SUPREME COURT OF INDIA

V.K. Puri

Vs

Central Bureau of Investigation

(S. B. Sinha and Markandeya Katju, JJ)

27.04.2007

JUDGMENT

S. B. SINHA, J.

Leave granted.

What would be the territorial jurisdiction of a Special Court within the meaning of the provisions of the Prevention of Corruption Act, 1988 (for short "the 1988 Act") is the question involved in this appeal which arises out of a judgment and order dated 1.09.2006 passed by the High Court of Delhi in Crl. Rev. Petition No. 556 of 2006.

Appellant was an officer working in the Customs Department. Central Bureau of Investigation registered a First Information Report against him purported to be for commission of an offence under Section 13(2) read with Section 13(1)(e) of the 1988 Act, viz., acquiring of assets disproportionate to the appellant's known sources of income for the check period of 1.06.1988 to 22.02.2002. Contention of the appellant is that, as he had never been posted in Delhi during the aforementioned period, the Delhi Court has no jurisdiction to his case. The learned Special Judge as also the High Court has rejected the said contention of the appellant.

Mr. L. Nageshwara Rao, learned senior counsel appearing on behalf of the appellant, would submit that the ingredients of an offence involving Section 13(1)(e) of the 1988 Act vis-a'-vis the other provisions thereof read with the relevant provisions of the Code Of Criminal Procedure, 1973, viz.,

Sections 177 and 178 thereof, would clearly go to show that the situs of the properties which are said to have been acquired out of the income of the employee would not confer jurisdiction upon the court.

It was submitted that the only fact relevant therefor would be as to where the public servant concerned committed acts of misconduct or abused his official position, which would be the places where he had held his offices. It was urged that the principal place of commission of offence will have to be judged having regard to the area where the offence has been said to have been completed. Reliance in this behalf has been placed on M. Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad Â and CBI, ADH, Patna v. Braj Bhushan Prasad and Others Â 2001 (9) SCC 432.

Drawing our attention to a judgment of Punjab and Haryana High Court rendered by M.M. Punchhi, J. (as the learned Chief Justice then was) in Kamal Dev v. State of Haryana Â 1986 (3) Crimes 305, it was submitted that the term "possession" would refer to the source and not the situs of the property.

Mr. A. Sharan, learned Additional Solicitor General appearing on behalf of the respondent, on the other hand, would submit that as by reason of Sub-section (3) of Section 5 of the 1988 Act, the provisions of the Code Of Criminal Procedure, 1973 have been made applicable in relation to the proceedings initiated against the 1988 Act, in a case where the offence was committed at more than one place, any of the courts concerned will have jurisdiction to try the offence. Reliance in this behalf has been placed on P. Nallammal and Another v. State Represented by Inspector of Police Â 1999 (6) SCC 559

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Before embarking on the questions involved herein, we may notice the relevant provisions of the Code Of Criminal Procedure, 1973 and the 1988 Act.

Sections 177 and 178 of the Code Of Criminal Procedure, 1973 read as under:

"177 - Ordinary place of inquiry and trial Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178 - Place of inquiry or trial

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) Where an offence is committed partly in one local area and partly in another, or

(c) Where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) Where it consists of several acts done in different local areas,it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

The relevant provisions of the 1988 Act read as under:

"3 - Power to appoint special Judges

(1) The Central Government or the State Government may, by notification in the Official Gazette, 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 following offences, namely:- -

(a) Any offence punishable under this Act; and

(b) Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code Of Criminal Procedure, 1973 (2 of 1974).

4 - Cases triable by special Judges

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried byspecial Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3)

(4)

5 - Procedure and powers of special Judge (1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant case by Magistrates.

(2)

(3) Save as provided in sub-section (1) or sub- section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4)

(5)

(6)

13 - Criminal, misconduct by a public servant (1) A public servant is said to commit the offence of criminal misconduct,

(a)

(b)

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he,

(i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public, interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

The 1988 Act is a Special Act. It over-rides the provisions of the general law, viz., Code Of Criminal Procedure, 1973. But, then when a matter is not covered by the 1988 Act, in view of Sub-section (3) of Section 5 of the 1988 Act, the provisions of the Code Of Criminal Procedure, 1973 shall clearly be applicable.

A distinction exists between a case filed under Sections 13(1)(c) and 13(1)(d) of the 1988 Act, on the one hand, and Section 13(1)(e) thereof, on the other.

Ingredients of the offence under Section 13(1)(e) of the 1988 Act are:

(i) The accused is a public servant;

(ii) The nature and extent of the pecuniary resources of property found in his possession;

(iii) His known sources of income, i.e., known to the prosecution.

(iv).....

Such resources or properties found in possession of the accused were disproportionate to his known sources of income.

Once, however, the aforementioned ingredients are established by the prosecution, the burden of proof would shift on the accused to show that the prosecution case is not correct. [See M. Krishna Reddy (supra), para 7]

One of the ingredients of offences, therefore, is known sources of income. What is material therefor is that the criminal misconduct had been committed during the period he held office and not the places where he had held offices. The fact that the appellant had bank accounts within the jurisdiction of the Delhi Courts as also immovable properties is not in dispute. Respondent in the chargesheet has clearly pointed out that one of his known sources of income was the rental received by him from his Delhi flat. The same had been given due credit for the purpose of arriving at a prima facie satisfaction that the assets possessed of by him are disproportionate to his known source of income.

From a perusal of the chargesheet, it furthermore appears that the appellant is said to have acquired large properties including several bank accounts. For the purpose of proving the offence, therefore, on the one hand, known sources of income must be ascertained vis-a'-vis the possession of property or resources which were disproportionate to the known sources of income of public servant and the inability of the public servant to account for it, on the other. Whereas the burden to prove the first part of the offence is on the prosecution, in the event the same is proved, it would shift to the public

servant concerned. [See P. Nallammal (supra)]

It is not a case where the offence revolves round any conspiracy or abetment to commit an offence to commit an offence. It is also not a case falling under Clauses (c) and (d) of Sub-section (1) of Section 13 of the 1988 Act as was the case in Braj Bhushan Prasad (supra). Appellant is not accused of commission of such an offence. No other person has been charged with the offence of abetment and conspiracy. The question of finding out the place where the offence was completed, thus, does not arise in this case.

Strong reliance has been placed by Mr. Nageshwara Rao on a Single Judge Bench decision of the Kerala High Court in Banwarilal Jhunjhunwalla and Others v. Union of India Â 1959 AIR(Ker) 311 wherein it was observed:

"13. Taking the first offence under Section 5 (2) of the Prevention of Corruption Act, alleged to have been committed by Thomson, there can be little doubt that it was committed within the State of Kerala where he passed inferior jungle-wood as timber of the contract quality and issued false certificates to that effect. (Of course these statements are as yet no more than assumptions based on the prosecution case, in accordance with which the question of jurisdiction has to be determined and it is unnecessary to repeat this caution at every stage of the discussion). When Thomson did this, he was undoubtedly abusing his position as a public servant, and it is a legitimate inference that he thereby obtained for himself or at least for the contractors, a pecuniary advantage. The act of abusing his position as a public servant certainly took place within the Kerala State where the false certificates were issued, and even if the consequence of obtaining a pecuniary advantage for himself or for the contractors which consequence makes that act an offence took place elsewhere, under Section 179, Code Of Criminal Procedure, 1973, the special judge for Kerala would have jurisdiction to try the offence. That the special judge has jurisdiction to try Thomson for the offence under Section 5 (2) of the Prevention of Corruption Act is, in fact, not disputed."

However, therein the factual matrix was absolutely different. In a case of this nature, the question of completion of any offence does not arise.

In a case involving Section 13(1)(e) of the 1988 Act, what is necessary is as to whether keeping in view the period in question, commonly known as check period, the public servant has acquired wealth which is disproportionate to his known sources of income. It has nothing to do with individual case of bribery. It has nothing to do with a series of acts culminated into an offence.

Each Court, where a part of the offence has been committed, would, therefore, be entitled to try an accused. The 1988 Act does not bar application of Section 178 of the Code Of Criminal Procedure, 1973. If application of the provision of Section 178 of the Code Of Criminal Procedure, 1973 is not barred, the fact that the appellant has a part of his known source of income at Delhi, in our opinion, would confer jurisdiction upon the Delhi Courts. It is one thing to say that only the Special Courts will have jurisdiction to try the offence, but for the purpose of arriving at a decision as to the Special Judge of which place shall have the requisite jurisdiction, the situs of the property may or

may not have any relevance. Once the situs of the property is held to have relevance for the purpose of ascertaining his known source of income and consequent acquisition of disproportionate assets, in our opinion, the Special Judge concerned will also have the requisite jurisdiction to try the case. For the said purpose, purport and object for which the 1988 Act has been enacted must be taken into consideration. The doctrine of purposive construction therefor must be taken recourse to.

With respect, Punchhi, J. (as the learned Chief Justice then was) in Kamal Dev (supra) was not concerned with such a question and in that view of the matter, the following observations made in paragraph 4 may not have strict application:

"4. The commission of the offence of criminal misconduct has nexus to the period of his office. It is so intimately interlinked that it is the place of office which would determine the place of commission of his misconduct. It is through his office alone that one can determine his known source of income and if his property which is presently in his possession or in possession of someone on his behalf, or has at any time during the period of his office been in his possession or of someone on his behalf, then it is relatively to be viewed with the period of his office. In this context, the place of office assumes importance, for that would determine the jurisdiction in which the offence of criminal misconduct would be triable. Thus, in the instant case, I am of the view that it was the Special Judge at Chandigarh who had the jurisdiction to try the offence against the petitioner."

In any event, as would appear from paragraph 5 of the said judgment itself, the learned Judge did not intend to determine the said question finally as ultimately the doctrine of forum conveniens had been taken recourse to for holding that although more than one Special Judge may have jurisdiction to try the offence, the Special Judge at Chandigarh would be the appropriate authority to have the case tried before it in the interest of justice.

For the reasons aforementioned, we, albeit for different reasons, do not find merit in this appeal which is dismissed accordingly.

TRANSFER PETITION (CRL.) NO. 351 OF 2006

An application for transfer has been filed wherein one of the principal questions raised was the absence of territorial jurisdiction of the Special Judge, Delhi.

The matter is pending for a long time before the Delhi Court. Charges have already been framed. It may be that many of the prosecution witnesses do not hail from Delhi. It may further be that

Accused No. 3 is a resident of Indore but as the offence is said to have been committed in the year 2002 and chargesheet has also been submitted in that year, we are of the opinion that the transfer petition at this stage should not be entertained. It is dismissed accordingly.