

Central Bureau of Investigation

Vs

Subodh Kumar Dutta and Another

Criminal Appeal No. 46 of 1997

(Dr. A. S. Anand, S. B. Majmudar JJ)

17.01.1997

ORDER

1. Special leave granted.

2. This appeal by the Central Bureau of Investigation (hereinafter referred to as "the CBI") arises from the judgment of the High Court of Calcutta dated 22-12-1995, allowing criminal revision filed by Respondent 1 and quashing the proceedings of Special Court Case No. 1 of 1988, pending before the learned 2nd Special Judge at Alipore.

3. On the basis of an FIR, registered on 28-11-1987 by the CBI on the complaint of Subodh Chandra De, a trap was laid by the officers of the CBI on 30-11-1987 and Respondent 1 Shri Subodh Kumar Dutta was allegedly caught accepting a bribe of Rs. 700. The CBI filed a charge- sheet against Respondent 1 for an offence under Section 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, 1947 on 11-2-1988, after completion of the investigation. Cognizance of the offence was taken by the learned Special Judge under the West Bengal Special Courts Act, 1950 (10 of 1950) on 9-7-1988.

4. It is an admitted case of the parties that the Special Court which took cognizance of the offence had been constituted under the West Bengal Special Courts Act, 1950 and not under the Criminal Law Amendment Act, 1952. After cognizance had been taken by the learned Special Judge, the Prevention of Corruption Act, 1947 came to be repealed by the Prevention of Corruption Act, 1988, with effect from 9-9-1988. Respondent 1 thereupon filed a criminal revision petition in the High Court under Sections 401/482 CrPC, seeking quashing of the proceedings in the case pending against him before the Special Court in which the principal ground raised was the violation of the fundamental right of the accused to a speedy trial under Article 21 of the Constitution of India. During the arguments, it appears the High Court also permitted Respondent 1 to raise a plea that the Special Court trying the bribe case had no jurisdiction to take cognizance of the offence under the Prevention of Corruption Act, 1947 as that court had not been constituted pursuant to Section 3 of the Prevention of Corruption Act, 1988 which had repealed the 1947 Act. The learned Single Judge appears to have been impressed with this submission made on behalf of Respondent 1. It appears that none appeared for the State before the learned Single Judge at the time of hearing of the petition.

5. The learned Single Judge noticed the provisions of Section 26 of the Prevention of Corruption Act, 1988 which reads as follows:

"26. Special Judges appointed under Act 46 of] 952 to be special Judges appointed

under this Act. - Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under Section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act."

and opined that the cognizance taken by the Special Court on 9-7-1988 under the 1947 Act, was not saved. The learned Single Judge, therefore held that the cognizance had not been taken in accordance with law and without referring to the merits of the other contentions raised in the revision petition, allowed the same and quashed the proceedings pending in the Special Court in Special Court Case No. 1 of 1988. Hence, this appeal by special leave.

6. Mr. Bhatt, the learned Additional Solicitor General, appearing for the appellant, CBI, concedes that the Special Court which had taken cognizance, had been constituted under the West Bengal Act of 1950 and not under the Criminal Law Amendment Act of 1952 but submits that both on the date of the commission of offence i.e. 30-11-1987 and on the date when the cognizance was taken by the Special Court i.e. 9-7-1988, the 1947 Act was very much in force and the Special Court had the jurisdiction to take cognizance of the offence. The 1947 Act came to be repealed by the Prevention of Corruption Act, 1988 with effect from 9-9-1988, after the cognizance had been validly taken by the Special Court under the 1947 Act. The learned Additional Solicitor General submits that under Section 30 of the Prevention of Corruption Act, 1988 anything done and any action taken under the Prevention of Corruption Act, 1947 before the repeal, has been specifically saved. Section 30 of the 1988 Act reads thus :

"30. Repeal and saving. - (1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952), are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of this Act."

7. A bare look at the provisions of sub-section (2) of Section 30 shows that anything done or any action taken or purported to have been taken under or in pursuance of the Prevention of Corruption Act, 1947 shall be deemed to have been taken under or in pursuance of the corresponding provision of the Prevention of Corruption Act, 1988. In view of this specific provision, the cognizance of the offence taken by the Special Court stood saved. It appears that the attention of the learned Single Judge of the High Court was not invited to Section 30 (supra) for had it been so invited, we have no doubt that the proceedings which were saved by the 1988 Act would not have been quashed. The learned Single Judge has only referred to Section 26 of the 1988 Act and we agree that under that section, the cognizance taken by the Special Court was not saved. Section 26 of the 1988 Act has no application to this case. The order of the High Court in view of the clear provisions of Section 30 (supra) cannot be sustained and we, therefore, accept this appeal and set aside the order of the High Court impugned before us. Since the High Court did not express any opinion on the other points raised in the revision petition, we deem it appropriate to remand the matter to the High Court for deciding the criminal revision petition, filed by Respondent 1, afresh on merits after hearing the

parties in the light of the observations made by us above. It shall be open to the respondent to raise all such pleas as are available to him in law, including the effect of superannuation of the respondent. The High Court, we request, may dispose of the matter expeditiously. No costs.