

ITEM NO.101

COURT NO.6

SECTION II/IIA

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

C R I M I N A L A P P E A L N O . 3 7 7 / 2 0 0 7

C.B.I.

APPELLANT(S)

VERSUS

R.R. KISHORE

RESPONDENT(S)

(WITH APPLN. (S) FOR DIRECTIONS AND PERMISSION TO FILE ADDITIONAL DOCUMENTS)

WITH

SLP(CRL) NO. 4364/2011

(WITH APPLN. (S) FOR DIRECTIONS AND PERMISSION TO FILE ADDITIONAL DOCUMENTS AND OFFICE REPORT)

Date : 10/03/2016 These cases were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE PRAFULLA C. PANT

For parties (s)

CRL.A.377/07

Mr. Rana Mukherjee, Sr. Adv.

Ms. Meenakshi Grover, Adv.

Ms. Daisy Hannah, Adv.

Ms. Binu Tamta, Adv.

Ms. Sushma Suri, Adv.

Mr. Rajiv Nanda, Adv.

Mr. Kapil Rastogi, Adv.

Mr. Rajiv Singh, Adv.

Ms. Nikita Shrivastava, Adv.

Mr. B. V. Balaram Das, AOR.

SLP(CRL) 4364/11

Mr. Arvind P. Datar, Sr. Adv.

Mr. Ankur Chawla, Adv.

Mr. D.N. Ray, Adv.

Mr. Bhanusood, Adv.

Mr. Rahul Pratap, AOR

Mr. R.R. Kishore, in-person

Mr. Senthil Jagadeesan, AOR.

Mr. Arvind Kumar Sharma, Adv. [N/P]

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

The provisions of Section 6A(1) do indicate that for officers of the level of Joint Secretary and above a kind of immunity has been provided for. Whether there can be a deprivation of such immunity by a retrospective operation of a judgment of the Court, in the context of Article 20 of the Constitution of India, is the moot question that arises for determination in the present case.

For the aforesaid reasons and having regard to the provisions of Article 145(3) of the Constitution of India, we refer the aforesaid question to a larger bench for which purpose the papers may now be laid before the Hon'ble the Chief Justice of India on the administrative side.

[VINOD LAKHINA]  
COURT MASTER

[ASHA SONI]  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 377/2007

C.B.I. . . . APPELLANT

VERSUS

R.R. KISHORE . . . RESPONDENT

WITH

SPECIAL LEAVE PETITION (CRIMINAL) NO.4364  
OF 2011

ORDER

1. A prosecution under the Prevention of Corruption Act, 1988 was sought to be questioned by the respondent accused on the basis of the provisions contained in Section 6A(1) of the Delhi Special Police Establishment Act, 1946 which was brought in by an amendment in the year 2003. Section 6A(1) of the Delhi Special Police Establishment Act, 1946 is in the following terms:

"6A. Approval of Central Government to conduct inquiry or investigation.-(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to-

- (a) the employees of the Central Government of the Level of Joint Secretary and above; and
- (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government."

2. The Delhi High Court before whom the challenge was brought answered the question by holding that the respondent accused was entitled to the benefit of the

said provision. Accordingly, the High Court took the view that the matter required fresh consideration for grant of previous approval under Section 6A(1) of the Delhi Special Police Establishment Act, 1946. Aggrieved, the C.B.I. is in appeal before us.

3. We have heard the learned counsels for the parties as also the respondent who appears in person.

4. The provisions of Section 6A(1) of the Delhi Special Police Establishment Act, 1946 has been held to be unconstitutional being violative of Article 14 of the Constitution of India by a Constitution Bench of this Court in Subramanian Swamy versus Director, Central Bureau of Investigation and another [(2014) 8 SCC 682]. The judgment of the Constitution Bench is however silent as to whether its

decision would operate prospectively or would have retrospective effect. Though a large number of precedents have been cited at the Bar to persuade us to take either of the above views, as would support the case of the rival parties, we are of the considered view that this question should receive the consideration of a Constitution Bench in view of the provisions of Article 145(3) of the Constitution of India.

5. In fact, in Transmission Corporation of A.P. versus Ch. Prabhakar and others [(2004) 5 SCC 551], the precise question that has arisen before us had been referred to a Constitution Bench. Paragraphs 15 and 21 dealing with the said question read as follows:

"15. Whether constitutional guarantee enshrined in clause (1) of Article 20 is confined only to prohibition against conviction for any offence except for violation of law in force at the

time of commission of the act charged as an offence and subjection to a penalty greater than that which might have been inflicted under the law in force at the time of commission of offence or it also prohibits legislation which aggravates the degree of crime or makes it possible for him to receive the same punishment under the new law as could have been imposed under the prior law or deprives the accused of any substantial right or immunity possessed at the time of the commission of the offence charged is a moot point to be debated.

(underlining is ours)

21. However, as the interpretation of Article 20 as to its scope and ambit is involved in these proceedings, we refer the question formulated in para 15 of this order to a larger Bench for consideration."

However, the Constitution Bench in Transmission Corporation of A.P. versus Ch. Prabhakar and others [(2010) 15 SCC 200] declined to answer the question as in the meantime there were certain amendments to the statute in question and, therefore, the issues referred were understood to have

become academic. The very same issues have been cropped up before us in the present proceedings.

6. We have considered it necessary to make the present reference for the reason that in the case of Transmission Corporation of A.P. versus Ch. Prabhakar and others [(2004) 5 SCC 551] one of the questions referred is whether the scope and ambit of Article 20 of the Constitution of India is to be understood to be protecting the substantial rights or the immunity enjoyed by an accused at the time of commission of the offence for which he has been charged.

7. The provisions of Section 6A(1), extracted above, do indicate that for officers of the level of Joint Secretary and above a kind of immunity has been provided for. Whether there can be a

deprivation of such immunity by a retrospective operation of a judgment of the Court, in the context of Article 20 of the Constitution of India, is the moot question that arises for determination in the present case.

8. For the aforesaid reasons and having regard to the provisions of Article 145(3) of the Constitution of India, we refer the aforesaid question to a larger bench for which purpose the papers may now be laid before the Hon'ble the Chief Justice of India on the administrative side.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(PRAFULLA C. PANT)

NEW DELHI  
MARCH 10, 2016