

SUPREME COURT OF INDIA

State of West Bengal

Vs

Sadan K. Bormal

Appeal (Crl.) 877 of 1998

(N. Santosh Hegde and B.P.Singh)

29/04/2004

JUDGMENT

B. P. SINGH, J.

The State of West Bengal has preferred this appeal by Special Leave impugning the judgment and order of the High Court of Judicature at Calcutta dated 21st February, 1997 in Criminal Revision No.2578 of 1994 whereby the High Court quashed the criminal proceedings against the respondents herein holding that the 3rd Special Court, Calcutta appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 for trying offences under the Prevention of Corruption Act, 1947 (for short Act of 1947) had no jurisdiction to try the respondents for the alleged offences after coming into force of the Prevention of Corruption Act, 1988 (for short Act of 1988) w.e.f. 9th September, 1998. In substance, it held that though the said court was earlier empowered to try offences under the Act of 1947, since no such jurisdiction was conferred upon it afresh after coming into force of the Act of 1988, which repealed the Act of 1947, it had no jurisdiction to try such offences after coming into force of the Act of 1988.

The facts of the case which are not in dispute may be briefly recapitulated. The respondents herein were employees of the State Bank of India and at the relevant time were working in its Netaji Subhash Road Branch, Calcutta. A criminal case was registered against them under the provisions of the Act of 1947 as also under Sections 120B, 420, 419, 467, 468 and 471 of the IPC. The

offences are alleged to have been committed by them in or about the month of August, 1988. A month later, on 9.9.1988 the Act of 1988 came into force repealing the Act of 1947. A criminal case was registered against respondents on 31.10.1988 and a chargesheet was filed before the Court of the Metropolitan Magistrate, Calcutta who by his order dated 12.7.1990 took cognizance and transferred the case to the Metropolitan Magistrate 17th Court for trial. However, on objection raised by the Public Prosecutor that the said Court had no jurisdiction to try the case as the same was exclusively triable by the Special Court, the said case was transferred to the Court of the 3rd Special Judge, Calcutta, a Court empowered under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 to try offences under the Act of 1947. The 3rd Special Judge took cognizance on 22nd March, 1993 when the chargesheet was filed before that Court.

The respondents herein challenged the jurisdiction of the 3rd Special Judge to try the case, as he had not been so empowered after coming into force of the Prevention of Corruption Act, 1988. The objection was rejected by the Special Court whereafter the respondents moved the High Court of Calcutta in its revisional jurisdiction.

The sole question which arises for consideration before us is whether an offence committed while the Act of 1947 was in force can be tried by the Courts empowered to try offences under the Act of 1947 after coming into force of the Act of 1988 w.e.f. 9.9.1988 repealing the Act of 1947. The case of the respondents before the High Court was that the Special Courts had been vested with jurisdiction to try cases under the Act of 1947 by the West Bengal Special Courts Act, 1949. After coming into force of the Act of 1988 no such jurisdiction had been conferred on those courts and, therefore, they could not take cognizance or try an offence under the corresponding provisions of the Act of 1988.

It is, therefore, necessary to notice the relevant provisions of the Prevention of Corruption Act, 1947 and the Prevention of Corruption Act, 1988 as also other legal provisions which have a bearing on this subject. Section 5 of the Act of 1947 defines misconduct while Section 5A enumerates the Police Officers who shall investigate any offence punishable under Section 5 of the Act. Section 6 of the Criminal Law Amendment Act, 1952, a Central Act, provided for appointment of Special Judges for trying offences under the Act of 1947, but so far the State of West Bengal is concerned, by reason of the West Bengal Criminal Law Amendment (Special courts) Amending Act, 1953, Sections 5 to 10 of the Criminal Law (Amendment), Act, 1952 were made inapplicable to the State of West Bengal. Therefore, Special Judges under the Criminal Law (Amendment) Act, 1952 were not appointed in the State of West Bengal. However, by the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, the Provincial Government was empowered by Notification in the Official Gazette to constitute Special Courts of Criminal Jurisdiction and from time to time by Notification in the Official Gazette to allot cases for trial to a Special Judge. The Special Judge had jurisdiction to try the cases for offences specified in the Schedule to the Act which included an offence punishable under Section 5 of the Act of 1947.

It is thus apparent from the above provisions that the offence under Section 5 of the Act of 1947 was made exclusively triable by a Special Judge appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. It is not in dispute that the 3rd Special Judge before whom the respondents had been put up for trial was a Court vested with such jurisdiction.

The Prevention of Corruption Act, 1988 came into effect from 9th September, 1988. Section 3 of the Act of 1988 empowers the Central Government or the State Government by Notification in the Official Gazette to appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the Notification to try the offences mentioned therein, which includes any offence punishable under the Act of 1988. Section 4 makes such cases exclusively triable by a Special Judge. Section 5 confers jurisdiction on the Special Judge to take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons to follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrates. Section 26 and 30 of the said Act are relevant which read as follows:-

"Sec. 26 - Special Judges appointed under Act 46 of 1952 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." *

"Sec. 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." *

As earlier noticed in the State of West Bengal no Special Judge was appointed under the Criminal Law Amendment Act, 1952 to try offences under the Act of 1947. However, Special Judges were appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 to try offences under the Prevention of Corruption Act of 1947.

The High Court took the view that Section 3 and 4 of the Act of 1988 clearly provided that an offence punishable under the Act of 1988 was triable only by a Special Judge appointed under Section 3 of the said Act and not by any other Court, notwithstanding anything contained in any other law for the time being in force. Section 26 of the Act of 1988 only protected the appointment of Special Judges under Section 5 of the Criminal Law Amendment Act, 1952 and not the appointment of Special Judges made under any other Act such as the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. The Act of 1988 being a Central Legislation had overriding effect over the provisions of the West Bengal Criminal Law Amendment (Special Courts) Act,

1949. The learned Judge following earlier decisions of the Court held that taking cognizance of an offence under the provisions of the Act of 1988 by a Special Judge appointed under Section 2 of the West Bengal Criminal Law (Special Courts) Act, 1949 was not permissible in law and, therefore, the order taking cognizance was bad, illegal and without jurisdiction.

Reliance was placed by the appellant on Notification No.6614-J dated 23rd April, 1993 issued by the Government of West Bengal for appointment of Special Judges under Sub-section (1) of Section 3 of the Act of 1988. By the said notification all the Judges or Special Courts appointed under Sub-section (2) of Section 2 read with sub-section (1) of Section 9 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and functioning as such Judges were appointed as Special Judges under the Act of 1988 for the purpose of trial of offences as enumerated in Clauses (a) and (b) of sub-section (1) of Section 3 of the Act of 1988 in respect of the areas of their respective Courts. The contention of the appellant was rejected by the learned Judge holding that the Notification which in effect gave retrospective operation to Section 3 of the Act of 1988 was not legal and permissible in law, and that if such effect had to be given it could be done by a Central Legislation, and not by a Government Notification, since the Notification could not override the provisions of law. In this view of the matter the High Court allowed the Revision Petition and quashed the criminal proceeding against the respondents.

When the appeal was first argued before us on 6th April, 2004, it was argued on the basis of the provisions of the various statutes noticed by the High Court, and counsel for the respondents submitted before us that the proceeding had been rightly quashed by the High Court for lack of jurisdiction in the Court trying them. On the other hand, counsel for the appellant - State submitted that the High Court was in error in quashing the proceeding. Relying upon the Notification of 23.4.1993, it was contended that in any event the Courts had been vested with jurisdiction to try offences under the Act of 1988 by the said Notification. In the alternative, it was submitted that even if the Court came to the conclusion that no court had been vested with jurisdiction to try offences under the Act of 1988, rather than quashing the prosecution the same could have been kept in abeyance till such time as special courts were empowered to try such offences. It is the submission of the counsel for the State that an offence committed under the Act of 1947 does not stand obliterated by the repeal of the Act of 1947, and indeed it could be tried under the corresponding provisions of the Act of 1988. The only question was about the jurisdiction of the Court to try an offence under the Act of 1947 after coming into force of the Act of 1988.

Later, it was brought to our notice by the counsel for the appellant that the West Bengal Legislature has enacted an Act known as the Prevention of Corruption (West Bengal Amendment) Act, 1994. It was published in the Calcutta Gazette on 23rd December, 1999. The said enactment was not brought to the notice of the High Court, nor to our notice when the matter was first argued. We, therefore, reheard the matter and afforded an opportunity to counsel for the parties to make their submissions on the basis of the new enactment brought to our notice.

By Section 2 of the Prevention of Corruption (West Bengal Amendment) Act, 1994 West Bengal Act No.LVI of 1994, the Prevention of Corruption Act, 1988 in its application to the State of West Bengal stands amended for the purpose and in the manner provided under the Act. In the Act of 1988, Section 26A has been inserted which is as follows:-

"26A- Judges appointed to preside over Special Courts under West Bengal Act 21 of 1949 to be deemed to be Special Judges appointed under this Act.-

(1) Every Judge appointed to preside over a Special Court under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 (West Ben. Act 21 of 1949), for any area or areas and 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.

(2) Every Judge appointed to preside over a Special Court under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, for any area or areas, holding office on any date after the commencement of this Act but before the commencement of the Prevention of Corruption (West Bengal Amendment) Act, 1994 (hereinafter referred to as the said date) and purporting to act under the provisions 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 the said date, every such Judge shall continue to deal with all the proceedings pending before him on the said date in accordance with the provisions of the Act" * .

Section 4 of the West Bengal Amendment Act, 1994 provides as follows:-

"4. Saving and validation : Notwithstanding anything contained in the principal Act or in any other law for the time being in force, any order passed, any evidence recorded, or any action taken under the principal Act by a Judge of Special Court appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, and purporting to act under the provisions of the principal Act, before the commencement of this Act shall be deemed to have been validly passed, recorded or taken under the principal Act as amended by this Act as if this Act were in force when such order was passed or such evidence was recorded or such action was taken" * .

Sub-section (1) of Section 26A relates to Judges appointed to preside over Special Courts under the West Bengal Special Courts Act, 1949 holding office on the commencement of the Act of 1988. They are deemed to be Special Judges appointed under Section 3 of the Act of 1988 and, accordingly, on and from such commencement they shall continue to deal with all the proceedings pending before them on commencement of the Act of 1988 in accordance with the provisions of the Act of 1988.

Sub-section (2) of Section 26A relates to Judges appointed under the West Bengal Special Courts Act, 1949 and holding office on any date after the commencement of the Act of 1988 but before the commencement of the Amendment Act of 1994. Such Special Judges purporting to act under the provisions of the Act of 1988 are deemed to be Special Judges appointed under Section 3 of the Act of 1988. Accordingly, on and from the said date, every such Judge shall continue to deal with all the proceedings pending before him on the said date in accordance with the provisions of the Act of

1988.

It thus appears that sub-section (1) in its application is confined to a Special Judge appointed under the West Bengal Special Courts Act, 1949 before the date of commencement of the Act of 1988, while sub-section (2) confers jurisdiction on a Judge appointed under the West Bengal Special Courts Act, 1949 on any date after the commencement of the Act of 1988 but before the commencement of the Amendment Act of 1994. In both cases they are deemed to be Special Judges appointed under Section 3 of the Act of 1988 and are empowered to continue to deal with all the proceedings pending before them in accordance with the provisions of the Act of 1988.

Section 4 of the West Bengal Amendment Act, 1994 begins with a non obstante clause and seeks to save and validate any order passed, any evidence recorded or any action taken under the Act of 1988 by a Judge of Special Court appointed under the West Bengal Special Courts Act, 1949 while purporting to act under the provisions of the Act of 1988 before the commencement of the West Bengal Amendment Act of 1994. It is further provided that all such orders passed, evidence recorded or actions taken shall be deemed to have been validly passed, recorded or taken under the Act of 1988 as amended by the West Bengal Amendment Act, 1994 as if the latter Act was in force when such action was taken.

We have, therefore, no doubt that the West Bengal Amendment Act, 1994 by inserting Section 26A in the Act of 1988 has created a legal fiction whereby a Special Judge appointed under the West Bengal Special Courts Act, 1949 even before the commencement of the Act of 1988, or thereafter, but before the commencement of the West Bengal Amendment Act, 1994, is deemed to be a Special Judge appointed under Section 3 of the Prevention of Corruption Act, 1988

In view of the provisions of the West Bengal Amendment Act of 1994, we have no doubt that the Special Judge trying the accused/respondents and who was appointed under the West Bengal Special Courts Act, 1949 and purported to act under the Act of 1988, is now vested with jurisdiction to try cases under the Prevention of Corruption Act, and by operation of law all actions taken by him purporting to act under the Act of 1988 are saved and validated as if the Amendment Act of 1994 were in force when such an order was passed or such evidence was recorded or such action was taken by him. Giving effect to the legal fiction we must imagine that Section 26A stood incorporated in the Act of 1988 when it came into effect.

Counsel for the respondents submitted that the fiction created by the West Bengal Amendment Act, 1994 should not be given an extended operation. In considering such a statute, the Court must consider what is the fiction created, what is its purpose, and what is its effect. He further submitted that on a fair reading of the provisions of the Act of 1988 as amended by the West Bengal Amendment Act of 1994, only those proceedings are saved which were pending before the Special Judge on the date of commencement of the 1988 Act i.e. on 9th September, 1988. In this case on the relevant date no proceeding was pending before the Special Judge as the matter was still under investigation. He, further, submitted that it is not permissible to read a fiction upon a fiction in a deeming statute. According to him, a statute can create only one fiction and therefore, it is not permissible to interpret the provisions of the Act of 1988 as creating two fictions, firstly that the Special Judges are deemed to have been appointed under Section 3 of the Act of 1988, and

secondly, to deem that all actions taken by them were in accordance with corresponding provisions of the Act of 1988 as if the West Bengal Amendment Act 1994 were in force when such actions were taken.

According to him, any offence committed before the Act of 1988 came into effect and in respect of which no proceeding was pending before a Special Judge, must lapse and the accused can not be tried for that offence at all. Counsel has placed reliance upon three judgments of this Court reported in Mancheri Puthusseri Ahmed and Ors. Vs. Kuthiravattam Estate Receiver 4; State of Maharashtra Vs. Laljit Rajshi Shah & Ors. and Commissioner of Income-tax (Central) Calcutta Vs. Moon Mills Ltd. . We, however, find nothing in the aforesaid decisions to support the submission urged on behalf of the respondents.

The submission that only those cases could be tried by the Special Judges which were actually pending before them on the date the Act of 1988 came into effect, proceeds on an extraneous assumption and ignores the clear provisions of sub-section (2) of Section 26A of the Act of 1988 inserted by the West Bengal Amendment Act of 1994, which conferred validity on the actions of Special Courts appointed even after the Act of 1988 coming into effect.

Even if, it is assumed for the sake of argument (though the factual position in this case is different) that the Act of 1947 having been repealed by the Act of 1988, and no Special Judge having been appointed under Section 3 of the Act of 1988 to try offences under the Prevention of Corruption Act, 1947, the result would not be that the offences committed stood abated and consequently the offenders could not be tried at all. In such a situation, the trial of the offenders had to be postponed till such time as Special Courts were created to try those offences in accordance with law. In such a situation the High Court ought to have kept in abeyance the trial till jurisdiction was conferred upon a competent Court to try the accused in accordance with law. This Court had occasion to consider such a situation in State by Central Bureau of Investigation Vs. Sh. S. Bangarappa (2000) Supp. 4 SCR. This Court observed:

"That apart, if the High Court found that XXI City Civil and Sessions Judge, Bangalore is not empowered to try such cases, how could that be a ground to quash the criminal proceedings? At the worst that would be a ground to transfer the case from that Court to the Court having jurisdiction to try the offence, and if no Court has been empowered till then, the criminal proceedings can be kept in abeyance till the Government issues a notification conferring such power on any other Court* . So far as interpretation of a provision creating a legal fiction is concerned, it is trite that the Court must ascertain the purpose for which the fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. In construing a fiction it must not be extended beyond the purpose for which it is created or beyond the language of the Section by which it is created. It cannot be extended by importing another fiction. These principles are well settled and it is not necessary for us to refer to the authorities on this subject. The principle has been succinctly stated by Lord Asquith in East End Dwelling Co. Ltd. V. Finsbury Borough Council, 1951 Indlaw HL 3, when he observed :-

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited

from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it-. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs" *

The above principle has been approved by this Court in large number of decisions.

Applying these principles to the provisions of the West Bengal Amendment Act of 1994 which inserts with retrospective effect Section 26A in the Act of 1988, we find that the Legislature was aware of the lacuna created by failure to appoint Special Judges to try offences under the Prevention of Corruption Act, 1988. Though, offences had been registered, objections were being taken before the Courts concerned as to their jurisdiction to try the accused and such objections had been upheld in some cases. It, therefore, became imperative for the Legislature to step in and confer jurisdiction upon Special Courts to try offences under the Act of 1988. Though Special Judges had been appointed in the State of West Bengal under the West Bengal Special Courts Act, 1949, they could not take cognizance and try offences after the Act of 1988 came into effect, since the Act of 1947 stood repealed and Section 26 of the Act of 1988 did not save the Special Courts created under the West Bengal Special Courts Act, 1949. It was with this in view that the West Bengal Legislature enacted the West Bengal Amendment Act of 1994 inserting Section 26A in the Act of 1988. Since, the Special Courts continued to exercise jurisdiction over the matters brought before them, the Legislature by law conferred validity on such actions by a deeming provision.

The submission that a law can create only a single fiction must also be repelled. This Court in *Yellappagouda Shankargouda Patil Vs. Basangouda Shiddangouda Patil*, ; held that the Legislature may sometimes create a chain of fictions by the same Act or by succeeding Acts. If the Legislature is competent to enact a provision creating a legal fiction, we see no reason why it cannot create a chain of fictions if necessity arises. It is true that in interpreting a provision creating a legal fiction it is not open to the Court to import another fiction.

In the instant case, the amendment of the Act of 1988 by the West Bengal Amendment Act, 1994 is intended to meet the situation arising from non-appointment of Special Judges under the Act of 1988 which repealed the Act of 1947. With a view to meet this situation the law deemed, subject to the conditions enumerates therein, the Special Judges appointed under the West Bengal Special Courts Act, 1949 to have been appointed under Section 3 of the Act of 1988. With the above purpose in mind it was further deemed that any order passed, evidence recorded, or action taken purportedly under the Act of 1988, shall be deemed to have been validly passed recorded or taken under the Act of 1988 as if the Act of 1988 as amended by the West Bengal Amendment Act, 1994 were in force at that time. We, therefore, hold that the **Prevention of Corruption (West Bengal Amendment) Act, 1994 by amending the Act of 1988 inserting Section 26A therein has vested jurisdiction in the Special Courts appointed under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 subject to conditions laid down therein, to try offences under the Prevention of Corruption Act, 1988. All actions taken by them are validated as if the West Bengal Amendment Act, 1994 were in force when such action was taken. #** Unfortunately, the aforesaid enactment which governs the case in hand was not noticed by the High Court. Counsel for the parties were also remiss in not bringing the West Bengal Amendment Act of

1994 to the notice of the High Court, and therefore the judgment rendered by the High Court was per incuriam.

We, therefore, allow this appeal, set aside the judgment and order of the High Court quashing the proceeding before the 3rd Special Judge, Calcutta and direct the said Court to proceed with the trial in accordance with law.