

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1647 OF 2021
(Arising out of SLP (CrI.) No. 4818 of 2021)

STATE OF RAJASTHAN ... Appellant(s)

VERSUS

TEJMAL CHOUDHARY ... Respondent(s)

WITH

CRIMINAL APPEAL NO. 1649 OF 2021
(Arising out of SLP (CrI.) No. 4939 of 2021)

AND

CRIMINAL APPEAL NO. 1648 OF 2021
(Arising out of SLP (CrI.) No. 4830 of 2021)

J U D G M E N T

INDIRA BANERJEE, J.

Leave granted.

2. This appeal is against the final judgment and order dated 07.04.2020 passed by the High Court of Judicature for Rajasthan at Jabalpur, allowing S.B. Criminal Miscellaneous Petition No.1163/2018, filed by the respondent and quashing FIR No.1/2018, registered against the respondent under Section 13(1)(g) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC Act") read with Sections 420, 467, 468, 471 and 120B of the Indian Penal Code.

3. By the aforesaid judgment and order, three miscellaneous petitions involving identical questions of law being S.B. Criminal Miscellaneous Petition No.1163/2018 referred to above, S.B. Criminal Miscellaneous Petition No.159/2018 and S.B. Criminal Miscellaneous Petition No.953/2018 have been disposed of. The petitioners in Criminal Miscellaneous Petition No. 159/2018 and Criminal Miscellaneous Petition No.953/2018 are also accused named in FIR 1/2018.

4. The said FIR has been quashed mainly on the ground that the Investigating Authorities had failed to obtain previous approval of the State Government under Section 17(A) of the PC Act before registering the said FIR against the accused persons.

5. Section 17(A) of the PC Act, which is set out hereinafter for convenience, has been incorporated by amendment of the Prevention of Corruption Act, 1988, with effect from 26th July, 2018. It reads as under :

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was

alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

6. In this case, the FIR was filed on 01.01.2018 before the said provision came into force. The main question involved in these appeals is whether Section 17A of the PC Act would apply to an investigation which had commenced before Section 17A was enacted/enforced.

7. It is a cardinal principle of construction that every statute is prospective, unless it is expressly or by necessary implication made to have retrospective operation. There is a presumption against retrospectivity. An express provision should ordinarily be made to make a statute retrospective. The presumption against retrospectivity may also be rebutted by necessary implication as

held by this Court in Akram Ansari vs. Chief Election Officer reported in (2008) 2 SCC 95, which has been referred to and relied upon by the Kerala High Court in its judgment in K.R. Ramesh vs. Central Bureau of Investigation and Another reported in 2020 SCC Online Kerala 2529. The device of a legal fiction can also be used to introduce retrospective operation. Generally, it is considered that every statute dealing with substantive rights is *prima facie* prospective unless it is expressly or by necessary implication made retrospective.

8. In T.N. Bettaswamaiah vs. State of Karnataka being W.P. No.29176/2019 (GM-RES), decided on 20.12.2019, which is reported in MANU/KA/9503/2019, the Karnataka High Court referred to the judgment of this Court in Hitendra Vishnu Thakur vs. State of Maharashtra & Ors. reported in (1994) 4 SCC 602, and rightly held :

“21. ... But in Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra and Others (1994) 4 SCC 602 it is held that a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided either expressly or by necessary implication. A careful reading of both Section 17A as also Section 19 do not contain any express provision to show that they are retrospective in nature nor it is so discernable by implication.

22. In Dr. Subramanian Swamy vs. Dr. Manmohan Singh and Another (2012) 3 SCC 64 it is held that any anti-corruption law has to be interpreted in such a fashion as to strengthen fight against corruption and where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption than the

one which seeks to perpetuate it.”

9. Reference may also be made to the judgment of this Court in GJ Raja vs. Tejraj Surana” reported in (2019) 19 SCC 469, cited by Mr. Saurav Roy, learned counsel appearing on behalf of the appellant, where this Court followed the judgment of this Court in Hitendra Vishnu Thakur (supra) and held that a statute which affect substantive rights is presumed to be prospective in operation unless made retrospective and unless textually impossible a statute which merely affects procedure is presumed to be retrospective. However, a statute which not only changes the procedure but also creates new rights or liabilities is to be construed to be prospective in operation, unless otherwise provided either expressly or by necessary implication.

10. In State of Telangana vs. Managipet alias Mangipet Sarveshwar Reddy reported 2019 (19) SCC 87, this Court rejected the arguments that amended provisions of the PC Act would be applicable to an FIR, registered before the said amendment came into force and found that the High Court had rightly held that no grounds had made out for quashing the proceedings.

11. It is a well settled principle of interpretation that the legislative intent in the enactment of a statute is to be gathered from the express words used in the statute unless the plain words literally construed give rise to absurd results. This Court has to go by the plain words of the statute to construe the legislative

intent, as very rightly argued by Mr. Roy. It could not possibly have been the intent of the legislature that all pending investigations upto July, 2018 should be rendered infructuous. Such an interpretation could not possibly have been intended.

12. In his usual fairness, learned Senior Counsel appearing on behalf of the respondent does not seriously dispute the proposition of law that Section 17A does not have retrospective operation. Learned Senior Counsel, however, argues that the Court might have looked into the merits and, in particular, the fact that investigation had ultimately been closed. We need not go into that aspect since the High Court has quashed the proceedings only on the ground of permission not having been obtained under Section 17A of the PC Act.

13 The appeals are, accordingly, allowed and the impugned judgment and order is accordingly set aside.

..... J.
[INDIRA BANERJEE}

..... J.
[J.K. MAHESHWARI}

New Delhi;
December 16, 2021.

ITEM NO.15

COURT NO.8

SECTION II

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 (Cr1.) No(s). 4818/2021

(Arising out of impugned final judgment and order dated 07-04-2020 in SBCRMP No. 1163/2018 passed by the High Court Of Judicature For Rajasthan At Jodhpur)

STATE OF RAJASTHAN

Petitioner(s)

VERSUS

TEJMAL CHOUDHARY

Respondent(s)

(FOR ADMISSION and I.R. and IA No.76968/2021-EXEMPTION FROM FILING O.T.)

WITH

SLP(Cr1) No. 4939/2021 (II)

(FOR ADMISSION and I.R. and IA No.78822/2021-EXEMPTION FROM FILING O.T.)

SLP(Cr1) No. 4830/2021 (II)

(FOR ADMISSION and IA No.77166/2021-EXEMPTION FROM FILING O.T...)

Date : 16-12-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Sourav Roy, Adv.
Mr. Kaushal Sharma, Adv.
Mr. Prabudh Singh, Adv.
Ms. Malavika Kala, Adv.
Mr. Nishanth Patil, AOR

For Respondent(s) Mr. Vishwa Pal Singh, AOR
Mr. Dinesh Kumar Mudgal, Adv.
Mr. Vikas Gothwal, Adv.
Ms. Kiran Bala Dewangan, Adv.
Mr. Jhingan Ashwani Omprakash, Adv.
Mr. Brijender Singh Dhull, Adv.
Mr. Surjeet Singh, Adv.
Mr. Y.P. Singh, Adv.

Mr. Vipul Maheshwari, Adv.
Dr. Amardeep Gaur, Adv.

M/S. V. Maheshwari & Co., AOR

Mr. Brijender Chahar, Sr. Adv.
Mr. Ronak Karanpuria, AOR
Mr. Sumit Sharma, Adv.
Mr. Gobind Kumar, Adv.

Mr. Gp. Capt. Karan Singh Bhati, AOR
Ms. Chitrangada, Adv.
Mr. Manvinder Singh, Adv.
Ms. Gunjan Negi, Adv.
Mr. Dashrath Singh, Adv.
Mr. Aditya Chauhan, Adv.

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

Leave granted.

The appeals are allowed and the impugned judgment and order is accordingly set aside in terms of the signed order.

Pending application (s), if any, stand disposed of.

(ARUSHI SUNEJA)
SENIOR PERSONAL ASSISTANT

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed order is placed on the file)