Sardar Iqbal Singh

Vs

State (Delhi Administration) and Others

Criminal Appeal No. 60 of 1977

(A. C. Gupta, P. S. Kailasam JJ)

09.11.1977

JUDGMENT

GUPTA, J. –

1. This appeal by special leave is directed against an order of the Delhi High Court refusing to quash a proceeding pending against the appellant in the Court of the Special Judge, Delhi.

2. On or about November 28, 1973 a chargesheet against the appellant and two others was filed before the Special Judge, Tis Hazari, Delhi, alleging facts constituting offences punishable under Section 120B, Indian Penal Code, read with Sections 161 and 165A of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947. One Martin Joseph Fernandez had been arrested in connection with the case when it was at the stage of investigation. He was produced before the Chief Judicial Magistrate, Delhi, who tendered a pardon to him under Section 337(1) of the Code of Criminal Procedure. 1898 (hereinafter referred to as the Code). On December 12, 1975 the appellant applied to the Special Judge for quashing the proceeding for want of sanction under Section 197 of the Code and also on the ground of failure to examine the said Martin Joseph Fernandez as a witness as required by sub-sections (2) and (2B) of Section 337 of the Code. The Special Judge having dismissed the application, the appellant moved the Delhi High Court under Article 227 of the Constitution and Section 482 of the Code of Criminal Procedure, 1973 for setting aside the order passed by the Special Judge and quashing the proceeding. On September 10, 1976 the High Court dismissed the appellant's petition and upheld the order of the Special Judge rejecting the prayer for quashing the proceeding.

3. Mr. A.K. Sen appearing for the appellant has not pressed the ground of want of sanction and has confined his argument to the other ground. His contention is that once a pardon has been tendered to a person at the stage of the investigation under Section 337(1) of the Code, the provision of Section 8(1) of the Criminal Law Amendment Act, the accused being committed to him for trial, ceases to apply and the chargesheet in such a case must be filed before a competent Magistrate. It is argued that in such a case letting the Special Judge take cognizance of the offence under Section 8(1) of the Criminal Law Amendment Act would make the provision discriminatory offending Article 14 of the Constitution. The argument is built on sub-section (2B) of Section 337 of the Code under which the Magistrate taking cognizance of the offence has to examine the approver as a witness before sending the case for trial to the Court of the Special Judge.

4. To test this argument we may refer briefly to the relevant provisions of the Code. Section 337(1) of the Code provides that in the case of any offence specified therein, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or any Magistrate of the first class may at any

stage of the investigation or enquiry into, or the trial of the offence may tender a pardon to any person supposed to have been concerned in the offence in any way, on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative of the offence. Sub-section (2) of the section requires every person accepting a tender under this section to be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any, Under sub-section (2A) where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending, if he finds reasonable grounds for believing that the accused is guilty of an offence, shall commit him for trial to the Court of Session or High Court, as the case may be. Sub-section (2B) on which the appellant relies reads :

> In every case where the offence is punishable under Section 161 or Section 165 or Section 165A of the Indian Penal Code or sub-section (2) of Section 5 of the prevention of Corruption Act, 1947, and where a person has accepted a tender of pardon and has been examined under sub-section (2), then, notwithstanding anything contained in sub-section (2A), a Magistrate shall, without making any further inquiry, send the case for trial to the Court of the Special Judge appointed under the Criminal Law Amendment Act, 1952.

Thus under sub-section (2B) in the case of an offence mentioned in the sub-section the Magistrate has to send the case for trial to the Court of the Special Judge without making any further inquiry as to whether there are reasonable grounds for believing that the accused is guilty, but after the approver has been examined under sub-section (2).

5. From these provisions it would appear that where a person has accepted a tender of pardon under sub-section (1) of Section 337 at the stage of investigation in a case involving any of the offences specified in sub-section (2B), the prosecution can file the chargesheet either in the Court of a competent Magistrate or before the Special Judge who under Section 8(1) of the Criminal Law Amendment Act, 1952 has power to take cognizance of the offence without the accused being committed to him for trial. It follows that if the Magistrate takes cognizance of the offence, the approver will have to be examined as a witness twice, once in the Court of the Magistrate and again in the Court of the Special Judge to whom the Magistrate has to send the case for trial, but if the chargesheet is filed directly in the Court of the Special Judge, he can be examined once only before the Special Judge. This means that in a case where the chargesheet is filed in the Court of a Magistrate, the accused gets an opportunity of having the evidence of the approver at the trial tested against what he had said before the Magistrate; the accused is denied this opportunity where the chargesheet is filed in the Court of the Special Judge. Whether the accused will get the advantage of the procedure which according to the appellant is more beneficial to the accused, thus depends on the Court in which the proceeding is initiated, and, it is contended, if the choice of forum is left to the prosecution, it will result in discrimination. Mr. Sen submits that the only way to avoid this position is to read sub-sections (1), (2) and (2B) of Section 337 of the Code and Section 8(1) of the Criminal Law Amendment Act, 1952 together and to construe them in a way to require that in every case where an accomplice is granted pardon, the chargesheet must be filed in the Court of a Magistrate.

6. We are unable to accept the contention. It is clear from the scheme of Section 337 that what is required is that a person who accepts a tender of pardon must be examined as a witness at the different stages of the proceeding. Where, however, a Special Judge takes cognizance of the case, the occasion for examining the approver as a witness arises only once. It is true that in such a case

there would be no previous evidence of the approver against which his evidence at the trial could be tested, which would have been available to the accused had the proceeding been initiated in the Court of a Magistrate who under sub-section (2B) of Section 337 of the Code is required to send the case for trial to the Special Judge after examining the approver. But we do not find anything in sub-section (2B) of Section 337 to suggest that it affects in any way the jurisdiction of the Special Judge to take cognizance of an offence without the accused being committed to him for trial. Sub-section (2B) was inserted in Section 337 in 1955 by Amendment Act 26 of 1955. If by enacting sub-section (2B) in 1955 the Legislature sought to curb the power given to the Special Judge by Section 8(1) of the Criminal Law Amendment Act, 1952, there is no reason why the Legislature should not have expressed its intention clearly. Also, the fact that the approver's evidence cannot be tested against any previous statement does not seem to us to make any material difference to the detriment of the accused transgressing Article 14 of the Constitution. The Special Judge in any case will have to apply the well established tests for the appreciation of the accomplice's evidence. This Court in Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay [(1975) 1 SCC 339] held that the mere availability of two procedures would not justify the quashing of a provision as being violative of Article 14 and that "what is necessary to attract the inhibition of the article is that there must be substantial and qualitative difference between the two procedures so that one is really and substantially more drastic and prejudicial than the other . . .". In our opinion, there is no such qualitative difference in the two procedures; whether a witness is examined once or twice does not in our opinion make any such substantial difference here that one of them could be described as more drastic than the other. The appeal is accordingly dismissed.

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