VASANT ARJUNRAO BHANDAK

v.

STATE OF KARNATAKA

NOVEMBER 12, 2002

[UMESH C. BANERJEE AND B.N. AGARWAL, JJ.]

Prevention of Corruption Act, 1988—Sections 3, 26, 30(2)—Criminal Law Amendment Act, 1952—Section 6—Appointment of 'Special Judge'—Applicability of Section 6 to 1988 Act—Held, applicable by virtue of deeming fiction—Prevention of Corruption Act, 1947.

Interpretation of Statutes—In order to have proper efficacy to the statutory intent, the Act shall have to be read as a whole—A deeming fiction has to be given effect to and any contra view would lead to a violent departure from the canons of construction and interpretation of statutes.

Appellant, being prosecuted for offences under provisions of Prevention of Corruption Act, 1988 filed applications praying to discharge him, on the ground that the trial Judge had no jurisdiction to try the case against him as the appointment of the trial Judge could not be termed to be an appointment as a 'Special Judge' within the meaning of Section 3 of Prevention of Corruption Act, 1988. Application of the appellant was rejected by trial Court. His petition u/s 482 Cr.P.C. was also dismissed by High Court.

In appeal to this Court the question for consideration was whether issuance of a notification u/s 6 of Criminal Law Amendment Act, 1952, appointing 'Special Judge' for any specified area to try offences under the Prevention of Corruption Act, 1947 would also hold good for the purpose of Section 3 of Prevention of Corruption Act, 1988.

Dismissing the appeal, the Court

HELD: 1. It is not correct to say that the applicability of Section 26 of Prevention of Corruption Act, 1988 is restrictive in its nature and thus applicable only to prior proceedings pending before the Special Judge on the commencement of the Act or to say that any other construction would render the legislative intent a complete otiose and thus a fresh notification

A **under Section 3 of the Act is required to enable the appointment of Special Judges for proceeding with the new cases under the 1988 Act. In order to have proper efficacy to the statutory intent, the Act shall have to be read as a whole and introduction of Section 26 in the Statute Book has brought into existence a deeming fiction which have to be given effect to and any** B **contra view would lead to a violent departure from the normal canons of construction and interpretation of statutes. The deeming fiction cannot but be read into the statute in view of repeal and saving provision as contained in Section 30(2) of 1988 Act. [60-G; 61-C-D]**

2. On consideration of the entire facts of the case and having regard C **to Section 30(2) and 26 of Prevention of Corruption Act, 1988 and in particular Section 26 thereof, the question of there being a contra view, does not and cannot arise and thus the Principal Sessions Judge has the authority and jurisdiction to entertain the complaint. [64-B-C]**

Nar Bahadur Bhandari and Anr. **v.** *State of Sikkim and Ors.*, **[1998] 5** D **SCC 39 and** *Bishambar Nath Kohli and Ors.* **v.** *State of Uttar Pradesh and Ors.*, **[1966] 2 SCR 158, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1138 of 2002.

E From the Judgment and Order dated 19.7.2001 of the Karnataka High Court in Crl. P. No. 3431 of 2000.

S.S. Javali, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni and Vijay Kumar, for the Appellants.

F Sanjay R. Hegde and Satya Mitra, for the Respondent.

The Judgment of the Court was delivered by

BANERJEE, J. Leave granted.

G A short but an interesting question of law falls for consideration in this appeal against the order of the High Court of Karnataka, wherein the High Court dismissed the Petition filed under Section 482 Cr.P.C. for quashing of the proceedings pending before the Principal Sessions Judge, Belgaum in Special Case No.22/94 : the question of law noticed above pertains to whether issuance of a notification under Section 6 of the Criminal Law Amendment H Act, 1952, appointing the Special Judge for any specified area to try offences

under the Prevention of Corruption Act, 1947 would also hold good for the purpose of Section 3 of the Act of 1988 (Prevention of Corruption Act, 1988) as well?

Adverting to the factual score briefly at this juncture it appears that the Appellant being charge-sheeted by the Respondent Authorities was prosecuted in the Court of Principal Sessions Judge, Belgaum in Special Case No.22/94 for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The factual score further depicts that during the pendency of the proceedings the appellant filed an application under Sections 3, 4 and 17 of the Act of 1988 read with Sections 173, 190 and 216 of the Cr.P.C. praying therein to discharge him, on the ground that the learned trial Judge had no jurisdiction to entertain and try the case against him since the appointment of the learned Judge cannot be termed or said to be an appointment as a Special Judge within the meaning of Section 3 of the Act of 1988. It was further contended that in any event the investigating officer who filed the charge-sheet, was not duly authorised under Section 17 to investigate into the matter. The learned trial Judge however rejected the petition.

The appellant thereafter moved the High Court under Section 482 Cr.P.C. for quashing the proceedings upon setting aside the order as passed by the learned trial Judge. The High Court, however, with a detailed and reasoned judgment negated such a plea and consequently the petition was dismissed. It is by reason of the dismissal of the matter by the High Court, this Court was moved under Article 136 of the Constitution and upon hearing the submissions, this Court thought it fit to dispose of the petition at the admission stage itself.

Coming to the matter under consideration, certain statutory provisions ought to be noticed at the initial stage and reference to Section 26 of The Prevention of Corruption Act, 1988, would be apposite and which reads as below :

> **"26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.** Every special Judge appointed under the Criminal Law Amendment Act, 1952 for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the

A proceedings pending before him on such commencement in accordance with the provisions of this Act."

It is the appellant's definite contention that the applicability of Section 26 is restrictive in its nature and thus applicable only to prior proceedings pending before the Special Judge on the commencement of the Act. Mr. S.S. B Javali, learned Senior Advocate appearing for the appellant contended that any other construction would render the legislative intent a complete otiose and thus a fresh notification under Section 3 of the Act is required to enable the appointment of Special Judges for proceeding with the new cases under the Act. We are, however, unable to record our concurrence therewith. In C order to have proper efficacy to the statutory intent the Act shall have to be read as a whole and introduction of Section 26 in the Statute Book has brought into existence a deeming fiction which have to be given effect to and any contra view would lead to a violent departure from the normal canons of construction and interpretation of statutes. The deeming fiction cannot but be read into the statute to include the situation as envisaged presently. The D situation however would stand clarified in any event by having a look at the repeal and saving provision in particular sub-section (2) of Section 30 which reads as below :

"30(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of E 1897), anything done or any action taken 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."

F Mr. Sanjay R. Hegde, learned Advocate appearing for the State Government being Respondent herein contended that on an analogy of reasoning, the appointment of the Special Judge for an area by a notification issued under Section 6 of the Criminal Law Amendment Act, 1952 be deemed to be the appointment of a Special Judge appointed under Section 3 of the G Act for that area or areas. Strong reliance is also placed on the decision of this Court in *Nar Bahadur Bhandari and Anr.* v. *State of Sikkim and Ors.*, [1998] 5 SCC 39, in support by Mr. Hegde, wherein Srinivasan, J, speaking for the Bench in paragraph 10 of the Report stated :

"10. The contentions urged on behalf of the petitioners are based on H a wrong understanding of the 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 Act of 1947 would cease to be triable after the repeal of the said Act. Normally Section 6 of the General Clauses 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 Clauses 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-section (2) of Section 30 reads as follows :

"30(2) " (omitted to avoid repetition by reason of earlier inclusion)

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 the 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."

Significantly, in Nar Bahadur (supra) this Court did refer to a decision of the Constitution Bench in *B.N. Kohli Bishambar Nath Kohli and Ors.* v. *State of Uttar Pradesh and Ors.*, [1966] 2 SCR 158, wherein the repealing of Ordinance 12/49 was effected by Ordinance 27/49. Section 58(3) of the repealing Ordinance provided as below :

"58(3) 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

A 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."

B

It is while interpreting the aforesaid provision, Shah, J. speaking for the Constitution Bench observed as below :

"By the first part of Section 58(3) repeal of the statutes mentioned therein did not operate to vacate things done or actions 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 a 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* v. *Ellison,* (1829) 9 B&C 750]. 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 Section 6 of the General Clauses Act, it is provided, insofar as it is material, that any Central 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, accrued 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) 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 authorises the investigation, legal proceedings and remedies in respect of rights, privileges, obligations, liabilities, penalties, forfeiture and punishment, as if the repealing Act or Regulation had not been passed,

C

D

E

F

G

H

Section 58(3) of Act 31 of 1950 directs that things done or actions taken in exercise of the 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 rule 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 case (Indira Sohanlal v. Custodian of Evacuee Property 1955 (2) SCR 1117) at p. 1133, the saving of the previous operation of the repealed law is not to be read, as saving of 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 the General Clauses Act. All things done and actions taken under the repealed statute are deemed to be done or taken in exercise of the 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 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."

It is on the above perspective that the reasoning put forth by the High Court ought also to be noticed :

"The provision in Section 26 clearly postulates that any notification issued by the State Govt. u/s 26 of the Criminal Law Amendment Act, appointing the Spl. Judge for any specified area, to try the offences under the Prevention of Corruption Act, 1947, would hold good for the purpose of Section 3 of the Act of 1988 as well. The ambit of Section 26 does not admit narrow interpretation so as to restrict its area of operation only to those cases under the old Act of 1897 which were actually pending before the Spl. Judge as on the date of commencement of the New Act of 1988. Therefore, the State Government Notification dated 19.11.88 is to be held as a valid notification for the purpose of Section 3 of the Act of 1988, and that

A the Prl. Dist. and Sessions Judge, Belgaum, who is appointed thereunder as the Spl. Judge has jurisdiction and is competent to try the offences under the Act. The conclusion so arrived at by the learned Trial Judge by his impugned order, is, therefore, entitled to be upheld."

On consideration of the above and having regard to the provisions of
B law as enunciated hereinbefore, in particular Section 26 thereof, the question of there being a contra view, apart from what has been observed above does not and cannot arise and consequently issuance of fresh notification appointing the Judges, does not and cannot arise and thus the Principal Sessions Judge, Belgaum has the authority and jurisdiction to entertain the complaint. The
C other issue though argued before the High Court as regards the status of the Investigation Officer by reason of provision of Section 17(c) has not been seriously raised and we also accordingly need not detain ourselves on that score. Suffice it however to say that negation of such a contention does have our concurrence.

D On the wake of the aforesaid, this appeal thus fails and is dismissed.

K.K.T. Appeal dismissed.