THE HINDU CENTRE
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Interview

Judgment in *Karnataka vs. Jayalalithaa and others* shows that even the rich and mighty are not above the law: B.V. Acharya

S. Rajendran

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Special Public Prosecutor B.V. Acharya arriving at the Bangalore City Civil Court to attend the Disproportionate Assets case on June 09, 2005. The Hindu Photo Archives

*Senior Advocate, **B.V. Acharya**, who as Special Public Prosecutor relentlessly led the prosecution for over a decade in the well-known disproportionate assets case against the late Chief Minister of Tamil Nadu, Jayalalithaa, and three others, is a legal luminary who was the Advocate General of Karnataka five times, with his services having been sought by several Chief Ministers.*

An advocate of impeccable integrity in his long career at the bar with practice in all branches of law, the 83-year-old Acharya is the recipient of several awards, was a member of National Law Commission and had also served as the Chairman of the Karnataka State Bar Council.

*In this interview with **S. Rajendran**, Karnataka Representative of The Hindu Centre for Politics and Public Policy, Acharya speaks on the difficulties and the twists and turns in the disproportionate assets case against a Chief Minister. Excerpts:*

It has indeed been a long legal battle in the prosecution of a top political leader (the late Tamil Nadu Chief Minister, Jayalalithaa, and others) in a case pertaining to possession of disproportionate assets. What were the kind of pressures that were brought to bear on you and the manner in which you resisted such attempts?

Generally, those who are accused in disproportionate assets case are rich and powerful persons with vast resources. Hence, a public prosecutor conducting such cases will have to withstand temptations, incentives and other pressures, including threats. In this particular case against Selvi Jayalalithaa and others, I had to face many difficulties and hardships which I have explained in Chapter XXV of my Autobiography *All from Memory* published by Universal Law Publishing.

Suffice it to say after realising that I cannot be persuaded to soft pedal the prosecution case, all efforts were directed towards forcing me to quit as Special Public Prosecutor (SPP). Towards this end, all efforts were unsuccessful, till a frivolous criminal complaint was filed against me and the Special Judge ordered investigation against me, even though by then it was well known that the case was filed only to force me to quit as SPP. This was the last straw and I decided to quit, but not before the complaint was quashed by the High Court awarding me cost of Rs. 50,000. On July 12, 2012, I resigned, little realising that on a future date I would have to assume office again to file written submission before the High Court and argue the case before the Supreme Court.

I wish to emphasise that the well-wishers and supporters of the accused indulged in undesirable and unlawful activities without the consent of the accused and sometime even without the knowledge of the accused.

When you were appointed as the SPP you were also the State Advocate General and you were compelled to resign from one post. Why did you choose to continue as the SPP?

I was not the Advocate General of the State [Karnataka] when I was appointed as the SPP in February 2005. Subsequently, in 2008-09, I was appointed as Advocate General during President's Rule in the State. At that time, none objected to my holding both posts. Again in August, 2011, when D.V. Sadananda Gowda became the Chief Minister, I was persuaded to accept the post of Advocate General and I agreed and assumed office.

A few months later, the State government desired that I may quit as SPP and continue as Advocate General. The ostensible reason put forward was that I should not hold two posts. (The government very well knew when it appointed me as Advocate General in August 2011 that I was already holding the post of SPP since February 2005). I did not see any conflict of interest in holding both posts. However, when pressure mounted on me to quit the post of SPP on the above ground, and had ultimately to opt for one post, in a jiffy I decided to resign as Advocate General and forwarded my resignation forthwith.

I was appointed as the SPP at the instance of the Supreme Court and on the recommendation of the then Chief Justice of Karnataka Justice, N.K. Sodhi, who had reposed confidence in me. The post of Advocate General was offered by the State government and I accepted it on persuasion. Since my appointment as SPP was at the instance

of the higher judiciary, I preferred to continue in the said post, even though the post of Advocate General is a constitutional post and also a more prestigious one.

Obviously this was a very high profile case registered under the provisions of the Prevention of Corruption Act (PCA). Apart from the main accused being the Chief Minister of a State (although at certain times she was also a former Chief Minister since the case prolonged for too long), there were also the recent amendments to the Representation of the People Act by virtue of which a person convicted in a DA case was ineligible to contest for a period of six years after serving the jail term. How do you compare this case with the other cases under the PCA? Were there any special features in this case?

It is true that this case cannot be compared with any other cases under the Prevention of Corruption Act because of certain special features. The following are some of the special features of this case:

It is first time when a Chief Minister in office was tried by the Special Judge for the offences under the provisions of the Prevention of Corruption Act.

A1 had to appear before the Court of Special Judge as Chief Minister of the State to answer the questions under section 313 of the Code of Criminal Procedure (Cr.P.C), after all her attempts to claim exemption were unsuccessful in view of the specific repeated directions issued by the Supreme Court (in fact, when the trial was going on at Chennai, the Special Judge granted her exemption and permitted her to answer questions in writing, *in absentia*). This conduct of the Special Judge, Chennai, was deprecated by the Supreme Court in the case reported in 2004 (3) SCC page 767. *Inter-alia* this was one of the reasons which prompted the Supreme Court to transfer the case outside Tamil Nadu.

In this case when A1 was holding the office of Chief Minister, she had to appear before the Special Judge and receive the order of conviction and sentence for the offences under the PCA, and had to proceed to the jail straight from the Court.

This is a unique case where the order of the government removing an SPP (my successor) was challenged (not by the SPP but) by the accused before the Supreme Court in a writ petition. Surprisingly, the Supreme Court quashed the Government Order which, in effect, permitted an SPP of the choice of the accused to continue in office. (Vide (2014) 2 SCC 401).

It is significant to note that the Tamil Nadu government appointed the same SPP to appear before the High Court in the appeals to be filed by the accused after conviction. However, a three-Judge Bench of the Supreme Court invalidated the same as per judgment reported in (2015) 6 SCC 158. This led to my appointment as SPP again enabling me to argue the appeals before the Supreme Court of India.

Another peculiar feature is the accused pleaded before the Supreme Court for continuation of the Presiding Officer even after superannuation. Though the Supreme Court passed a favourable order, the accused could not have the judge of their choice, as the learned judge declined to continue in office after superannuation. ((2014) 2 SCC 401) This led to the appointment of a strict judge (John Michael Cunha, present Judge of the High Court of Karnataka) known for his impeccable integrity and honesty, who ultimately recorded a well-known historic judgment of conviction and sentence of four years.

The sifting of available evidence, hostile witnesses and working in tandem with the investigating agencies and obtaining their support may have been a very difficult exercise. Can you please elaborate on these difficulties that you faced including the twists and turns in the case?

In this case though when the trial started at Chennai in 1997, A1 was not the Chief Minister of Tamil Nadu, she assumed office [again] as Chief Minister in 2002. Thereafter, as many as 76 prosecution witnesses were recalled at the instance of the accused and they gave evidence denying their previous statements on oath. The Public Prosecutor appointed by the government headed by A1 did not treat them hostile or cross-examine them.

This is one of the reasons which prompted the Supreme Court to transfer the case to outside of Tamil Nadu. (Case reported in 2004 (3) SCC page 767). The Supreme Court specifically permitted the newly appointed SPP to recall these witnesses and cross-examine them, if necessary. Ultimately, when these witnesses were recalled, A1 had again lost power and all these witnesses once again gave evidence supporting the case of the prosecution.

Whenever A1 was not in power, there was no difficulty for me to get the required assistance from the investigating agency. However, the difficulty arose once she again came back to power. In May, 2011, she once again assumed office as Chief Minister of Tamil Nadu. Thereafter, as SPP I not only did not get the required assistance from the investigating agency, but the agency itself was almost hostile to the prosecution.

The investigating agency decided to hold further investigation, so as to weaken the prosecution case without my consent. When I declined to seek adjournment on this ground, the investigating officer directly wrote to the Special Judge, resulting in threat of contempt action by the Special Judge, which was dropped after an apology by the investigating officer.

The investigating agency also engaged its own counsel to appear before the High Court relating to this case by-passing me. However, the High Court held that the investigating agency had no right to engage its own counsel and also quashed the further investigation conducted by it. These decisions of the High Court were upheld by the Supreme Court as per its order dated: 30.01.2012 in SlP No.8046/2011 c/w SLP 7099/2012 filed by the DVAC [Directorate of Vigilance and Anti Corruption], (Tamil Nadu).

The above is a brief account of my encounter with the investigating agency as also the twists and turns in the case. Throughout the proceedings, I had the able assistance of Sandesh J. Chouta (present State Public Prosecutor) and B.L. Acharya, Advocate, which made my task easier.

How would you assess the impact of the outcome of the case—as a lesson for public servants and political leaders in particular?

There is a general impression among the public that in the cases under the PCA, it is only the low paid officials who are convicted and sentenced and that the public servants holding high office (whether they be politicians or bureaucrats) ultimately go scot free. This case shows that even the rich and mighty are not above the law and that the law will not allow them to escape from its clutches.

The two judges of the Supreme Court have appreciated the role of the Trial Court judge [Michael Cunha] and have also commented on the arithmetical errors by the High Court judge [C.R. Kumaraswamy] in the calculation of the disproportionate assets. Is it not a grave error on the part of the latter?

It is true that the High Court Judge, apart from other errors, committed one fundamental error in totalling, which alone made a difference of Rs.13.5 crore. He had held that the disproportionate asset held by the accused was only to the extent of Rs.2,82,36,812, which amounted to 8.1 per cent of the income. As the same is less than 10 per cent the benefit of doubt has to be given to the accused. However, if this one totalling error is corrected and Rs.13.5 crore is added to the above income determined by the High Court Judge, the total disproportionate asset comes to Rs.16,32,36,812/- which is about 76.7 per cent. Thus, in this case one totalling error resulted in order of acquittal instead of conviction.

It has taken 20 years for the case to be disposed of and the guilty to be punished. Will it not be appropriate for such cases to be disposed of within a specified time frame in the interest of eradicating corruption in public life?

Though it is desirable that all cases, including cases under the PCA, are disposed of expeditiously, fixing any time limit in this connection is difficult. There are several enactments where there are provisions fixing time limits.

Section 86 (7) of the Representation of the People Act, 1951, is one such provision, which provides that an election petition challenging the election of a legislator (either MLA, MLC or MP) has to be concluded within a period of six months from the date of filing of the petition. There is hardly any case which has been so disposed of within the prescribed period. It has also provided that case of election petition should go on day-to-day basis. This provision is also rarely followed.

Similar is the provision for day-to-day trial both under the Cr.P.C as well as the PCA. However, they are rarely followed in practice. Therefore, in my opinion mere prescribing of a time limit will not solve the problem.

The fifth accused in the DA case, T.T.V. Dinakaran, was not prosecuted since you expressed the view that there was not much evidence against him in the acquisition of some London Hotels utilising the money acquired by Jayalalithaa (Public Servant). Can you please elaborate on this matter, given the fact that Dinakaran has been given a new role in the ruling political party after V.K. Sasikala has been convicted and lodged in prison?

There were two cases which were transferred from Chennai to Bengaluru. One is the case related to disproportionate assets known as 'Wealth Case'. The other one was a case of disproportionate asset acquired in London by purchasing of two hotels, known as 'London Hotel case'. In the latter case, there were only two accused viz., Jayalalithaa and T.T.V. Dinakaran.

The prosecution case was that the ill-gotten wealth of A1 was transferred abroad by *hawala* means and A2 Dinakaran by utilising the said money by forming some shell companies purchased two hotels. Though there was evidence to show that Dinakaran had purchased these hotels by paying a huge price, there was lack of reliable evidence to prove that the money belonging to A1 was transferred abroad by *hawala* means.

Dinakaran being a private individual and not a public servant, the provisions of the Prevention of Corruption Act are not attracted for his acquisitions. Further, when Jayalalithaa was Chief Minister in 2002-03 this case was weakened by further investigation, wherein three Ministers had gone back on their previous statements. The

Special Judge at Bengaluru directed clubbing of these two cases with Sri Dinakaran as A5 and this decision was challenged before the Supreme Court and the case was pending before the Supreme Court for over 4 years.

In the circumstances, on studying the case, I felt that it is not possible to secure conviction in the *London Hotel* case and sought leave of the Court to withdraw the same. Though the trial court refused permission, the High Court granted permission and accordingly the prosecution in *London Hotel* case was withdrawn. Had it not been so withdrawn, even today both the cases would have remained incomplete. It would have taken some more years to complete the trial in two clubbed cases. The power to withdraw is exclusively with the SPP who has to take only the permission of the Court. However, in this case I had also taken concurrence of the Government of Tamil Nadu then in office.

Are there adequate and accessible public institutions to enable the common people fight corruption? Do you see an increase in the role for such institutions and your suggestions to make them effective?

In my opinion, public institutions or individuals will not be in a position to prosecute successfully public servants. They can only assist the investigating agencies in the matter.

There seems to be a sense of optimism after the judgment, but there is also pessimism that it will be business-as-usual in government quarters, which is the hub of corruption. As a veteran at the bar, can you offer your suggestions that could effectively empower citizens to fight corruption as envisioned by Justice Amitava Roy in the final paragraphs of the judgment?

Certainly the citizens can play an important role in fighting corruption. However, such efforts will be rendered futile if we do not have officers of integrity to investigate the cases. In the present case, Nallama Naidu, an officer of the rank of Superintendent of Police [Tamil Nadu], conducted a thorough and exhaustive investigation resulting in conviction. No praise is too high for his sincere efforts. It is also important that the Judges who try the cases under the PCA should be men of impeccable integrity, having sound general knowledge and, not the least, they should be good in arithmetic.

There are reports that efforts are on to transfer V.K. Sasikala to a prison in Tamil Nadu? What are your views on these reported efforts?

As far as I am aware, there is no such proposal before the Government of Karnataka. Even if, in the normal circumstances, there could be transfer of a prisoner from one State to another (with the concurrence of both States), in this particular case, it may not be possible to effect such a transfer without the specific orders of the Supreme Court in view of the fact that the case was transferred from Tamil Nadu to Karnataka by the Supreme Court on specific grounds, and it is unlikely that the apex court will pass any such orders of transfer [of the prisoner/s].

The judgment noted that as the late Chief Minister Jayalalithaa had expired, "appeals against her have abated". Could you please elaborate?

Section 394 of the Cr.P.C provides for abatement of appeals on the death of the accused. The Supreme Court has held that this provision contained in section 394 Cr.P.C is not strictly applicable to the appeals filed before the Supreme Court, after obtaining the leave under Article 136 of the Constitution of India. However, it has been clarified that for the sake of uniformity, the Supreme Court may adopt principles underlining the Section.

In Civil Law, an appeal does not abate even on the death of an accused after arguments are concluded and the case is posted for judgment (vide Order XXII Rule 6 C.P.C). In the present case, the arguments have been concluded on 07.06.2016 and the judgment in the appeal was reserved. Therefore, in such an event whether the appeal has abated on the death of Accused 1 is a moot point. I am yet to give a detailed opinion to the Government of Karnataka on this aspect.

Related Links:

Resources: Supreme Court judgment which upheld the Trial Court judgment [PDF 2.15 MB]

Source: Supreme Court of India

Resources: High Court of Karnataka judgment acquiting Jayalalithaa and others [PDF 3.37MB]

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Resources: Trial Court Judgment convicting Jayalalithaa and others [PDF 3.49 MB]

Source: Special Court for Trial of Criminal Cases Against Jayalalithaa and others

Bhattacharya, S, 2014. "The Conviction of a Chief Minister", The Hindu Centre for Politics and Public Policy, September 27.

(S. Rajendran is Resident Representative, Karnataka, The Hindu Centre for Politics and Public Policy, based in Bengaluru. Until recently he was Resident Editor/ Associate Editor, The Hindu, Karnataka.

In a journalistic career of over 35 years with The Hindu in Karnataka, he has extensively reported on and analysed various facets of life in the State. He holds a Master's degree from the Bangalore University. The Government of Karnataka, in recognition of his services, presented him the Rajyotsava Award — the highest honour in the State — in 2010.)

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