

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 877 OF 2014
(SPECIAL LEAVE PETITION(CRL.)NO.2690 OF 2005)

DHARAMPAL SINGH CHOUDHARY
AND ORS.

..APPELLANTS

VERSUS

CENTRAL BUREAU OF INVESTIGATION

..RESPONDENT

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Karnataka at Bangalore in Criminal Revision No.1222 of 2003, dated 28.01.2005.

3. The appellants before us are the accused in a criminal case. They had made an application before the learned Special Judge, CBI, Bangalore to arraign one B.V. Aswathanarayana Shetty, CW-1 as an accused on the basis of the material evidence collected by the investigating agency. The learned Special Judge, CBI, Bangalore allowed the prayer made by the accused-herein and ordered that CW-1 be impleaded as accused No.7.

4. Being aggrieved by the order passed by the Trial Court, the CBI preferred Criminal Revision Petition before the High Court. The High Court by its impugned judgment and order has reversed the order passed by the Trial Court observing that merely based on the statements recorded under Section 161 of the Criminal Procedure Code, 1973, a person ought not to have been directed to participate

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in a criminal trial.

5. During the pendency of this appeal, a Constitution Bench of this Court in the case of Dharam Pal & Ors. vs. State of Haryana & Anr., 2013(9) SCALE at paragraph Nos. 23, 24, 28 and 29 has stated as under :

".....23. The view expressed in Kishun Singh's case, in our view, is more acceptable since, as has been

held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(3) of the Code and to proceed against the accused persons de hors the police report, which power the Session Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(3) of the Code, he was helpless in taking recourse to such a course of action while the Session Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.

24. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

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xxx

28. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as

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offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

29. We are also unable to accept Mr.Dave's submission that the Session Court would have no alternative, but to wait till the stage under Section 319 Cr.P.C. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session."

6. In view of the judgment passed by the Constitution Bench of this Court, we cannot sustain the judgment and order passed by the High Court. Therefore, we set aside the impugned judgment and order and remand the matter back to the High Court for fresh disposal of Criminal Revision Petition filed by the respondents- herein in accordance with law keeping in view the judgment and order

passed by the Constitution Bench of this Court in the case of Dharam Pal & Ors. (supra).

7. All the contentions of both the parties are kept open.

8. The Criminal Appeal is disposed of accordingly.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(S.A. BOBDE)

NEW DELHI;
APRIL 15, 2014

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ITEM NO.201

COURT NO.3

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).2690/2005

(From the judgement and order dated 28/01/2005 in CRLR
No.1222/2003 of the HIGH COURT OF KARNATAKA AT BANGALORE)

DHARAMPAL SINGH CHOUDHARY AND ORS.

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

(With appln(s) for stay,early hearing and office report)
(for final disposal)

Date: 15/04/2014 This Petition was called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Sanjay Jain,Adv.

For Respondent(s) Mr.Mukul Gupta, ASG
Ms.Ranjana Narain, Adv.
Mr.Syed Tanweer Ahmad, Adv.
Mr.B.V.Balram Das, Adv.
For Mr. P. Parmeswaran,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of, in terms of the signed order.

(G.V.Ramana)
Court Master

(Vinod Kulvi)
Asstt.Registrar

(Signed order is placed on the file)