before the Special Judge appointed under the Criminal Law Amendment Act. 1952. One charge which was common to all the three of them was that between June, 1962 and January, 1963 all of them agree to commit or cause to be committed offences under Section 5 (2) of the Prevention of Corruption Act, and of cheating punishable under Section 420 of the Indian Penal Code, and these offences been committed in pursuance of a conspiracy were punishable under Section 120-B of the Indian Penal Code read with Section 5 (2) of the Prevention of Corruption Act and Section 420, I.P.C. Mr. Gupta, the businessman was charged under Section 420, I.P.C., as well as Section 511 read with Section 420, I.P.C. The two Army Officers were also charged with offences under Section 420 read with Section 5 (1) (d) of the Prevention of Corruption Act.

2. The case was filed before the Special Judge on 28-6-1963 and the charge was framed on 13-3-65 After about 18 out of the 52 witnesses cited by the prosecution had been examined the three respondents filed petitions under Section 561-A read with Section 439 of Code of Criminal Procedure before the High Court of Assam and Nagaland on 28-3-68, 1-4-68 and 10-4-68 respectively for quashing the charges A learned Single Judge allowed these petitions on 23-5-1969 and quashed the charges and the proceedings before the learned Special Judge. He did this on three grounds:

(1) that the officer who investigated the case was not competent to do so :

(2) that the offences that were being tried were non-cognizable and the Special Judge could not have taken cognizance of them without sanction under Section 196-A of the Code of Criminal Procedure and

(3) that in view of the enormous length of time between 2-2-63, the date on which the case was registered and 1-4-68, upto which date some witnesses had been examined, the last witness having been examined on 15-11-67, it entailed undue harassment to the accused persons and the proceedings have to be quashed to prevent further harassment, abuse of the process of the court and vexation to the accused persons.

These three appeals have, therefore, been filed by the Union of India by certificate granted by the High Court.

3. We shall first of all deal with the question whether the officer who investigated into these cases was not properly authorized to do so. The officer was an Inspector of the Delhi Special Police Establishment. Under Section 5-A of the Prevention of Corruption Act, before it was amended in 1964, no officer below the rank of the Deputy Superintendent of Police could investigate into offences punishable under Sections 161, 165 and l65-A of the Indian Penal Code or under Section 5 of the Prevention of Corruption Act without the order of a Presidency Magistrate or a Magistrate of the First Class. In this case the Inspector concerned had obtained the order of the First Class Magistrate of Tezpur. The argument before the High Court, which was accepted by the learned Judge, was that as the offences of conspiracy were alleged to have been committed both at Tezpur as well as at Gauhati the investigation based on the order of the Tezpur Magistrate alone was not a proper one. In other words, the argument was that unless the Inspector had been authorized to investigate not only by the First Class Magistrate of Tezpur but also by the First Class Magistrate of Gauhati district he could not have done so. The learned Judge referred to and relied upon the decision in Chinnappa v. State of Mysore. AIR 1960 Mys 242. It was decided in that case that any First Class Magistrate appointed in a district can issue orders under Section 5-A of the Prevention of Corruption Act for investigation of a case. From this the learned Single Judge drew the conclusion that in respect of an offence said to have been committed at Gauhati as well as at Tezpur the order

of the Tezpur Magistrate was not enough. He also relied upon the decision of the High Court of Assam and Nagaland in Chatterjee v. Delhi Special Police Establishment, Assam LR (1969) Assam 242. This decision has been upheld by this Court in Union of India v B. N. Ananthapadmanabhiah. AIR 1971 SC 1836. But that was a case of a Delhi Magistrate sanctioning an investigation of offences committed in Assam and it was held that such an order was not valid. That decision is no authority for the proposition that where an offence is committed in more than one place the order of every Magistrate within whose jurisdiction the offence or part of the offence was committed was necessary in order to enable the investigation to be carried on. All that is necessary is that the Magistrate who makes the order under Section 5-A should have territorial jurisdiction over the place where any part of the ingredients of the offence took place. That criterion is amply satisfied in this case. On principle also such a contention seems to he devoid of any substance. The offence of conspiracy or for that matter any other offence might consist of a series of acts and incidents spread over the whole country. Very often one conspirator or one of the offenders might not have even met the other conspirator or offender. To accept this contention would be to hold that the Police should go to every Magistrate within whose jurisdiction some part of the conspiracy or one of the ingredients of the offence has taken place. We have no hesitation in rejecting it.

4. He also seemed to have had some doubt as to whether the order of the Magistrate of Tezpur produced before him was a genuine one. To say the least, the attitude of the learned Judge is most surprising. To put it in his own words :

"It does not appear that any order of a Magistrate form part of the record. But at the time of hearing, such an order was placed before me on behalf of the

Prosecution. The application on which the order is said to have been passed by the Magistrate appears to have been addressed to the Court of the Magistrate first class at Tezpur, wherein it was stated that for pre-occupation of the Deputy Superintendent of Police, the investigation was sought to be made by an Inspector of Police. The petition is unnumbered, undated. What appears curious is that although the application was made before a Magistrate of the first class, the order passed is supported by a seal of the District Magistrate Darrang. The order of the Magistrate runs as follows :

"Paper and F. I. R. seen. Shri H. B. D. Baijal, Inspector is permitted to investigate the case."

There is an illegible signature with date 4-2-1963 and below the signature the official designation has not been stated. It appears that no order-sheet of the Magistrate has been produced in this regard and in above circumstances it cannot be unequivocally said that this document was obtained in due course of business in compliance with Section 5-A of the Prevention of Corruption Act. Even assuming that the order is free from doubt, learned counsel appearing for the petitioners has urged before me that since the venue of the offences has been clearly stated in the charge, the permission given by the Magistrate for investigation of the offences at Gauhati (Tezpur ?) is not valid."

If he had any doubts about the genuineness of the order of sanction it was his duty to have gone into the matter thoroughly and satisfied himself whether the order was genuine or not. It was his duty to have given a categorical finding regarding the matter. There should have been no room allowed for any doubt or suspicion of any underhand dealing and unfair conduct in a matter of this kind. It was even alleged on behalf of the respondents that an order was produced for the first time before the learned Judge and it was taken back by the prosecution. If that was so it proves a woeful lack of care on the part of the learned Judge. He should have retained the order on file and called for the necessary records and information in order to find out whether the order was a genuine one or not. We have before us the order of the Superintendent of the Special Police Establishment dated 2-2-1963 entrusting the investigation to Inspector Baijal and directing him to obtain the necessary permission from a competent Magistrate for doing so. We have also been shown the papers relating to the prosecution, papers given to the accused under Section 173 of the Code of Criminal Procedure. Item 71 of those papers relates to the order of sanction dated 4-2-1963 given by the Magistrate of Tezpur authorizing the Inspector of the S. P. E. to investigate. Thus, there is no doubt at all that Inspector Baijal had been authorized to investigate into this case. It only shows rather superficial way the learned Judge chose to deal with this matter.

5. The next question is whether offences under Sections 161. 165 end 165-A of the Indian Penal Code and Section 5 (2) of the Prevention of Corruption Act are cognizable or non-cognizable offences. This becomes important for the purpose of deciding whether a sanction under Section 196-A is necessary. The sanction necessary under Section 6 of the Prevention of Corruption Act and Section 197 of the Code of Criminal Procedure has been accorded by the Government of India. What was contended by the respondents before the High Court and was accepted by that Court was that these offences being non-cognisable offences a sanction under Section 196-A (2) is necessary and that prosecution without such sanction is bad. Cognizable offence is defined in Section 4 (1) (f) of the Code of Criminal Procedure as an offence for which a police officer, within or without the presidency towns, may in accordance with the second schedule, or under any law for the time being in force arrest without warrant. The argument which appealed to the learned Judge of the High Court was that as under Section 5-A of the Prevention of Corruption Act no officer below the rank of Deputy Superintendent of Police could investigate or make any arrest without a warrant in respect of offences punishable under Sections 161, 165 and 165-A, I. P. C. and Section 5 of the Prevention of Corruption Act, they were not offences for which any police officer can arrest without warrant and therefore, they are not cognizable offences. The same argument was repeated before this Court by Mr. Tarkunde emphasising that "a police officer" means "any police officer" and as any police officer cannot, under Section 5-A of the Prevention of Corruption Act, arrest without warrant but only officers of and above the rank of Dy. Superintendent the offences mentioned in that section are non-cognizable offences. If we pursue the same line of argument and look at the definition of non-cognizable offence in Section 4 (1) (a) which defines non-cognizable offence as an offence for which a police officer within or without a presidency-town may not arrest without warrant it might mean that as these are cases where a police officer of the rank of Dy. Superintendent and above can arrest without warrant these are not non-cognizable offences either. How can there be a case which is neither cognizable nor non-cognizable? It was sought to be argued that these offences would be cognizable offences when they are investigated by the Deputy Superintendents of Police and superior officers and non-cognizable when they are investigated by officers below the rank of Deputy Superintendents. We fail to see how an offence would be

cognizable in certain circumstances and non-cognizable in certain other circumstances. The logical consequences of accepting this argument would be that if the offences are investigated by Deputy Superintendents of Police and superior officers no sanction under Section 196-A (2) would be necessary but sanction would be necessary if they are investigated by officers below the rank of Deputy Superintendents of Police. One supposes the argument also implies that the fact that an officer below the rank of a Deputy Superintendent is authorized by a Magistrate under the provisions of Section 5-A would not make any difference to this situation. We do not consider that this is a reasonable interpretation to place.

6. Under Schedule II of the Code of Criminal Procedure offences under Sections 161 to 165 of the Indian Penal Code are shown as cognizable offences. At the end of that Schedule offences punishable with death, imprisonment for life or imprisonment for 7 years and upwards are also shown as cognizable offences. Under Section 5 (2) of the Prevention of Corruption Act the sentence may extend to seven Years. Therefore, an offence under S. 5 of the Prevention of Corruption Act is according to the provision in Sch II to the Code of Criminal Procedure a cognizable offence. Therefore, the mere fact that under the Prevention of Corruption Act certain restrictions are placed as to the officers who are competent to investigate into offences mentioned in Section 5-A would not make those offences any the less cognizable offences. The words "notwithstanding anything contained in the Code of Criminal Procedure', found at the beginning of Section 5-A (1) merely carve out a limited exemption from the provisions of the Code of Criminal Procedure in so far as they limit the class of persons who are competent to investigate into offences mentioned in the section and to arrest without a warrant. It does not mean that the whole of the Code of Criminal Procedure including Schedule II thereof, is made inapplicable. Under Section 5 of the Code of Criminal Procedure all offences under the Indian Penal Code shall be investigated a inquired into, tried, and otherwise dealt with according to the provisions therein contained. Also all offences under any other law (which would include the Prevention of Corruption Act) shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 5-A of the Prevention of Corruption Act should be related to this provision in Section 5 (2) of the Code of Criminal Procedure, which limits the application of the provisions of that Code to be subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The only change which Section 5-A of the Prevention of Corruption Act makes is with regard to officers competent to investigate and arrest without warrant in all other respects the Code of Criminal Procedure applies and, therefore, there is no doubt that all offences mentioned in Section 5-A of the Prevention of Corruption Act are cognizable offences.

7. The Assam High Court seems to have taken a line of its own in this matter, In G. K. Apte v. Union of India. AIR 1970 Assam and Nagaland 43 curiously enough the Bench of which the learned Judge who dealt with this case was a member, took the view that though an offence under Section 161 is a cognizable offence, if investigations were made under Section 156 of the Code of Criminal Procedure there would be no need for a sanction under Section 196-A of the Code of Criminal Procedure, and there can be a conviction under Section 161 of the Indian Penal Code but if the investigation is made under Section 5-A of the Prevention of Corruption Act it will be an investigation into a non-cognizable offence and there should be a sanction under Section 196-A for

the trial following such investigation. For this conclusion the decision of this Court in H. N. Rishbud v. State of Delhi. AIR 1955 SC 196 was relied upon. We con see nothing in that case to support this conclusion. Nor are we able to see how if the investigation into an offence of misconduct punishable under Section 5 (2) is done by a police officer of high rank the offence is cognizable and if investigated by an officer of a lower rank it is non-cognizable. That cannot be a proper criterion for deciding whether an offence is cognizable or non-cognizable. Unless there are clear and compelling reasons to hold otherwise the division of offences given in the Code of Criminal Procedure as cognizable and non-cognizable should be given effect to. When the same Code makes sanction under Section 196-A necessary for trial of non-cognizable offences it clearly contemplates non-cognizable offences as defined in the Code. There is no justification for relying upon extraneous considerations end far-fetched reasoning in order to get over the effect of these provisions.

8. We may now refer to certain decisions of various High Courts on this point. In Taj Khan v. State, AIR 1956 Raj 37 it was held:

"The fact that the power to investigate or to arrest without warrant has been circumscribed by certain conditions (which conditions were clearly provided for the purpose of safeguarding public servants from harassment at the hands of subordinate police officers) under the proviso to Section 3 of the said Act cannot lead to the conclusion that such offence is non-cognizable."

In Ram Rijhumal v. State. AIR 1958 Bom 125 it was held:

"The provisions of Section 3, Prevention of Corruption Act can only have one meaning; and the meaning is that an offence under Section 165-A of the Penal Code has to be deemed to be a cognizable offence for the purpose of the Code of Criminal Procedure. It is only because the Legislature enacted Section 5-A of the Prevention of Corruption Act that, so far as the Presidency town of Bombay was concerned, no police officer below the rank of a Superintendent of Police could in the case of an offence under Section 165-A of the Penal Code investigate it without the order of a Presidency Magistrate. There is nothing in the language of Section 5-A which would suggest that an offence under Section 165-A of the Penal Code is not to be treated as a cognizable offence."

In Gulabsingh v. State AIR 1962 Bom 263 it was held that:

"Offence under Section 161, I. P. C. is a cognizable offence. Its nature is not affected by either Section 3 or Section 5-A of the Prevention of Corruption Act. The requirement that in a cognizable offence, a police officer should be able to arrest without warrant, is without any limitation and

Section 5-A cannot be split up to mean that an offence can be cognizable in reference to one officer and not in reference to another."

The learned Judges specifically dissented from the decision in Union of India v. Mahesh Chandra. AIR 1957 Madh B 43. In Public Prosecutor v. Shaik Sheriff, AIR 1965 Andh Pra 372 it was held "that these offences cannot be treated as non-cognizable offences when investigated by an officer below the rank of Deputy Superintendent of Police simply on the ground that such investigation cannot be done without the order of a Presidency Magistrate or a Magistrate of the First Class. In the same way offences under Section 5 of the Act cannot be treated as non-cognizable even when investigated by a low rank officer. Thus, the provision in Section 5-A is of the nature of a special provision which applies to offences specified therein which are cognizable offences including those under Section 5 under all circumstances." They also referred to the decision in AIR 1957 Madh B 43 (supra) to the effect "that an offence under Section 161, I. P. C. and under sub-section (2) of Section 5, Prevention of Corruption Act is cognizable so far as officers of the rank of a Deputy Superintendent of Police and above are concerned, but so far as the officers below the rank of Deputy Superintendent of Police are concerned the said offences are non-cognizable in so far as they cannot investigate them without the permission of a Magistrate of the First Class" and held that:

"the learned Judges only intended to emphasise the provision in Section 5-A and chose to refer to it as a non-cognizable aspect of the offences comprised in the Act and to describe that aspect also as non-cognizable for the limited purpose of the provision in Section 5-A."

Thus the preponderance of opinion of the various High Courts is in favour of the view we are taking.

9. We are, therefore, clearly of opinion that the offences under Sections 161. 165 and 165-A of the Indian Penal Code and Section 5 of the Prevention of Corruption Act are cognizable offences and there is no question of their being cognizable if investigated by a Deputy Superintendent of Police and non-cognizable when investigated by an Inspector of Police. Nor can there be any question of those offences being cognizable if they are investigated under Section 156 of the Criminal P. C. but not when investigated in accordance with the provisions of S. 5-A of the Prevention of Corruption Act. The question, therefore, of the need for a sanction under Section 196-A does not arise. Consequently the need to order re-investigation or to begin the trial again after the sanction under Section 196-A is obtained, and the consequent inordinate delay and harassment of the officers concerned, reasons that weighed with the learned Single Judge for quashing the charges does not arise. It may incidentally be mentioned that the respondents took nearly three years before they moved the High Court for quashing the charges and are, thus to a considerable extent responsible for the delay.

10. On behalf of Mr. Gupta it was argued that he cannot be tried along with the two Army Officers, Under Section 6 of the Criminal Law Amendment Act, 1952 the Special Judge may try any conspiracy to commit or any attempt to commit or any abetment of any of the offences punishable under Sections 161. 165 or 165-A of the Indian Penal Code or sub-section (2) of Section 5 of the Prevention of Corruption Act, and under sub-section (3) of Section 7 of the same Act a special judge when trying any case may also try any offence other than an offence specified in Section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial. Under Section 235 of the Code of Criminal Procedure if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence and under Section 239 persons accused of the same offence committed in the course of the same transaction, as well as persons accused of an offence and persons accused of abetment or of an attempt to commit such offence may be charged and tried together. In State of Andhra Pradesh v. Kandimalla Subbaiah. (1962) 1 SCR 194 - (AIR 1961 SC 1241) this Court observed :

"No doubt the offence mentioned in charge No. 1 is alleged to have been committed not by just one person but by all the accused and the question is whether all these persons can be jointly tried in respect of all these offences. To this kind of charge Section 239 would apply. This section provides that the following persons may be charged and tried together, namely:

(1) persons accused of the same offence committed in the course of the same transaction ;

(2) persons accused of an offence and persons accused of abetment or an attempt to commit such an offence ;

(3) persons accused of different offences committed in the course of the same transaction.

Clearly, therefore, all the accused persons could be tried together in respect of all the offences now comprised in charge No. 1.

" In that case the first accused was a public servant and the other accused were private individuals to whom the first accused was alleged to have sold transport permit books intended to be issued to Central Excise Officers for granting permits to persons applying bona fide for licences to transport tobacco. This Court also pointed out that "sub-sec. (3) of Section 7 provides that when trying any case a special judge may also try any offences other than an offence specified in Section 6 with which the accused may under the Code of Criminal Procedure. 1898 be charged, at the same trial and clearly, therefore, accused No. 1 could be tried by the Special Judge for offences under Section 120-B read with Sections 466, 467 and 420, I. P. C. and similarly the other accused who are said to

have abetted these offences could also be tried by the Special Judge". There is, therefore, no objection to Mr. Gupta being tried along with the two Army Officers.

11. Though in the revision petitions filed before the High Court the question as to whether on the evidence produced before the Special Judge the offences with which the respondents had been charged could be said to have been prima facie established was raised, the learned Single Judge has not dealt with that question apparently because it was not argued before him. We do not, therefore, propose to say anything about the merits of the case.

12. It is not necessary to refer to the decisions in Madan Lal v. State of Punjab. (1967) 3 SCR 439 = (AIR 1967 SC 1590) and Bhanwar Singh v. State of Rajasthan, (1968) 2 SCR 528 = (AIR 1/968 SC 709) which are relied upon on behalf of the appellants in the view that we have taken that all the offences with which the accused are charged are cognizable offences, and therefore, the question whether charges which require sanction under Section 196-A could be tried along with charges which did not require such sanction and the entire charges are vitiated for want of sanction, as held by the learned Judge, does not arise.

13. The appeals are allowed and the order of the learned Single Judge is set aside. The Special Judge will now proceed to deal with the cases and dispose of them as expeditiously as possible as the matter has been pending for a long time.

Appeals allowed.