

A

SATYA NARAYAN SHARMA

v.

STATE OF RAJASTHAN

SEPTEMBER 25, 2001.

B

[K.T. THOMAS AND S.N. VARIAVA, JJ.]

C

*Prevention of Corruption Act, 1988—Sections 5(2), 19—Public servants—Trial against—Stay of—Held, not to be granted on any ground even when court is exercising inherent jurisdiction under section 482 of Criminal Procedure Code—Further if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar—Criminal Procedure Code, 1973, sections 482, 397.*

D

Trial Court took cognizance against the appellant by an order passed by Special Judge constituted under the Prevention of Corruption Act, 1988. Appellant filed miscellaneous petition, before High Court, for quashing the order passed by the special Judge and got a stay of the trial. Thereafter, the case was adjourned from time to time and as such the trial was delayed for seven years. Ultimately the High Court dismissed the petition. Hence the present appeal.

E

Appellants contended that the inherent power, vested in a High Court was not circumvented by the limitations which are there whilst exercising revisional powers and the power to pass stay order was part of the inherent power of the Court. On behalf of the appellant it was contended that section 19(3)(c) of the Act applies only to the revisional powers as exercised under section 397 of the Criminal Procedure Code and not to the inherent jurisdiction exercised by High Court under section 482 of the Code.

F

G

On behalf of the respondent it was contended that the inherent jurisdiction of a Court could not be exercised if there was a specific provision for redressal of the grievances of the aggrieved party or against an express bar of law engrafted in any other provision; and that it has to be very sparingly exercised only to prevent abuse of process of court or to secure the ends of justice.

H

Dismissing the appeal, the Court

**HELD : PER VARIAVA, J. 1. When public servants are sought to be prosecuted under the Prevention of Corruption Act, 1988 courts grant stay of the trials without considering and/or in contravention of section 19(3)(c) of the Act which has an adverse effect on combating corruption amongst public servants. [271-H; 272-A; B]**

**2. In cases under the Prevention of Corruption Act, there can be no stay of trials. Even if petition under section 482 is entertained there can be no stay of trials under the Prevention of Corruption Act. It is for the party to convince the concerned court to expedite the hearing of that petition.**

[275-G; H]

**3. If section 19 of the Act was only to deal with revisional powers then clause (b) would have been sufficient. The legislature has, by adding the words "no court shall stay the proceedings under this Act on any other ground" under section 19(3)(c), clearly indicated that no stay could be granted by use of any power on any ground. Therefore, section 19 of the Act would apply even where a court is exercising inherent jurisdiction under section 482 of the Criminal Procedure Code. [275-A-C]**

**4. Under section 482 of the Criminal Procedure Code the inherent power can be exercised even if there was a contrary provision in the Cr.P.C. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar.**

[275-C; D]

*Madhu Limaye v. The State of Maharashtra*, [1977] 4 SCC 551; *Janata Deal v. H.S. Chowdhary & Ors.*, [1992] 4 SCC 305; *Indra Sawhney v. Union of India*, [2000] 1 SCC 168, relied on.

*Income Tax Officer v. M.K. Mohammed Kunhi*, [1969] 2 SCR 65, referred to.

**5. It cannot be said that section 19 of the Act would not apply to a High Court. Section 5(3) of the Act shows that the Special Court under the Act is a Court of Session. Therefore, the power of revision under/or the inherent jurisdiction can only be exercised by the High Court. [275-F]**

*PER THOMAS, J. (CONCURRING)*

**1. When Parliament imposed an undiluted ban against granting stay**

A of any proceedings involving an offence under the Prevention of Corruption Act, 1988 on any ground whatsoever, no court shall circumvent the ban through any means. A provision prohibiting the grant of stay is included in the statute for speeding up the proceedings. [275-E; G]

B 2. The prohibition of grant of stay is incorporated under section 19(3) of the Act with the non-obstante words “notwithstanding anything contained in the Code of Criminal Procedure 1973”. Hence none of the provisions in the Code could be invoked for circumventing any one of the bans enumerated in the sub-section. [277-A-C]

C 3. Section 19(3)(b) contains prohibition against stay of proceedings under the Act but is restricted to sanction aspect alone. No error, omission or irregularity in the sanction shall be a ground for staying proceedings under the Act unless it is satisfied that the omission has resulted in a failure of justice. In determining whether there was any such failure of justice as stated under section 19(3)(b) it is mandated that the court shall have regard to the fact whether the objection regarding that aspect could or should have been raised at any earlier stage in the proceedings. Merely because objection regarding sanction was raised at the early stage, there is no ground for holding that there was failure of justice. If the Special Judge has overruled the objection raised regarding that aspect it is normally inconceivable that there could be any failure of justice even if such objections were to be upheld by the High Court. Overruling an objection on the ground of sanction does not end the case detrimentally to the accused. It only equips a judicial forum to examine the allegations against a public servant judicially. Hence it is an uphill task to show that discountenance of any objection regarding sanction has resulted in failure of justice and the corollary of this is that the High Court would not normally grant stay on that ground either. [277-E-H]

G 4. Prohibition under section (19)(3)(c) that “No court shall stay the proceedings under this Act on any other ground” does not mean that the legislative ban contained in clause (c) is restricted only to a situation when the High Court exercises its inherent powers of revision which would be a misinterpretation of the enactment. [278-A-C]

H 5. Several High Courts, overlooking the ban, are granting stay of proceedings involving offences under the Act pending before courts of Special Judges. It might be on account of a possible chance of missing the

legislative ban contained in clause (c) of sub-section (3) of section 19 of the Act because the title to section 19 is "previous sanction necessary for prosecution". It could have been more advisable if the prohibition contained in sub-section (3) has been included in a separate section by providing a separate distinct title. Be that as it may, that is no ground for by-passing the legislative prohibition contained in the sub-section. [278-C-E]

A

B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 981 of 2001.

From the Judgment and Order dated 25.4.2001 of the Rajasthan High Court in S.B. CrI. M.P. No. 578 of 1994.

C

Harish N. Salve, Solicitor General, Ashwani Kumar, Pallav Shishodia, Ms. Shalini Shishodia, Hemant Sharma, Ranbir Singh Yadav, P. Parmeswaran, Ranji Thomas and Javed Mahmud Rao for the appearing parties.

The Judgments of the Court were delivered by

D

**S.N. VARIAVA, J.** Leave granted.

Heard parties.

This Appeal is against an Order dated 25th April, 2001. By this Order a Criminal Miscellaneous Petition, under Section 482 of the Criminal Procedure Code, for quashing an Order dated 8th July, 1984 passed by a Special Judge constituted under the Prevention of Corruption Act (hereinafter called the said Act) has been dismissed.

E

On 8th July, 1984 the Trial Court took cognizance against the Appellant for offences punishable under Sections 420, 467, 468 and 471 of the I.P.C. and Section 5(2) of the said Act. The Appellant then approached the High Court with Miscellaneous Petition No. 578 of 1984 and get a stay of the trial. Having obtained a stay of the trial the Miscellaneous Petition was got adjourned, from time to time. By this method the Appellant has successfully delayed trial for 7 years.

F

G

We find that what has happened in this case is happening in a large number of matters. Corruption in public offices is becoming rampant. When public servants are sought to be prosecuted under the said Act, by filing

H

A revisions under Section 397 Criminal Procedure Code or by filing petitions under Section 482 Criminal Procedure Code, stay of the trials are obtained and parties successfully manage to delay the trials. The stays are granted by Courts without considering and/or in contravention of Section 19(3)(c) of the said Act. This has an adverse effect on combating corruption amongst public servants. It has therefore become necessary to reiterate the law. We have thus heard this Petition only on the question of law as to whether or not trials under the Prevention of Corruption Act could be stayed.

C Mr. Shishodia submitted that by virtue of Section 27 of the said Act, the High Court can exercise all the powers of appeal and revision under the Criminal Procedure Code as if the Court of the Special Judge were a Court of Sessions. He further submitted that Sections 22 and 23 of the said Act make it clear that the Criminal Procedure Code would apply to proceedings before the Special Judge in relation to an offence punishable under the said Act.

D Mr. Shishodia submitted that the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code was distinct from its revisional jurisdiction. He submitted that the Special Court (under the said Act) was subordinate to the High Court. He submitted that the inherent power, vested in a High Court was not circumvented by the limitations which are there whilst exercising revisional powers. He submitted that the power to pass an interim order, like a stay order, was part of the inherent power of the Court. He submitted that this must necessarily be so as otherwise the Court could not effectively exercise the jurisdiction vested in it.

F In support of this last submission, he relied upon the case of *Income Tax Officer v. M.K. Mohammed Kunhi*, [1969] 2 SCR 65. This was a case under the Income Tax Act. Certain amounts were imposed as penalty upon the assessee for concealment of income and for furnishing inaccurate particulars. The assessee preferred appeals and prayed for stay of recovery of the penalties. The Tribunal declined to grant stay on the ground that it had no power to do so. The High Court held that the Tribunal had the inherent power to stay and directed the Tribunal to dispose of the application for stay in accordance with law. In appeal by the Income Tax Officer, this Court confirmed the findings of the High Court that the Tribunal had power to stay recovery. This Court held that the power of stay was incidental to the

appellate jurisdiction of the Court. It must immediately be noted that there was no statutory provision barring grant of stay.

Mr. Shishodia further submitted that both the High Courts and this Court have time and again exercised inherent jurisdiction under Section 482 Criminal Procedure Code to quash proceedings even under the said Act. He submitted that it takes a number of years for matters to reach hearing. He submitted that it was absolutely necessary that, during the pendency of such proceedings, there should be a stay of the trial. He submitted that otherwise there would be an anomalous position inasmuch as the trial may conclude before the High Court has examined the legality of the charge itself.

Mr. Shishodia next submitted that the expression "no court" in Section 19 of the said Act would not include the High Court. He submitted that it only applies to a Court which had revisional jurisdiction over the Special Court. He submitted that many of the Judges of the Special Court were Assistant Sessions Judges. He submitted that the revisional power would thus be exercised by the Sessions Court.

Mr. Shishodia next submitted that Section 19(3)(c) applies only to the revisional powers as exercised under Section 397 Criminal Procedure Code and not to the inherent jurisdiction, which a High Court exercises under Section 482 Criminal Procedure Code.

On the other hand the learned Solicitor General points out the Statement of Objects and Reasons of the Prevention of Corruption Act, 1988. The relevant portion of the Statement of Objects and Reasons of the Prevention of Corruption Act, 1988 reads as follows :

"2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. *The Act seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.*

A 3. The Act inter alia, envisages widening the scope of the definition of the expression "public servant", incorporation of offences under sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. *In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of a revision on interlocutory orders have also been included.*" (emphasis supplied)

B

C The learned Solicitor General Salve submitted that inherent jurisdiction of a Court could not be exercised if there was a specific provision for redressal of the grievances of the aggrieved party or against an express bar of law engrafted in any other provision. He further submitted that inherent jurisdiction had to be very sparingly exercised only to prevent abuse of process of any Court or to secure the ends of justice. In support of this submission he relied upon the cases of *Madhu Limaye v. The State of Maharashtra*, reported in [1977] 4 SCC 551, *Janata Deal v. H.S. Chowdhary & Ors.*, reported in [1992] 4 SCC 305 and *Indra Sawhney v. Union of India and Ors.*, reported in [2000] 1 SCC 168.

D

E We have heard the parties. Section 19(3)(c) of the said Act reads as follows :

“(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).

F                    xxxx                    xxxxx                    xxxxx

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.”

G It is thus to be seen that this Section provides :

(a) that no court should stay the proceedings under the Act on any ground and

H                    (b) that no court shall exercise the powers of revision in relation to any

interlocutory order passed in any inquiry, trial, appeal or other proceedings. To be noted that (b) above is identical to Section 397(2) of the Criminal Procedure Code which deals with revisional power of the Court. If Section 19 was only to deal with revisional powers then the portion set out in (b) above, would have been sufficient. The legislature has, therefore, by adding the words "no court shall stay the proceedings under this Act on any other ground" clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a Court is exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code.

There is another reason also why the submission that, Section 19 of the Prevention of Corruption would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code." Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of *Madhu Limaye v. The State of Maharashtra*, reported in [1977] 4 SCC 551, *Janata Deal v. H.S. Chowdhary & Ors.*, reported in [1992] 4 SCC 305 and *Indra Sawhney v. Union of India and Ors.*, reported in [2000] 1 SCC 168, the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.

We see no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.

Thus in cases under the Prevention of Corruption Act there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned Court to expedite the hearing of that petition. However, merely because the concerned Court is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.



A In this Appeal we see no reason to interfere with the impugned Order. The Appeal stands dismissed. We clarify that merits of the case have not been argued before us. We are thus not expressing any opinion on the merits of the case.

B As the trial has already been delayed, we direct that now the trial be taken up for hearing on a day to day basis and the same be concluded within a period of 6 months from today.

C It has been brought to our attention that in a large number of cases stays have been granted by the High Courts in matters under the Prevention of Corruption Act, even though there is a specific bar against the grant of any stay. We therefore direct the Registrars of all the High Courts to list all cases in which such stay is granted before the Court concerned so that appropriate action can be taken by the Court in the light of this decision. The Registrar of this Court is directed to send a copy of this order to the Registrars of all the High Courts.

D There shall be no Order as to costs.

E **THOMAS, J.** I am in respectful agreement with the judgment drafted by brother Variava J. When Parliament imposed an undiluted ban against granting stay of any proceedings involving an offence under Prevention of Corruption Act, 1988 (for short 'the Act') on any ground whatsoever, no court shall circumvent the said ban through any means. The reasons which prompted the Parliament to divest all the courts in India of the power to stay the proceedings in the trial courts involving any such offence, is to foreclose even the possible chance of delaying such trials on account of any party to such proceedings raising any question before the High Court during the pendency of trial proceedings.

F  
G In the Objects and Reasons for bringing the Act with new measures the law-makers declared it in abundantly clear terms that a provision prohibiting the grant of stay is included in the statute for speeding up the proceedings. This can be discerned from the following words:

H "In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been

included." A

The prohibition is couched in a language admitting of no exception whatsoever, which is clear from the provision itself. The prohibition is incorporated in sub-section (3) of Section 19 of the Act. The sub-section consists of three clauses. For all the three clauses the controlling non-obstante words are set out in the commencing portion as: B

"Notwithstanding anything contained in the Code of Criminal procedure 1973."

Hence none of the provisions in the Code could be invoked for circumventing any one of the bans enumerated in the sub-section. C

Clause (a) of the sub-section prohibits reversal or alteration of any finding or sentence or order passed by a Special Judge on the ground of absence of, or any error, omission or irregularity in the sanction required for taking cognizance of an offence punishable in the Act, unless in the opinion of the appellate or revisional court "a failure of justice has in fact occasioned thereby". D

Clause (b) contains the prohibition against stay of proceedings under this Act, but it is restricted to sanction aspect alone. No error, omission or irregularity in the sanction shall be a ground for staying the proceedings under this Act "unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice." In determining whether there was any such failure of justice it is mandated that the court shall have regard to the fact whether the objection regarding that aspect could or should have been raised at any earlier stage in the proceedings. We may now point out that merely because objection regarding sanction was raised at the early stage is not a ground for holding that there was failure of justice. If the special judge has overruled the objection raised regarding that aspect it is normally inconceivable that there could be any failure of justice even if such objections were to be upheld by the High Court. Overruling an objection on the ground of sanction does not end the case detrimentally to the accused. It only equips a judicial forum to examine the allegations against a public servant judicially. Hence it is an uphill task to show that discountenance of any objection regarding sanction has resulted in a failure of justice. The corollary of it is this: The High Court would not normally grant stay on that ground either. E F G H

A It is in clause (c) of the sub-section that the prohibition is couched in unexceptional terms. It reads thus:

"No court shall stay the proceedings under this Act on any other ground."

B The mere fact that yet another prohibition was also tagged with the above does not mean that the legislative ban contained in clause (c) is restricted only to a situation when the High Court exercises powers of revision. It would be a misinterpretation of the enactment if a court reads into clause (c) of Section 19(3) a power to grant stay in exercise of inherent powers of the High Court.

C We are informed that several High Courts, overlooking the said ban, are granting stay of proceedings involving offences under the Act pending before courts of Special Judges. This might be on account of a possible chance of missing the legislative ban contained in clause (c) of sub-section (3) of Section 19 of the Act because the title to Section 19 is "previous sanction necessary for prosecution." It could have been more advisable if the prohibition contained in sub-section (3) has been included in a separate Section by providing a separate distinct title. Be that as it may, that is no ground for by-passing the legislative prohibition contained in the sub-section.

D  
E I fully concur with the direction indicated by Variava J. in the judgment that the Registrar of each High Court shall list the cases in which such stay was granted by orders happened to be passed by such High Court and to board all such cases before the appropriate bench without further delay. This is to enable the High Court concerned to dispose of such matters in the light of this judgment.

N.J.

Appeal dismissed.