Iqbal Singh vs State (Delhi Administration) & Ors on 9 November, 1977

Equivalent citations: 1977 AIR 2437, 1978 SCR (2) 174, AIR 1977 SUPREME COURT 2437, (1977) 4 SCC 536, (1978) 2 SCR 174, 1977 CRI APP R (SC) 396, 1978 SCC(CRI) 1, 1978 ALLCRIC 105, 1978 SC CRI R 52

Author: A.C. Gupta

Bench: A.C. Gupta, P.S. Kailasam

PETITIONER:
IQBAL SINGH

Vs.

RESPONDENT:
STATE (DELHI ADMINISTRATION) & ORS.

DATE OF JUDGMENT09/11/1977

BENCH:
GUPTA, A.C.
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GUPTA, A.C.
KAILASAM, P.S.

CITATION:
1977 AIR 2437 1978 SCR (2) 174
1977 SCC (4) 536

ACT:
Criminal Law Amendment Act, 1952, s. 8(1)-Jurisdiction of Special Judge whether limited by a grant of pardon by Magistrate u/s. 337(1), Cr.P.C., 1898 Post-pardon application of s. 8(1), whether violative of Article 14, Constitution of India.

HEADNOTE:
A charge-sheet against the appellant and two others, was filed before the Special Judge Delhi u/s. 120-B I.P.C. read with ss. 161 and 165-A, I.P.C. and s. 5(2) of the Prevention of Corruption Act, 1947. Earlier, at the Investigation stage, the Chief Judicial Magistrate, Delhi, had granted pardon to, an approver u/s. 337(1) Cr. P.C., 1898. :Me appellant applied for getting the Proceeding quashed, but

his application was dismissed, first by the Special Judge, and thereafter by the High Court u/Art. 227 of the Constitution and s. 482. Cr.P.C.. 1898.

The appellant contended before this Court, that, on the grant of such a, pardon, the application of a. 8(1) of the Criminal Law Amendment Act, 1952 ceases for the reason that on the charge sheet being tiled before a Magistrate, the accused can have the approver's evidence at the trial tested against his statement before the Magistrate, while he is denied this opportunity where the charge sheet is filed before the Special Judge, thus rendering s. 8(1) of the Criminal Law Amendment Act if applied to such a case discriminatory, and violative of Art. 14 of the Constitution.

Dismissing the appeal the Court,

HELD : (1) Section 337 (2-B), under which the Magistrate is required to send the case for trial to the Special Judge. after examining the approver, does not in any way affect the jurisdiction of the Special Judge. By enacting sub-section (2B) in-1955, if the legislature sought to curb the power given to, the Special Judge by s. 8(1) of the Criminal Law Amendment Act, 1952, it would have expressed its intention clearly. [177 B-C]

(2)The fact that the approver's evidence cannot be tested against any previous statement does not 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. The mere availability of two procedures would not justify the quashing of a provision as being violative of Art. 14 , unless there is substantial and qualitative difference between the two procedures so that one is really and substantially more drastic and prejudicial than the other. (177 D-F]

Magantal Chagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay and Ors. [1975] 1 SCR 1, applied.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 60 of 1977.

Appeal by special leave from the Judgment and Order dated 10.9.76 of the Delhi High Court in Criminal M/s. (Main) No,. 84 of 1976.

A. K. Sen, Bishamberlal and B. B. Lal for the Appellant. P. N. Lekhi and R. N. Sachthey for Respondent No. 1.

The Judgment of the Court was delivered by GUPTA J., 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.

On or about November 28, 1973 a charge sheet against the appellant and two others was filed before, the Special Judge, Tis Hazari, Delhi, alleging facts constituting offences punishable under section 120-B 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 correction 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 Judgefor quashing the proceeding for want of sanction under section 197of 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 Art. 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 1 0, 1976 the High Court dismissed the appellant's petition and upheld the order of the Special Judge rejecting the prayer for quashing the proceeding.

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 be-en 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, 1952 empowering a Special Judge to take cognizance of offences without the accused being committed to him for trial, ceases to apply and the charge sheet 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.

To test this argument we may refer briefly to the relevant provisions of the Code. Section 3 3 7 (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 an(] true disclosure of the whole of the circumstances within his knowledge relative to the offence. Sub-section. (2) of the section requires every person accepting a tender. of pardon 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 subsection (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 Sessions or, High Court as the case may be. Subsection (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 subsection (2B) in the case of an offence mentioned in them subsection 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 approved has been examined under sub- section (2).

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 charge sheet 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 bet 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 charge sheet 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 charge sheet 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 charge sheet 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 subsection (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 charge sheet must be filed in the court of a Magistrate.

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 tile 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 subsection (2B) of section 337 of the Code is required to send the

case to 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 even 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 and others(1) held that 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 procedure 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 whither 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. M.R. Appeal dismissed.

(1,) [1975] 1 S.C.R. I