

Nar Bahadur Bhandari Etc vs State Of Sikkim And Others on 13 May, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2203, 1998 AIR SCW 2093, (1998) 3 SCR 421 (SC), 1998 CRI. L. J. 3013, (1998) 2 CURCRIR 280, (1998) 2 PAT LJR 195, (1998) 2 RECCRIR 769, (1998) 3 SCJ 391, 1998 (5) SCC 39, 1998 UJ(SC) 2 143, 1998 ADSC 4 600, 1998 CALCRILR 273, (1998) 4 ALLCRILR 13, 1998 CRILR(SC&MP) 420, (1998) 2 CTC 189 (SC), (1998) 3 RAJ LW 369, 1998 UP CRIR 824, 1998 CRILR(SC MAH GUJ) 420, (1998) 3 SCALE 571, (1999) 1 SERVLJ 7, 1998 APLJ(CRI) 2 231, (1998) 2 CHANDCRIC 294, (1998) 5 SUPREME 9, 1998 SCC (CRI) 1252, (1998) 4 JT 164 (SC)

Bench: M. Srinivasan, Syed Shah Mohammed Quadri

PETITIONER:
NAR BAHADUR BHANDARI ETC.

Vs.

RESPONDENT:
STATE OF SIKKIM AND OTHERS

DATE OF JUDGMENT: 13/05/1998

BENCH:
M. SRINIVASAN, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SRINIVASAN, J.

Leave granted.

The common question in these petitions relates to the competence of Special Judge (P.C. Act) Sikkim to try the cases registered against the petitioners herein under Section 5(2) read with Section

5(1)(e) of the Prevention of Corruption Act, 1947 corresponding to Section 13(2) read with Section 13(1)(e) of the prevention of Corruption Act, 1988. The petitioner in S.L.Ps 146-148 of 1998 is the third respondent in S.L.Ps 149-150 of 1998 and the petitioner in the later petitions is the third respondent in S.L.Ps 146-

148. The petitioner in the earlier petitions was the Chief Minister of Sikkim and the petitioner in the later petitions was a Member of Indian Administrative Service(Sikkim cadre) working at the relevant time as a Secretary to the Rural Development Department, Government of Sikkim.

2. Cases were registered against the petitioners by C.B.I. on 26.5.84 and 7.8.84 under Section 5(2) read with Section 5 (1)(e) and Section 5 (2) read with Section 5 (1)(d) of the prevention of Corruption Act 1947. On 7.1.87 the State of Sikkim issued a Notification withdrawing the consent given under Section 6 of the Delhi Special Police Establishment Act, 1946 to the C.B.I. for exercising powers and jurisdiction the State of Sikkim for investigations of offences punishable under the provisions of the Indian Penal Code specified therein as well as offences under the Prevention of Corruption Act, 1947. The said Notification was challenged in a writ petition filed under Article 32 of the Constitution of India. This Court by its judgment dated March 29, 1994 allowed the writ petition and declared that the Notification dated 7.1.87 withdrawing the consent given by the Government of Sikkim earlier operated only prospectively and the said withdrawal would not apply to cases which were pending investigation on the date of issuance of the said Notification. The Court observed that the Notification dated 7.1.87 did not preclude the C.B.I from submitting the report in the competent court under Section 173 Cr.P.C. on the basis of the investigation conducted in RC 5/84- CIU (A) and RC 8/84- CIU (A). The judgment of this Court is reported in Kazi Lhendup Dorji Versus Central Bureau of Investigation and others 1994 Supp (2) S.C.C. 116.

3. It should be mentioned here that even before the said writ petition was filed, the prevention of Corruption Act, 1947 (hereinafter referred to as 'The Act of 1947')) was repealed and the prevention of Corruption Act, 1988 (hereinafter referred to as 'The Act of 1988') came into force. The Act of 1947 was extended to the State of Sikkim with effect from 1.9.76. The Delhi Special Police Establishment Act 1946 had been extended to the State of Sikkim with effect from 15.5.76. The Act of 1988 became applicable to the State of Sikkim from the date it came into force namely 9.9.88. On 13.9.1994 the following Acts were made applicable to the State of Sikkim.

1. Cr. P.C. 1973

2. Indian Penal Code 1860

3. Indian Evidence Act 1972 On the same day, the State of Sikkim issued Notification under Section 3 of The Act of 1988 appointing Shri A. P. Subba as Special Judge for trying cases referred to in clauses (a) and (b) of Section 3(1) of the said Act for the Whole of the State of Sikkim.

4. On 14.9.94 the C.B.I. filed its report before the said Special Judge as permitted by this Court in its judgment dated March 29,1994. The Special Judge passed a detailed order on 11.8.95 holding that on the basis of materials on record he was of the view that prima facie there was ground for

presuming that the accused had committed an offence punishable under Section 5(2) read with Section 5 (1)(e) of the Act of 1947 corresponding to Section 13(2) read with Section 13 (1)(e) of the Act of 1988 and accordingly charges had to be framed. Thereafter the petitioners raised a preliminary objection to the competence of the Special Judge to try the aforesaid offences. After hearing arguments on both sides the special Judge passed an order on 1.7.97 upholding the preliminary objection and expressing the view that the Court not having been constituted under Criminal Law (Amendment) Act, 1952 hereinafter referred to as the 'Act of 1952' lacked jurisdiction to take cognizance of and to try the offences in the present case. Consequently, it held that further proceedings in both the cases stood dropped and the accused be discharged from their respective bail bonds.

5. That order of the Special Judge was challenged before the high Court in Criminal Revision Nos. 1,3 and 4 of 1997 by the State and the C.B.I. The learned Chief Justice of the High Court on 24.9.1997 allowed the revision petitions and held that the Special Judge appointed under Section 3 of the act of 1988 had jurisdiction entertain the chargesheet filed under the provisions of the Act of 1988 with regard to the offences committed under the Act of 1947 and directed the special Judge to dispose of the criminal case pending on his file in accordance with law. It is that order of the High Court which is challenged in these S.L.Ps.

6. Learned counsel for the petitioner in S.L.Ps 146-148 of 1998 has contended as follows:- Before the passing of the Act 1988 there were two enactments which dealt with the offences in question, namely, the Act of 1947 and the Act of 1952. The Act of 1952 provided for constitution of Special Courts to try the offences under the Act of 1947 and excluded the jurisdiction of other Courts. The Act of 1952 was not extended to the State of Sikkim. No special Court was constituted in the State of Sikkim to try the offences under the Act of 1947. Consequently, when the Act of 1988 was passed repealing both the Act of 1947 and the Act of 1952 and bringing into force a consolidated and amalgamated Legislation providing not only for the ingredients of the offences but also for the constitution of Special Courts to try the same, the Special Court constituted under Section 3 of the Act of 1988 has jurisdiction only to try the offences punishable under the said act. Such a Court cannot try the offences punishable under the Act of 1947 unless the proceeding in relation to such offences had commenced before a Special Judge appointed under the Act of 1952. In the absence of such Special Judge under the Act of 1952 in the State of Sikkim, Section 26 of the Act of 1988 is not applicable and the present proceeding will not be governed thereby. Section 30 of the Act of 1988 is not applicable to the facts of the case in as much as the repeal under Sub- sec. (1) of Section 30 is a joint repeal of both the Acts, namely, the Act of 1947 and the Act of 1952. sub--sec. (2) of Section 30 will come into play only if sub-sec. 91) is applicable. In the State of Sikkim the Act of 1952 was not in force so as to be repealed by sub-sec (1) of Section 30 and consequently sub-section 2 will not apply. It is also contended the Section 6 of the General Clauses Act will not help the prosecution in the present case in as much as the provisions of the Act of 1988 indicate a different intention as contemplated by the first part of the said Section 6. According to the learned counsel if the provisions of the Act of 1988 are perused, it will be seen that the legislative intention is not to make Section 6 of the General Clauses Act applicable to the repeal of Act of 1947. In this connection reliance is placed on the judgment of this Court in State of Punjab Versus Mohar Singh (1955) 1 S.C.R. 893.

7. Learned counsel for the petitioners in S.L.Ps 149-150 of 1998 has contended that Section 30(2) of the Act of 1988 can apply only if a proceeding had been initiated before the said Act came into force so that it could be continued and in the present case the proceeding was instituted only after the said Act came into force and consequently the Special Court had no jurisdiction. It is also contended by him that the prosecution had conceded before the High Court that the alleged offence is punishable under Section 5(1) (d) and 5 (2) of the Act of 1947 and not under the Act of 1988 and therefore the special court has no jurisdiction.

8. Per contra, learned Additional Solicitor General has contended that Section 3 of the Act of 1988 has to be read along with Section 30(2) of the said Act and that it will be clear therefrom that the Special Court is competent to try the offences under the Act of 1947 as well as the Act of 1988. According to him a legal fiction is created by Section 30(2) by which the Act of 1988 is deemed to have been in force at the time when the offences were committed and the investigation done. Reliance is placed by him on the judgment of this Court in B.N. Kohli and others Versus State of Uttar Pradesh and others 1966 (2) S.C.R. 158. Our attention is also drawn to the judgment of this Court in C.B.I versus Subodh Kumar Dutta and another (1997) 10 S.C.C. 567 and it is contended that the matter is concluded by the judgment in that case.

9. The contentions urged on behalf of the petitioners are based on a wrong understanding of provisions of the Act of 1988. No doubt, section 3 of the said Act refers only to offences punishable under the Act and the Special Courts constituted under Section 3 will have jurisdiction to try the offences punishable under the Act but Section 3 cannot be read in isolation. It should be read along with other provisions of the Act to understand the scope thereof. Section 30(1) of the Act of 1988 repeals the Acts of 1947 and 1952. that does not mean that any offence which was committed under the At of 1947 would cease to be triable after the repeal of the said Act. Normally Section 6 of the General Causes Act would come into play and enable the continuation of the proceedings including investigation as if the repealing Act had not been passed. As per the provisions of Section 6 of the General Clauses Act the position will be as if the Act of 1947 continues to be in force for the purpose of trying the offence within the meaning of the said Act. Section 6 of the General Causes Act however makes it clear that the said position will not obtain if a different intention appears in the repealing Act. In the present case, the Act of 1988 is the repealing Act. Sub-sec. (2) of Section 30 reads as follows:

(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 purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far 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 provision of this Act."

The said sub-section while on the one hand ensures that the application of Section 6 of the General Clauses Act is not prejudiced, on the other it expresses a different intention as contemplated by the said Section 6. The last part of the above sub-section introduces a legal fiction whereby anything done or action taken under or in pursuance of the Act of 1947 shall be deemed to have been done or

taken under or in pursuance of corresponding provisions of the Act of 1988. That is, the fiction is to the effect that the Act of 1988 had come into force when such thing was done or action was taken.

10. This aspect of the matter was clearly elucidated by the Constitution Bench in B. N. Kohli's case(supra). In that case Ordinance 27/49 repealed Ordinance 12/49. The relevant provision in the repealing Ordinance was sub-sec.(3) of Section 58. That read as follows:

" The repeal by this Act of the Administration of Evacuee property Ordinance, 1949 or the Hyderabad Administration of Evacuee property, Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or Corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this act were in force on the day on which such thing was done or action was taken."

11. While construing the said sub-section, the Court observed as follows:

"... By the first part of S.58(3) repeal of the statutes mentioned therein did not operate to vacate things done or action taken under those statutes. This provision appears to have been enacted with a view to avoid the possible application of the rule of interpretation that where statute expires or is repealed, in the absence of a provision to the contrary, it is regarded as having never existed except as to matters and transactions past and closed:

(see *Surtees versus Ellison* (1829) 9 B & C 752). This rule was altered by an omnibus provision in General Clauses Act, 1897, relating to the effect of repeal of statutes by any Central Act or Regulation. By s.6 of the General Clauses Act, it is provided, in so far as it is material, that any; central Act of Regulation made after the commencement of the General Clauses Act or Regulation made after the commencement of the General Clauses Act repeals any enactment, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, occurred or incurred under any enactment so repealed or affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such penalty forfeiture or punishment may be imposed. as if the Repealing Act or Regulation had not been passed. But the rule contained in Section 6 applies only if a different intention does not appear, and by enacting Section 58(3) the Parliament has expressed a different intention, for whereas the General Clauses Act keeps alive the previous operation of the enactment repealed, and things done and duly suffered, the rights, privileges, obligations or liabilities acquired or incurred, and authorities the investigation, legal proceeding and remedies in respect of rights, privileges,

obligations, liabilities, penalties, forfeitures and punishment and if the repealing Act or Regulation had not been passed, Section 58 (3) of Act 31 of 1950 directs that things done or actions taken in exercise of power conferred by the repealed statutes shall be deemed to be done or taken under the repealing Act as if that latter Act were in force on the day on which such thing was done or action was taken. The rule so enunciated makes a clear departure from the rules enunciated in Section 6 of the General Clauses Act, 1897. By the first part of Section 58(3) which is in terms negative, the previous operation of the repealed statutes survives the repeal. Thereby matters and transactions past and closed remain operative; so does the previous operation of the repealed statute.

But as pointed out by this Court in Indira Sohanlal's case (1955) 2 S.C.R. 1117 at P.1133, the saving of the previous operation of the repealed statute. But as pointed out by this Court in Indira Sohanlal's case (1955) 2 S.C.R. 1117 at P. 1113, the saving of the previous operation of the repealed law is not to be read as saving the future operation of the previous law. The previous law stands repealed, and it has not for the future the partial operation as it is prescribed by Section 6 of General Clauses Act. All things done and actions taken under the repealed statute are deemed to be done or taken in exercise of powers conferred by or under the repealing Act, as if that Act were in force on the day on which that thing was done or action was taken. it was clearly the intention of the parliament that matters and transactions past and closed were not to be deemed vacated by the repeal of the statute under which they were done. The previous operation of the statute repealed was also affirmed expressly but things done or actions taken under the repealed statute are to be deemed by fiction to have been done or taken under the repealing Act."

12. On the basis of the above reasoning the Court held that the Custodian- General had jurisdiction to entertain a revision against an order passed by the Deputy Custodian of the Evacuee property under Section 6 of Ordinance 12/49 which was repealed by Ordinance 27/49.

13. Applying the said ratio of the Constitution Bench, we arrive at the conclusion that the Special Court constituted under Section 3 of the Act of 1988 has competence to try the offences under the Act of 1947.

14. The judgment in State of Punjab versus Mohar singh (supra) relied on by the learned counsel for the petitioner does not help him in any manner. The Court has only held in that case that in order to ascertain the different intention within the meaning of section 6 of the General Clauses Act the Court has to read the provisions of repealing enactment.

15. In our view, the matter has been set at rest by the judgment of this Court in C.B.I. Versus Subodh Kumar Dutta and another (supra). That was an appeal by the C.B.I. from the judgment of the High Court of Calcutta allowing a criminal revision filed by the respondent therein quashing the proceedings of the Special Court constituted under the West Bengal Special Courts Act, 1950 for trying the offences under the Act of 1947. A case was registered in November 1987 by the C.B.I. before the special Court and cognizance of the offence was taken by the Special Judge on 9.7.88. When the Act of 1988 came into force on 9.9.88 an objection was taken to the competence of a

Special Court to continue with the case. A Criminal Revision Petition was filed by the accused before the High Court seeking to quash the proceeding before the Special Judge. The High Court accepted the contention of the accused and opined that Section 26 of the Act of 1988 saved only proceedings before the Special Courts constituted under the Act of 1952 and not other Special Courts. Consequently the proceeding was quashed.

16. Reversing that judgment of the High Court this Court, held that by virtue of the provisions of sub-sec. (2) of Section 30 the proceeding initiated under the Act of 1947 shall be deemed to have been taken under the corresponding provisions of the Act of 1988 and consequently the Court had jurisdiction to continue the Same. The relevant passage in the judgment reads as follows:

" A bare look at the provisions of sub-sec. (2) of Section 30 shows that anything done or any action taken or purported to have been taken under or in pursuance of the prevention of Corruption Act, 1947 shall be deemed to have been taken under or in pursuance of the corresponding provision of the Prevention of Corruption Act 1988. In view of this specific provision, cognizance of the offence taken by the Special Court stood saved. It appears that the attention of the learned Single Judge of the High Court was not invited to Section 30 (supra) or had it been so invited, we have no doubt that the proceedings which were saved by the 1988 Act would not have been quashed. The learned Single Judge has only deferred to Section 26 of the 1988 Act and we agree that under that Section, the cognizance taken by the Special Court was not saved. Section 26 of the 1988 Act has no application to this case.

The order of the High Court in view of the clear provisions of Section 30 (supra) cannot be sustained and we, therefore, accept this appeal and set aside the order of the High Court impugned before us. Since the High Court did not express any opinion on the other points raised in the revision petition, we deem it appropriate to remand the matter to the High Court for deciding the Criminal revision petition, filed by Respondent No.1, afresh on merits after hearing the parties in the light of the observations made by us above..... "

17. The present one is an afortiori case. when a Special Court constituted under an enactment other than the Act of 1952 can continue the proceedings by virtue of Section 30(2) of the Act of 1988, it goes without saying that the special Court constituted under the Act of 1988 can take cognizance of the report filed before it and try the offences particularly when this Court had in its judgment dated March 29, 1994 held that the filing of such report was not precluded (vide 1994 Supp. (2) S.C.C. 116).

18. We have no hesitation to hold that the special Judge (P.C. Act) Sikkim is competent to try the offences for which the appellants stand charged. Hence these appeals are dismissed.