

## **Vivek Gupta vs Central Bureau Of Investigation And ... on 25 September, 2003**

**Equivalent citations: AIR 2004 SUPREME COURT 361, 2003 (11) SCC 146, 2003 AIR SCW 6392, (2003) 8 JT 296 (SC), (2004) 1 JCR 140 (SC), (2003) 5 LAB LN 199, 2003 (6) SLT 724, 2003 (9) SCALE 272, 2003 (4) LRI 532, 2003 (8) JT 296, (2004) 2 MAD LJ 113, (2003) 4 SCT 867, (2004) 1 SERVLR 287, (2004) 1 SUPREME 26, (2003) 9 SCALE 272, (2003) 5 ESC 240, (2003) 12 INDLD 486, (2004) 3 BOM CR 796, AIR 2004 SUPREME COURT 797, 2003 AIR SCW 6993, 2005 SCC(CRI) 801, (2003) 12 ALLINDCAS 773 (SC), 2003 (8) SCALE 655, 2003 (12) SCC 485, 2003 (4) LRI 294, 2003 CRIAPPR(SC) 642, 2003 (12) ALLINDCAS 773, 2004 (1) SRJ 181, 2003 (6) SLT 539, 2006 ALL MR(CRI) 6 NOC, (2004) 1 EASTCRIC 10, 2004 CHANDLR(CIV&CRI) 407, (2003) 4 CURCRIR 255, (2004) 1 ALLCRIR 524, (2003) 8 SCALE 655, (2004) 1 MPHT 476, (2003) 47 ALLCRIC 1157, (2003) 3 CHANDCRIC 165, (2004) 1 ALLCRILR 749, AIRONLINE 2003 SC 275, (2003) 11 INDLD 726, (2003) 26 OCR 744, (2003) 2 ALD(CRL) 1012, (2003) 3 CHANDCRIC 83, (2003) 4 ALLCRILR 734, (2003) 4 CRIMES 174, (2003) 4 CURCRIR 137, (2003) 4 KHCACJ 244 (SC), (2003) 4 RECCRIR 549, (2003) 6 SUPREME 921, (2003) 8 SCALE 100, 2003 (8) SCC 628, 2003 CHANDLR(CIV&CRI) 699, (2004) 1 ALLCRIR 243, (2004) 1 ANDHLT(CRI) 9, (2004) 1 BOMCR(CRI) 549, (2004) 1 JCJR 26 (SC), (2004) 2 RAJ CRI C 517, (2004) 50 ALLCRIC 19, 2004 ALLMR(CRI) 1184, 2004 SCC (CRI) 51, (2004) SC CR R 493, 2004 UJ(SC) 1 140, (2005) 3 EASTCRIC 215**

**Author: B.P. Singh**

**Bench: N.Santosh Hegde, B.P. Singh**

CASE NO.:

Appeal (crl.) 1249 of 2002

PETITIONER:

Vivek Gupta

RESPONDENT:

Central Bureau of Investigation and another

DATE OF JUDGMENT: 25/09/2003

BENCH:

N.Santosh Hegde & B.P. Singh.

## JUDGMENT :

J U D G M E N T B.P. SINGH, J.

In this appeal by special leave the core question which arises for consideration is whether the appellant herein can be charged and tried together with the other two accused by the Special Judge under the provisions of the Prevention of Corruption Act, 1988, in view of the fact that the appellant herein has been charged only under Section 420 I.P.C. and under Section 120-B read with Section 420 I.P.C. while the other two accused have been additionally charged of the offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act"). The appellant contends that the Special Judge under the Prevention of Corruption Act has no jurisdiction to try the appellant who is not charged of any offence under the said Act, while the respondent contends to the contrary relying upon the provisions of the said Act and the Code of Criminal Procedure. The High Court of Bombay by its impugned judgment and order has answered the question in the affirmative holding that the appellant can be tried by the Special Judge under the Prevention of Corruption Act along with the two accused who also stand charged of offences under the Act.

Before advertng to the submissions urged at the Bar, we may very briefly notice the broad facts of the case to appreciate the nature of the allegations made against the appellant and the other two accused. Accused No.1 Sri G.B. Nande was at the relevant time the Manager of the Commercial Branch of the State Bank of India, Fort, Bombay, while accused No.2 Sri J.S. Kelkar was an Accountant employed in the same branch of the State Bank of India. The appellant herein is accused No.3 who transacted business with the said branch of the State Bank of India on behalf of eight companies with which he was associated. There is considerable controversy as to whether the appellant was a Director of those companies or whether he was simply representing them as their representative. This, however, is not of much consequence in this appeal. The case of the prosecution is that the appellant entered into a conspiracy with the aforesaid officers of the bank to cheat the bank. A clever device, rather intricate in nature, was conceived by them whereby eight separate accounts were opened in the name of the companies concerned and overdraft facility was extended to the companies on the representation of the appellant and with the assistance of the aforesaid officers of the bank. The aforesaid officers of the bank misused their official position and in a dishonest manner the banking business was transacted in such a manner that it caused substantial monetary loss to the bank. This was achieved by the appellant and the officers of the bank acting in concert, pursuant to the conspiracy. The aforesaid officers of the bank abused their official position as public servant and by corrupt or illegal means obtained pecuniary advantage for themselves and others. The Special Judge, therefore, framed charges against all the three accused for the offence punishable under Section 120-B read with Section 420 I.P.C. The appellant herein was additionally charged of the offence under Section 420 I.P.C. Accused Nos. 1 and 2, the bank officers were also charged of the offence punishable under Section 13 (2) read with Section 13 (1) (d) of the Act.

Sri S.B. Sanyal, learned senior advocate appearing on behalf of the appellant submitted that in view of the express provisions of Section 3 of the Act, the Special Judge could only try offences which are

punishable under the Act or any conspiracy to commit or any attempt to commit or abetment of any of the offences punishable under the Act. Sub- section (3) of Section 4 empowers the Special Judge to try an accused at the same trial for any offence committed under any law other than an offence punishable under the Act. He, however, added that before an accused can be charged and tried by the Special Judge for any offence other than an offence under the Act, the necessary pre-condition is that the said accused must also be charged of an offence under the Act or conspiracy to commit, attempt to commit or abetment of any offence under the Act. He, therefore, submitted that since the appellant herein was charged only of offences under Section 420 and Section 120-B read with Section 420 I.P.C., he could not be tried by the Special Judge even with the aid of sub-Section (3) of Section 4 of the Act. He submitted that only the co-accused, who were officers of the bank, were charged of offences under the Act and there was no charge against the appellant of having committed any offence under the Act or of having conspired, attempted or abetted to commit an offence under the Act. Clearly therefore, according to him, the Special Judge had no jurisdiction to try the appellant along with the co-accused in the same trial. He did not dispute the position that so far as the co-accused are concerned, the Special Judge had jurisdiction to try them for any offence under the Act and even for the offence under Section 120-B read with Section 420 I.P.C. However, since the appellant was not charged of any offence specified in Section 3 of the Act, the Special Judge had no jurisdiction to try him for the offence under Section 420 I.P.C. or even under Section 120-B read with Section 420 I.P.C. treating him as a co-conspirator of the co- accused.

Shri P.P. Malhotra, senior advocate appearing for the respondent- CBI, however, contended that the appellant being a co-conspirator, and the Special Judge having jurisdiction to try the co-accused for the offence under Section 120-B read with 420 I.P.C., the jurisdiction of the Special Judge to try the appellant was not in doubt. He submitted that it would be rather incongruous that on a charge of conspiracy some of the conspirators may be tried by the Special Judge while others must be tried by the Courts under the Code of Criminal Procedure. He placed strong reliance on two decisions of this Court namely, Kadiri Kunhahammad vs. The State of Madras : AIR 1960 SC 661 and Union of India vs. I.C. Lala : A.I.R. 1973 S.C. 2294 and submitted that applying the principles laid down by this Court, the High Court was right in holding that the appellant could be tried along with the co-accused by the Special Judge in the same trial even for the offences not specified under Section 3 of the Act, but forming a part of the same transaction which led to the commission of an offence under the Act, for which the public servants concerned were charged in addition to the offence of conspiracy under the I.P.C.

To appreciate the force of the rival submissions, it is necessary to notice the relevant provisions of the Act and the Code of Criminal Procedure. Section 3 and Section 4 of the Act read as follows :-

"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 by special 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) When trying any case, a special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

Section 22 of the Act provides that the provisions of the Code of Criminal Procedure, 1973 shall, in their application to any proceeding in relation to an offence punishable under the Act, have effect subject to certain modifications specified therein. The modifications of the provisions of the Code of Criminal Procedure in their application to offences punishable under the Act do not modify the provisions of Chapter XVII of the Code of Criminal Procedure with which we are concerned in the instant appeal. It is, therefore, apparent that the provisions of the Code of Criminal Procedure do apply to trials for offences under the Act subject to certain modifications as provided in Section 22 of the Act unless the application of any provision of the Code is excluded either expressly or by necessary implication.

Section 220 of the Code of Criminal Procedure provides as follows :-

"220. Trial for more than one offence.-

(1), If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

The relevant provisions of Section 223 of the Code read as under:-

"223. What persons may be charged jointly. - The following persons may be charged and tried together, namely :-

(a) persons accused of the same offence committed in the course of the same transaction ;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence ;

(c) ... ..

(d) persons accused of difference offences committed in the course of the same transaction ;

(e) ... ..

(f) ... ..

(g) ... ..

A mere perusal of Section 4 of the Act clearly mandates that as specified in Section 3, offences punishable under the Act or any conspiracy, attempt or abetment to commit an offence under the Act shall be tried by a Special Judge appointed in accordance with Section 3 of the Act. Sub-section (3) of Section 4 also lays down clearly that while trying any case for an offence specified in Section 3 of the Act, a Special Judge may also try any offence other than offences specified in Section 3 with which the accused may under the Code of Criminal Procedure, 1973 be charged at the same trial. It therefore follows that a Special Judge trying a case relating to an offence specified in Section 3 of the Act may also try any offence under any other law for which, under the provisions of the Code of Criminal Procedure, the accused may be charged at the same trial. Thus in cases within the contemplation of Section 4 (3) of the Act, the Special Judge is not precluded from trying an offence other than an offence specified in Section 3 of the Act.

We have earlier reproduced the provisions of Section 220 of the Code. The aforesaid Section will clearly apply to the case of co-accused who undoubtedly must be tried by the Special Judge for the offence under Section 120-B read with Section 420 I.P.C., apart from the offence under the provisions of the Act. This is so because in the facts of this case there is no doubt that the offence under the Act and the offence under the I.P.C of which they have been charged were committed in the course of the same transaction. Even Mr. Sanyal, learned senior advocate appearing for the appellant did not dispute this position. His submission is that since the co-accused have been charged of offences under the Act, they can be tried by the Special Judge for other offences as well if such other offences have been committed in the course of the same transaction. He submitted that "accused" in Sub-section (3) of Section 4 refers to an accused who is charged of offences specified in Section 3 of the Act. Therefore, he contends that since the appellant is not charged of any offence specified in Section 3 of the Act, his case will not be covered by sub-section (3) of Section 4.

On the other hand Sri P.P. Malhotra, senior advocate for the respondent contends that once it is held that the co-accused can be tried by the Special Judge of the charge under Section 120-B read with Section 420 I.P.C., it must logically follow that the co-conspirators must also be tried with them in the same trial, and for this he places strong reliance on the provisions of Section 223 of the Code of Criminal Procedure.

We have given to the rival submissions our deep consideration and we are of the view that the contention of the respondent must be upheld. It is worth noticing that Sub-section (3) of Section 4 of the Act provides that a Special Judge may "also try any offence" other than an offence specified in Section 3 with which the accused may under the Code of Criminal Procedure be charged at the same trial. We have observed earlier that the provisions of the Code of Criminal Procedure apply to trials under the Act subject to certain modifications as contained in Section 22 of the Act and their exclusion either express or by necessary implication.

Section 223 of the Code of Criminal Procedure has not been excluded either expressly or by necessary implication nor has the same been modified in their application to trials under the Act. The said provision therefore is applicable to the trial of an offence punishable under the Act. The various provisions of the Act which we have quoted earlier make it abundantly clear that under the provisions of the Act a Special Judge is not precluded altogether from trying any other offence, other

than offences specified in Section 3 thereof. A person charged of an offence under the Act may in view of sub-section 3 of Section 4 be charged at the same trial of any offence under any other law with which he may, under the Code of Criminal Procedure, be charged at the same trial. Thus a public servant who is charged of an offence under the provisions of the Act may be charged by the Special Judge at the same trial of any offence under I.P.C. if the same is committed in a manner contemplated by Section 220 of the Code.

The only narrow question which remains to be answered is whether any other person who is also charged of the same offence with which the co-accused is charged, but which is not an offence specified in Section 3 of the Act, can be tried with the co-accused at the same trial by the Special Judge. We are of the view that since sub-section (3) of Section 4 of the Act authorizes a Special Judge to try any offence other than an offence specified in Section 3 of the Act to which the provisions of Section 220 apply, there is no reason why the provisions of Section 223 of the Code should not apply to such a case. Section 223 in clear terms provide that persons accused of the same offence committed in the course of the same transaction, or persons accused of different offence committed in the course of the same transaction may be charged and tried together. Applying the provisions of Sections 3 and 4 of the Act and Sections 220 and 223 of the Code of Criminal Procedure it must be held that the appellant and his co-accused may be tried by the Special Judge in the same trial.

This is because the co-accused of the appellant who have been also charged of offences specified in Section 3 of the Act must be tried by the Special Judge, who in view of the provisions of sub-section (3) of Section 4 and Section 220 of the Code may also try them of the charge under Section 120-B read with Section 420 I.P.C. All the three accused, including the appellant, have been charged of the offence under Section 120-B read with Section 420 I.P.C. If the Special Judge has jurisdiction to try the co-accused for the offence under Section 120-B read with Section 420 I.P.C., the provisions of Section 223 are attracted. Therefore, it follows that the appellant who is also charged of having committed the same offence in the course of the same transaction may also be tried with them. Otherwise it appears rather incongruous that some of the conspirators charged of having committed the same offence may be tried by the Special Judge while the remaining conspirators who are also charged of the same offence will be tried by another Court, because they are not charged of any offence specified in Section 3 of the Act.

Reliance was placed by the respondent on the judgment in *Union of India vs. I.C. Lala* : A.I.R. 1973 S.C. 2294 but counsel for the appellant distinguished that case submitting that the facts of that case are distinguishable in as much as in that case apart from the two army officers, even the third appellant who was a businessman, was charged of the offence punishable under Section 120-B I.P.C. read with Section 5 (2) of the Act. Such being the factual position in that case, Section 3 (1) (d) of the relevant Act was clearly attracted. In the instant case he submitted, there was no charge against the appellant of having conspired to commit a offence punishable under the Act. The aforesaid judgment refers to an earlier decision of this Court in the case of *State of Andhra Pradesh vs. Kandimalla Subbaiah and another* : AIR 1961 SC 1241. Learned counsel for the appellant distinguishes that case also for the same reason, since in that case as well the respondent was charged of conspiracy to commit an offence punishable under the Act.

We are, therefore, of the view that in the facts and circumstances of this case, the Special Judge while trying the co-accused of an offence punishable under the provisions of the Act as also an offence punishable under Section 120-B read with Section 420 I.P.C. has the jurisdiction to try the appellant also for the offence punishable under Section 120-B read with Section 420 I.P.C. applying the principles incorporated in Section 223 of the Code. We, therefore, affirm the finding of the High Court and dismiss this appeal.