

SHEILA KAUL THROUGH MS. DEEPA KAUL

A

v.

STATE THROUGH C.B.I.

(Criminal Appeal Nos.1676-77 of 2013)

OCTOBER 8, 2013

B

**[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]**

*Code of Criminal Procedure, 1973 – s.482 – Prosecution for commission of offences punishable u/ss.7, 9, 13 (2) r/w s.13(1)(d) of the Prevention of Corruption Act and s.120-B r/w s.384 IPC – Application filed by accused-appellant seeking exemption from personal appearance to answer charges framed against her – Dismissed by trial Court – Order affirmed by High Court in petition filed by appellant u/s.482 CrPC – Held: Trial Court, despite the report of medical board and deposition of Doctor, came to the conclusion that appellant was not of 'unsound mind' nor was she incapacitated by her age and illness – Since said finding had been specifically questioned by the appellant, High Court should have adverted to that aspect of the matter also – Process of appreciation of material concerning medical condition of appellant and her alleged incapacity to make her defence was inevitable – Inasmuch as the same escaped the attention of High Court, order passed by it unsustainable – Matter remitted back to High Court for fresh disposal in accordance with law.*

C

D

E

F

**The appellant is being prosecuted for commission of offences punishable under Sections 7, 9, 13 (2) read with Section 13 (1) (d) of The Prevention of Corruption Act and Section 120-B read with Section 384 IPC. The trial court (Special Judge, CBI) directed framing of charges against all the accused including the appellant by his order dated 2nd February, 2012. By another order dated 9th May, 2012, the trial Court directed the appellant to appear in**

G

H

A person to answer the charges framed against her. That direction came despite an application filed by the appellant in which it was, *inter alia*, pointed out that she was nearly 98 years of age and suffering from severe heart ailment and dementia which confined her to bed.

B The trial Court concluded that the appellant was capable of understanding questions put to her and giving appropriate answers although such questions may have to be repeated. The application filed by the appellant seeking exemption from personal appearance to answer

C the charges framed against her was, on the above basis, dismissed and the appellant directed to appear in person in the trial Court by Order dated 9th May, 2012.

D Aggrieved, the appellant filed Crl. M.C. No.1816 of 2012 before the High Court under Section 482 CrPC in which she assailed not only Order dated 2nd February, 2012 but also the latter Order dated 9th May, 2012. The same was dismissed by the High Court.

E In the instant appeal, the appellant contended that the High Court had while dismissing Crl.M.C. No.1816 of 2012 completely lost sight of the fact that apart from order dated 2nd February, 2012, the appellant had also assailed the correctness of order dated 9th May, 2012; that the High Court did not advert to the said latter order nor

F recorded any reason for declining to interfere with the same.

Allowing the appeals, the Court

G HELD: 1. The High Court did not examine the question whether the trial Court was justified in holding that the appellant was capable of understanding the questions that may be put to her and answering the same appropriately. While it is true that the application filed by the appellant did not, strictly speaking, bring her case

H under Section 329 CrPC, yet it is evident from the

averments made in the application that the appellant was alleged to be incapable of making her defence on account of her old age and multiple medical problems including senile dementia. The report of the medical board also *prima facie* suggested that the plea raised by the appellant was not wholly without any basis. The trial Court had despite that report and the deposition of Dr. Khandelwal come to the conclusion that the appellant was not of 'unsound mind' nor was she incapacitated by her age and illness. All the same since the said finding had been specifically questioned by the appellant the High Court should have adverted to that aspect of the matter also. Whether or not the appellant can be described to as a person of unsound mind would largely depend upon the value which the High Court attached to the report submitted by the medical board and the deposition of Dr. Khandelwal. The process of appreciation of material concerning the medical condition of the appellant and her alleged incapacity to make her defence was inevitable. Inasmuch as the same escaped the attention of the High Court, the order passed by it is rendered unsustainable. The order passed by the High Court insofar as the same dismissed CrI. M.C. No.1816 of 2012 *qua* order dated 9th May, 2012 passed by the trial Court is set aside and the matter is remitted back to the High Court for fresh disposal in accordance with law. [Paras 8, 9 & 10] [236-G-H; 237-A-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1676-1677 of 2013.

From the Judgment & Order dated 20.02.2013 of the High Court of Delhi at New Delhi in CrI. M.C. No. 1816 & 6432 of 2012 (stay)

Dr. Sumant Bhardwaj, Archana Pathak Dave, Mridula Ray Bhardwaj for the Appellant.

A Rakesh K. Khanna, ASG, B.V. Balaram Das, C.K. Sharma, P.L. Nigam, Syeed Tanweer Ahmad for the Respondent.

The Judgment of the Court was delivered by

B **T.S. THAKUR, J.1.** Leave granted.

2. The appellant, a former minister in the Central Government is being prosecuted for commission of offences punishable under Sections 7, 9, 13 (2) read with Section 13 (1) (d) of The Prevention of Corruption Act and Section 120-B read with Section 384 of the Indian Penal Code. Special Judge, CBI-I, Central Delhi, before whom the accused are being tried has directed framing of charges against all of them including the appellant herein by his order dated 2nd February, 2012. By another order dated 9th May, 2012, the trial Court directed the appellant to appear in person to answer the charges framed against her. That direction came despite an application filed by the appellant in which it was, *inter alia*, pointed out that she was nearly 98 years of age and is suffering from severe heart ailment and dementia which has confined her to bed. She further stated that the appellant required help and support even for her daily activities. She was, therefore, unable to travel to the Court for getting her plea recorded. A medical certificate as to her condition and state of health was also filed along with the application that alleged that it was not clear whether the applicant was in a condition to understand the consequences of the order passed against her and whether she was, in fact, suffering from dementia. The trial Court had entertained that application and directed SP, CBI to produce the appellant before a medical board on 23rd April 2012 for examination.

3. The Medical Board comprising of six doctors, headed by Dr. S.K. Khandelwal, appears to have kept the appellant under observation for four days and submitted a report dated 27th April, 2012 in which it was concluded that the appellant was not suffering from any major psychiatric disorder. The

possibility of senile dementia could not, however, be ruled out. It was also stated that the appellant was unable to comprehend simple questions and provided monosyllabic responses after prolonged reaction time, despite questions being repeated to her a number of times. The report further suggested that the appellant's memory for immediate, recent and remote events and information about day-to-day events was impaired. She was also found to be suffering from hypertension, coronary artery disease, anaemia and bilateral medical kidney disease.

4. The trial Court on receipt of the above report asked the Director, AIIMS to depute two members of the medical board to the Court to obtain a clearer picture of the situation. Pursuant to that direction Dr. Achal Srivastava, Dr. Vijaydeep Siddharth and Dr. S.K. Khandelwal appeared before the Court on 7th May, 2012 to make their statements. Dr. S.K. Khandelwal alone, it appears, was examined by the trial Court who concluded that the appellant was capable of understanding questions put to her and giving appropriate answers although such questions may have to be repeated. The Court observed:

*"11. So it becomes very clear that accused Sheila Kaul is capable of understanding questions put to her and giving appropriate answers. Though, the questions might have to be repeated. Unfortunately for her, law does not prescribe any immunity for aged people. She might be quite old but, but there is no way out. Her absence has caused considerable delay and is holding up the trial. I, therefore, direct accused Sheila Kaul to appear in person in the Court on the next date of hearing. She may attend the Court in the same manner, she visited AIIMS. She is to answer the charge to be framed against her and let the matter proceed."*

5. The application filed by the appellant seeking exemption from personal appearance to answer the charges framed against her was, on the above basis, dismissed and the appellant directed to appear in person in the trial Court by Order

A dated 9th May, 2012.

6. Aggrieved by the refusal of the relief prayed for by her, the appellant filed Crl.M.C. No.1816 of 2012 before the High Court of Delhi under Section 482 of the Code of Criminal Procedure in which she assailed not only Order dated 2nd February, 2012 passed by the trial Court directing framing of charges but also latter Order dated 9th May, 2012 by which the trial Court directed the appellant to appear in person for getting her plea recorded. The High Court has by its Order dated 20th February, 2013 dismissed the said petition holding that there was no room for interfering with the order passed by the trial Court directing framing of charges against the appellant. The present appeals assail the correctness of the said order.

• 7. When this matter initially came up for admission before us on 2nd April, 2013, we issued notice to the respondent limited to prayer (b) mentioned in Crl. M.C. No.1816 of 2012 filed before the High Court. We have accordingly heard Dr. Sumant Bhardwaj, learned Counsel for the appellant who argued that the High Court had while dismissing Crl.M.C. No.1816 of 2012 completely lost sight of the fact that apart from order dated 2nd February, 2012, the appellant had also assailed the correctness of order dated 9th May, 2012 before it. The High Court has not, argued Mr. Bhardwaj, adverted to the said order nor recorded any reason for declining to interfere with the same. The impugned order, to the extent it dismissed Crl.M.C. No.1816 of 2012 without even addressing the question raised by the appellant relating to prayer (b) in the petition, was bad and deserved to be set aside on that count alone.

8. There is in our opinion considerable merit in the submission made by Mr. Bhardwaj. The order passed by the High Court has not examined the question whether the trial Court was justified in holding that the appellant was capable of understanding the questions that may be put to her and answering the same appropriately. While it is true that the application filed by the appellant did not, strictly speaking, bring

her case under Section 329 of the Code of Criminal Procedure, yet it is evident from the averments made in the application that the appellant was alleged to be incapable of making her defence on account of her old age and multiple medical problems including senile dementia.

9. The report of the medical board also *prima facie* suggested that the plea raised by the appellant was not wholly without any basis. The trial Court had despite that report and the deposition of Dr. Khandelwal come to the conclusion that the appellant was not of 'unsound mind' nor was she incapacitated by her age and illness. All the same since the said finding had been specifically questioned by the appellant the High Court should have adverted to that aspect of the matter also. Whether or not the appellant can be described to as a person of unsound mind would largely depend upon the value which the High Court attached to the report submitted by the medical board and the deposition of Dr. Khandelwal. Suffice it to say that the process of appreciation of material concerning the medical condition of the appellant and her alleged incapacity to make her defence was inevitable. In as much as the same has escaped the attention of the High Court, the order passed by it is rendered unsustainable.

10. In the result, we allow these appeals set aside the order passed by the High Court in so far as the same dismissed CrI. M.C. No.1816 of 2012 *qua* order dated 9th May, 2012 passed by the trial Court and remit back the matter to the High Court for a fresh disposal of the matter in accordance with law. We express no opinion as to whether the appellant can be said to be of unsound mind within the meaning of Section 329 of the Cr.P.C. as also the question whether the provisions of Section 318 Cr.P.C. can be invoked in case the appellant cannot be said to be of unsound mind. It follows that the High Court shall be free to take an appropriate view in the matter after hearing learned counsel for the parties.

A 11. Since the trial of other accused persons is also delayed on account of the pendency of the present proceedings, the High Court is requested to expedite the disposal of the matter and pass orders as far as possible within a period of three months from today.

B B.B.B. Appeals allowed.