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TRIAL OF ECONOMIC OFFENCES - NEED FOR SOME PROCEDURAL CHANGES

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Chapter XIX of Code of Criminal Procedure, 1973 deals with the trial of the warrant cases by the Magistrates. It is consisting of three parts. Part-A deals with “cases instituted on a police report”, “consisting of Sections 238 to 243, and Part-B prescribes the procedure for trial of the cases instituted” otherwise than on police report”, consisting of Sections 244, 245, 246 and 247, Part C deals with the conclusion of the trials. Sections 248, 249, and 250 are the relevant sections under this Part-C, and Part C is applicable for both cases instituted on police report and also cases instituted otherwise than on police report. The difference in the two procedures *i.e.*, the procedure contemplated in Part A and the procedure contemplated in Part B lies in the initial stages.

Under the procedure contemplated in Part-A the Magistrate is empowered to frame a charge without examining any witnesses before/charges and merely on examining the documents, a charge can be framed. Whereas the examination of the witnesses before framing a charge is mandatory if the procedure contemplated under Part-B is adopted. The classification for the different procedures was challenged before the Supreme Court in *Budhan Choudary v. State of Bihar* AIR 1955 SC 191. The Hon’ble Supreme Court enunciated the principles underlying Article 14 of the Constitution of India and held as under:

“In order to pass the test of permissible classification, two conditions must be fulfilled, *viz.*, (1) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.”

In the case of *Ghisia v. State*, AIR 1959 Raj. 266 and *Mahabir Prasad v. State of Orissa*, AIR 1958 Ori. 11. It is held that the classification satisfies the test of reasonableness in as much as it is based on a relevant consideration namely, whether or not there has been a previous investigation by a responsible public servant whose duty it is to detect crime and bring offenders to book and held that the test of *intelligible differentia* is satisfied. As regard the second test the underlying purpose is to ensure speedy disposal of the warrant cases instituted on police report without in any way prejudicing the accused. It is to achieve this object that the Legislature has simplified the procedure and done away

with the necessity for the examination of witnesses before framing of the charge. There is thus a nexus between the basis of the classification and the object sought to be achieved by the statutory provisions in question. Thus it is made out that the procedure contemplated for trial of complaints filed on the basis of the police reports and otherwise than on police reports was considered to be constitutionally valid and there was no discrimination under Article 14 of the Constitution of India.

Section 2(r) defines “police report” as a report forwarded by a police officer to a Magistrate under sub-clause (2) of Section 173. Complaint is defined under Section 2 (d), which means any allegation, made orally or written to a Magistrate with a view to his taking action under this code that some persons whether known or unknown has committed an offence but does not include a police report. Thus Code of Criminal Procedure had defined a police report as a report submitted to the Magistrate under Section 173 of Cr.PC which is popularly known as a final report (Charge-sheet) having completed the investigation. Thus basing upon the final report submitted by police officer under Section 173 of Cr.PC the Magistrate is empowered to take cognizance of the offence and try the offence under Chapter XIX Part-A by straightaway framing a charge, and while framing of charge, the Magistrate shall consider the documents filed along with charge-sheet. The documents that are generally looked into by the Magistrate while framing charges under Sections 240 Cr.PC are, the charge-sheet *i.e.*, the final report submitted under Section 173 Cr.PC, the first information report given under Section 154 Cr.PC and the statements of the witnesses recorded under Section 161 Cr.PC by the police officer, and normally while framing the charge the Court cannot embark upon an enquiry, whether the evidence is reliable

or not for the purpose of framing the charge and at the stage of framing charge the Court need not be satisfied that the prosecution would ultimately result in conviction and it would be sufficient enough that there are circumstances which raise enough suspicion as to the complicity of the accused.

In addition to the offences mentioned under the Indian Penal Code there are various other economic offences and other social crimes which are punishable under various enactments : To name of some of them, the offences committed under the Central Excise Act, the Customs Act, 1962, the Income Tax Act, 1961, FERA, 1973, ESI Act, 1948, the Companies Act, 1956, Prevention of Corruption Act, Dowry Prohibition Act *etc.* These offences are also investigated by responsible public servants and after an elaborate enquiry and investigation based upon so many material documents, the authorities prescribed under the above enactments file “complaints” before the Court and these offences are now being tried under Part B of Chapter XIX, as cases instituted “otherwise than on Police Report”. Since the complaint filed by the public servants under the above enactments are only complaints as defined under Section 2(d) of Cr.PC and the public servants not being police officers and their complaints cannot be treated as the police report within the meaning of Section 2(r) read with Section 173 Cr.PC therefore necessarily all the complaints filed by the public servants under various Central enactments referred above have to be tried only under Part B of Chapter XIX and the Courts have not left with any option except adopting the private warrant procedure for trial of these cases.

Now the question that arise for consideration is whether the procedure contemplated under Part A of Chapter XIX can also be extended to the various

complaints filed under various enactments as referred above by making a simple amendment to the heading of Part-A as “Cases instituted on a Police and public servant’s Report”. The practical difficulties in trying the offence committed under various Central enactments as referred above under Chapter XIX Part B as “complaints instituted otherwise than a public report” which is popularly known as “private warrant procedure” are enumerated hereunder :

(i) Though there is voluminous evidence both documentary and oral, if the procedure is adopted under Part B of Chapter XIX the Court is required to examine all the witnesses before framing charge under Section 244 Cr.PC and after recording the evidence the accused concerned shall have an opportunity under Section 245 Cr.PC to plead discharge and if the accused was not discharged under Section 245 Cr.PC a charge has to be framed under Section 246 Cr.PC upon consideration of the evidence recorded under Section 244 Cr.PC and then the accused should be permitted to cross-examine the witnesses already examined before framing charges under Section 244 Cr.PC and thus this procedure contemplates the mandatory requirement of the attendance of the witnesses atleast twice *i.e.*, once before framing the charge and once after framing charge. Whereas the procedure prescribed under Part A of Chapter XIX requires the Court to record the evidence of the witnesses only after framing the charge under Section 240 Cr.PC.

(ii) The officers who investigate the cases under the above enactments *viz.*, Central Excise, Income Tax Act, Customs Act, FERA, Companies Act *etc.*, will be frequently transferred all over the country and for the purpose of giving evidence they will be required to attend compulsorily atleast on two occasions in the private warrant procedure. The officers will be required to travel from far off places for the purposes of attending the Court more

than twice, in view of the mandatory procedure prescribed under Sections 244 to 247 Cr.PC such mandatory visits of the officers is also causing a lot of expenditure for the State for the conveyance charges of the witnesses in addition to valuable working hours of the Court, and also of the concerned departments.

(iii) In case the trial is conducted under the private warrant procedure invariably the trial will be on different dates and there will not be any continuity of the matter, for proper appreciation of the cases by the Court. In view of the prolonged trial, in most of the cases, the trial will be conducted before more than one Presiding Officer and there will not be any occasion for the officer to have a complete grip over the case and the witnesses examined before the Court. In most of the cases the officer who records the evidence may not deliver the judgment and thereby the officer who delivers the judgment is deprived of having an opportunity of observing the demeanour of the witnesses examined before the Court and observing the reaction of the accused persons, while the evidence of the witnesses is being recorded.

(iv) The Law of Limitation as prescribed under Section 468 Cr.PC, 1973 has no application for the economic offences and in most of the cases the officers who investigate the economic crimes take their own time for launching prosecution and invariably it will be not less than five years and at times complaints will be filed in the Court after 15 to 20 years also. In view of the long time taken for investigation of the cases by the departmental officers for filing complaints after obtaining necessary sanction, and by the time the case reaches the Court it will be an oldest matter reckoning from the date of offence and in such complaints also if the Court is required to follow the private warrant procedure

the trial before the Court will also take its own time, as a result of which there is every possibility of the retirement or death of the officers who conducted the investigation who are required to appear as witnesses and thereby a valuable material evidence will be missing during the course of trial of the case and the Court will be required to pass orders in the absence of such material evidence on account of the death, retirement or non-availability of witnesses on account of health grounds or staying at far off places.

(v) On account of the mandatory delay in adopting the private warrant procedure for the trial of the economic offences, the importance of the case will be lost. People forget about the cases by the time the verdict is given by the Court at a later point of time. For example, if there is any offence of significant public importance has taken place, and the investigation is conducted and the accused is booked for the offence, and if trial is completed within a reasonable period say within six months or one year, it will have a deterrent impact in the minds of the people and whereas if there is delay in trial on account of procedural compulsions and the accused involved in such significant public importance crimes are allowed to move freely for years together without being booked immediately, it will have a negative impact in the minds of the people encouraging the people to do more such crimes, which will send bad signals about the criminal administration system and there is also scope for vanishment of faith in the judicial system itself.

(vi) On account of the private warrant procedure and the necessity of the official witnesses making their appearance before the Court more than once being mandatory the loss to the exchequer is so high than the result of the prosecution itself. To make it more clarified, let us take an

example. In a prosecution under the Income tax, if there is any concealment of income of more than Rs.1,00,000/- normally a prosecution is launched against the assessee and the officers who investigate the crime if were transferred to Delhi, each of the witnesses will be required to travel from Delhi to Hyderabad and according to their status, they only travel by first class train or by flight and for each trip of the witnesses the expenditure which can be involved for the State will not be less than Rs.20,000/- to Rs.30,000/- and if two or three witnesses are required to appear before a trial Court in order to prove the case, the expenditure for the State will be more than one lakh rupees. Thus the expenditure incurred by the witnesses on account of such visits is more than one lakh rupees and the State will be required to spend the avoidable expenditure if these crimes are tried under Chapter XIX Part A.

The sanctity attached to the police reports in the investigation done by the police officers is recording of the statements by them under Section 161 of Cr.PC, so as to be used against the accused initially for framing charges as per the procedure prescribed under Part-A of Chapter XIX. Let us take a small example of an offence under Section 354 IPC in Andhra Pradesh State which is to be tried as a sessions case. The only requirement for constituting the offence is the statement of the victim in addition to the complaint either by the victim herself or by any of her relative or by any citizen. The offence under Section 354 IPC in A.P. is punishable with imprisonment of either description for a term which shall not be less than five years and which may extend to seven years in addition to fine. The said offence under Section 354 IPC is now triable as a sessions case by the Court of sessions as per the schedule annexed to the Code of Criminal Procedure, and it is only on the basis of the first information

report and on the basis of a statement of the victim recorded under Section 161 Cr.PC a charge-sheet can be filed for the offence under Section 354 IPC by a Head Constable rank officer before the Magistrate who is empowered to take cognizance and commit the case to the Court of sessions, which is required to try the offence as a sessions case by framing a charge straightaway. As against this simple procedure in the offences committed under Income tax Act, Central Excise Act, Customs Act, FERA, ESI Act, Companies Act, the officers who deal with those offences and investigate those crimes shall collect voluminous evidence against the accused and file a complaint in the Court which is only required to be tried as a private warrant case under Part-B of Chapter XIX requiring the attendance of the witnesses more than once before the Court mandatorily. Let us take the example of an offence under Sections 271, 272, 276 of Income tax Act etc. Under the Income tax Act the assessee files a tax return in the first instance and basing upon the same assessment order will be passed, and an opportunity is given to the assessee to explain the discrepancy in the tax return, and then only assessment order will be passed, thereon and the penalty proceedings will be passed only after a thorough enquiry at various stages and after giving various opportunities before various authorities and ultimately the complaint will be filed before the Court if there is an intentional evasion of tax or concealment of income as the case may be. Therefore it is manifest that there is voluminous documentary evidence both filed by the accused and by the department before the matter reached the stage of complaint before the Court for trial of the offences under the Income tax Act, and in spite of this voluminous evidence the Criminal Procedure Code prescribes private warrant procedure for the trial of the offences under the Income tax Act and various other Central enactments referred above causing undue

hardship to the investigating officers and also waste of time of the Court for recording evidence again and again of the same witnesses.

The officers who investigate various crimes under various central enactments referred to above are higher in rank than the station house officers of the police department and they are responsible public servants, and they cannot be inferior in any way in detection of the economic crimes when compared to the police officers, who are empowered to detect the law and order crimes under the Indian Penal Code. If the statement recorded under Section 161 Cr.PC by the police officer is to be given such importance, much more sanctity can be attached to the investigation done by the Income tax Inspectors and Commissioners and the Central Excise Inspectors and Commissioners *etc.* In fact the quality of the investigation done by the officers of Income tax and Customs and Central Excise will be much more than the police investigation in detecting the crimes under the Indian Penal Code.

If it is found necessary from the accused point of view that the accused should have a preliminary knowledge of the substance of accusation against him by way of providing him the copies of the statements recorded under Section 161 Cr.PC who should be supplied with the copies of documents under Section 207 Cr.PC the Income tax officials and the Customs officials and other public servants who file the complaints can be asked to file the affidavits of the witnesses along with the complaint so that a charge can be framed straightaway before recording the evidence and the accused shall have an opportunity of going through the accusation made against him in these cases also.

The cases filed by the Central Bureau of Investigation and the Anti-Corruption

Bureau of the States which are also special enactments, the Special Courts are adopting the procedure prescribed under Part A of Chapter XIX and charges are being framed against the accused straightaway without recording any evidence of witnesses initially. The same procedure can be applied to the complaints filed by the Income tax Officials, Central Excise and Customs officials and various other central enactments also before Special Judge for Economic Offences, Courts. The procedure prescribed under Part-B of Chapter XIX can be confined only to the cases filed by the private citizens and all the cases filed by the police officers and other public servants have to be tried under Part A of Chapter XIX of Cr.PC so that the valuable time of the Court, the witnesses, the investigating officers, and money of the State will be saved.

The classification test as per the decisions of the Rajasthan and Orissa High Courts referred to supra, it is significant that the two tests to be satisfied are (i) The investigation must be done by a responsible "Public servant" whose duty is to detect the crime and bring the offender to book and the second test was to ensure speedy disposal of the warrant cases instituted by police report without in any way prejudicing the accused. The investigation done by the officers in economic crimes under various enactments like Income tax Act and Central Excise Act, Customs Act, FERA are all "public servants" within the meaning of Section 21 IPC and their investigation satisfies the first requirement as laid down by the Apex Court and also the High Courts of Rajasthan and Orissa. Now it is to be considered whether there is any need for speedy disposal of the warrant cases instituted by various public servants under various central enactments which are normally referred as economic offences. Considering the importance of the economic offences and their impact on the society

we cannot say that there is no need for their speedy disposal on par with the law and order crimes instituted by the police. In fact these economic offences require more speedy trial than the law and order crimes because the very nature of the offences are against the Nation, whereas law and order crimes are generally committed against individuals. Therefore the economic offences investigated by public servants under various central enactments also satisfy the two essential requirements as laid down by the Supreme Court in *Budhan Choudary's* case and no prejudice will be caused to the accused if straightaway the charge is framed against the accused by adopting the procedure under Part A of Chapter XIX Cr.PC, 1973.

There is no uniformity in establishment of the economic offences Courts in the country some of the States have established the Special Judge Court for trial of economic offences with the cadre of District Judges as its Presiding Officers and in some States these cases are tried by the Judicial first class Magistrates, and in some States these cases are tried by the Chief Judicial Magistrates with the rank of Subordinate Judges/Senior civil Judges which is an intermediary rank between Magistrates and District Judges. Since these economic offences play greater role affecting the Financial Administration of the Nation and are of significant importance the Courts should be established with uniform pattern all over the country, and they should be preferably headed with the District Judge rank officers.

Most of the economic offences under various central enactments are non-cognizance offences, and therefore the offences should be made as cognizable offences.

As against the orders passed by the Special Court trying economic offences the

appeals, lies, to the same cadre of officers, for example, in the State of Andhra Pradesh the Special Judge for economic offences Court is presided over a District Judge cadre officer and the appeal lies against the order of the Special Court to the Metropolitan Sessions Court which is also headed by a District Judge cadre officer, who is empowered to make over the cases to other additional Metropolitan Sessions Courts, and sometimes a Junior officer will be sitting in over appeal against the orders passed by the Special Court trying the economic offences. Though these offences are termed as economic offences and have significant importance, the provision for appeal and revision against the orders of the Special Court before Metropolitan Sessions Court with the same cadre officer is not conducive to the spirit of the Establishment of Special Court and enforcement of the special Acts. In other special enactments like the Family Courts Act, 1984 the orders passed against the Family Court shall only lie to the High Court. For example even the order passed by under Section 125 Cr.PC granting less

than 500 rupees maintenance by the Family Court judge under the family Court Act, 1984, the appeal or revision only lie to the High Court to be heard by a Division Bench whereas the economic offences involving lakhs and crores of rupees evasion are not given due weight and importance both in matters of pre-trial and post trial. The appeals against the orders of the economic offences Court all over the country should uniformly lie before only the High Courts to be heard by a Division Bench.

Therefore, it is suggested that by making a simple amendment to the heading of Chapter XIX Part A as “cases instituted on police reports and public servants complaints” a uniform procedure can be adopted in respect of complaints filed by police officers and other public servants under various enactments, which are the economic crimes, which are of considerable importance, and the disposal of the economic offences at an early date is also very much essential in the interest of the Nation.