(1982) 04 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Rajinder Kumar Sood	APPELLANT
Vs	
The State of Punjab	RESPONDENT

Date of Decision: April 14, 1982

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 5

Citation: (1982) CriLJ 1718 : (1983) 1 ILR (P&H) 185

Hon'ble Judges: S.S. Sandhawalia, C.J; D.S. Tewatia, J

Bench: Division Bench

Judgement

S.S. Sandhawalia, C.J.
The two significant questions which have necessitated this reference to the Division Bench may be formulated in the following terms:

1. Whether sanction under S- 6 of the prevention of Corruption Act, 1947, is a pre-requisite for the prosecution of an accused public servant u/s 5 of the said Act (and allied offences u/s 161 etc., of the Penal Code); even where such accused person had ceased to be a public servant on the date of the taking of cognizance of the offence by the Special Judge?

2. If the answer to the aforesaid question be in the negative, whether sanction in terms of Section 197(1) of the Criminal P.C. would still be required for such a prosecution ?

2. For the purposes of this reference, it is unnecessary to delve deeply into the facts. It suffices to mention that at the instance of Amrik Singh complainant a trap was laid by the Investigating Agency on the 23rd of July, 1977, wherein marked currency notes of Rs. 20/-allegedly paid as a bribe to the appellant Dr. Rajinder Kumar Sood (then in charge of the rural Dispensary, Banur, District Patiala) were recovered, from the left pocket of his Bush-shirt. After completion of the investigation the appellant

was sent up for trial u/s 5(1)(d) read with Section 5(2) of the F. C. Act and Section 161 of the Penal Code before the Court of the Special Judge, Patiala. In a detailed judgment the learned Special Judge held the appellant guilty of the offences aforesaid and imposed a sentence of one year''s rigorous imprisonment and a fine of Rs. 200/-.

3. This appeal first came up before my learned brother Tewatia J., sitting singly. Before him it was the common case that the appellant had ceased to be a public servant at the time when the cognizance of the offence was taken by the Special Judge. Though no objection with regard to the absence of sanction was raised at the stage of the trial yet the issue being one primarily of law and going to the root of the jurisdiction was allowed to be agitated. The learned Counsel for the appellant further raised the question that irrespective of the provisions of the P. C Act sanction was nevertheless necessary in view of the change brought about in this section by the new Code. Because of the obvious significance of the question raised the matter has been referred for adjudication to the Division Bench and that is how it is before us.

4. Adverting to question No. 1 posed at the outset I may straightway notice that this need not detain us for long. It suffices to mention that the stand of the learned Counsel for the appellant in this context was wholly rested on the Division Bench judgment Manmal Bhutoria Vs. State of West Bengal and Others, , Therein it had been held that a public servant who had ceased to be a public servant cannot at all be prosecuted u/s 5(2) of the p. C. Act before a Special Judge. This view has, however, been categorically reversed by their Lordships in State of West Bengal and Others Vs. Manmal Bhutoria and Others, . Thereby the authoritative precedent earlier in S.A. Venkataraman Vs. The State, has been approvingly referred to and followed. In Venkata-raman''s case this point was directly in issue and was adjudicated upon unequivocally in the following terms (in Para 16 of the report).

In our opinion, in giving effect to the ordinary meaning of the words used in Section 6 of the Act, the conclusion is inevitable that at the time a Court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of Section 6 can apply. In the present appeals, admittedly, the appellants had ceased to be public servants at the time the Court took cognizance of the offences alleged to have been committed by them as public servants. Accordingly the provisions of Section 6 of the Act did riot apply and the prosecution against them was not vitiated by the lack of a previous sanction by a competent authority.

All controversy having now been set at rest by this judgment, and in view of the afore-quoted enunciation the answer to the first question formulated above has to be rendered in the negative.

5. Coming now to the second question it deserves highlighting that this arises primarily because of the change brought about in Section 197(1) by the new Criminal P.C. Section 197 of the earlier Code apparently prescribed sanction when the accused public servant was such at the time of the cognizance of the offence. However, in the new Code, the legislature deliberately used the phraseology ''when any person who is or was a Judge or Magistrate or a public servant''. It was not disputed before us that because of this fact, Section 197 of the Criminal P.C. would come into play not only where the accused public servant was such at the time of the commission of the offence but also when he had ceased to be such a public servant later at the time of taking cognizance of the offence. The amendment made in Section 197 of the New Code was patently directed to give a larger protection thereby to the public servant and apparently to continue the same even when he had ceased to hold office.

6. The aforesaid change in Section 197 of the Code however, would in no way resolve the controversy. The true issue is - whether Section 197 of the Code is at all attracted to the trial of offences before the Special Judge. Hence the core question that arises is - would the special provisions of sanction u/s 6 of the p. C. Act, be altogether exclusory of the general provisions of sanction u/s 197 of the Code at least in all prosecutions before the Special Judge.

7. For a true answer to the aforesaid question, one may inevitably turn to the object and purpose, the preamble, and the provisions, of the p. C Act, 1947. The aftermath of the Second World War had necessitated the enactment of this statute as is manifest from the following statement of Objects and Reasons therefor:

The scope for bribery and corruption of public servants had been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for a considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are being disposed of; there will, for some years, be shortages of various kinds requiring the imposition of controls and extensive schemes of post-war reconstruction, in-volving the disbursements of very large sums of Government money, have been and are being elaborated, AH these activities offer wide scope for corrupt practices and the seriousness of the evil and the possibility of its continuance or extension in the future are such as to justify immediate and drastic action to stamp it out.

The existing law has proved inadequate for dealing with the problem which has arisen in recent years and the Bill is intended to render the Criminal Law more effective in dealing with cases of bribery and corruption of public servants.

8. The preamble of the Act is again a pointer to the same effect and is in the following terms:

An Act for the more effective prevention of bribery and corruption;

Whereas it is expedient to make more effective provision for the prevention of bribery and corruption;

It is hereby enacted as follows:

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9. It is plain from the above that the legislature intended to come down with a heavy hand for the suppression of the crying evil of bribery and corruption in the post-War era. The provisions of the Act are stringent in the field of criminal law. Certain presumptions of guilt of offences committed under Sections 161 and 165A of the Penal Code, are enjoined by Section 4 of this Act unless the contrary is proved by the accused, thus reversing the ordinary presumption of innocence. Section 5 of the Act has created a special offence of criminal misconduct earlier unknown to the Penal Code. Sub-section (2) thereof made it stringently punishable with a term of imprisonment, which may extend to seven years or with fine or both, Sub-section (3) of the Section again raised a presumption of guilt if the accused person or any other person on his behalf was in possession of pecuniary resources or property disproportionate to his known sources of income. These and the other provisions of the Act indicate that the legislature brought in special legislation for the special purpose of eradicating bribery and corruption on the part of public servants and not to condone it in any manner whatsoever.

Matched with this stringency was also the safeguard of sanction u/s 6 which was provided by this Act. This, in a way was made more effective and complete than the general provisions of sanction provided by Section 197 of the Code. Therein, apart from other material differences, protection was afforded only if the accused person was acting or purporting to act in discharge of his official duty. However, Section 6 of the P.C. Act, did not hedge the safeguard of sanction by any such qualification. All this seems to make it plain that the P.C. Act is a special legislation in its own field and equally, the sanction provided therein by Section 6 is particular and peculiar to itself.

10. Though the inference of special legislation is unequivocal enough from the above, yet all doubts on this point would be set at rest by the subsequent enactment of the Criminal Law Amendment Act, 1952. This, as its preamble plainly states has further amended the Penal Code and the Criminal P.C. to provide for a more speedy trial of offences relating to bribery and corruption. Thereby Section 165A was introduced in the Penal Code to make abetment of offences u/s 161 or Section 165, Penal Code, equally punishable. To give effect to the special legislation, the State Governments were empowered by Section 6 thereof to appoint Special Judges and exclusive jurisdiction was vested in them to try the offences pertaining to bribery and corruption in categoric terms by Section 7(1), which reads as under:

Notwithstanding anything contained In the Criminal P.C. 1898 (Act V of 1898) or in any other law the offences specified in Sub-section (1) of Section 6 shall be triable by special judges only." Further Section 8 also provided for the procedure and powers of the Special Judges and Sub-section (3) thereof deserves notice in extenso:

Save as provided in Sub-section (1) or Sub-section (2), the provisions of the Criminal P.C. 1898 shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special judge: and for the purposes of the said provisions, the court of the special judge shall be deemed to be a court of session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a special judge shall be deemed to be a public prosecutor." I am of the view that it would be waste-ful to further elaborate the matter as the larger perspective of the provisions of the P.C. Act and the Criminal Law Amendment Act. leaves no manner of doubt that this is a special legislation with regard to bribery and corruption both with regard to its substantive and procedural aspects.

11. Once it is held as above, it would necessarily follow that the special provisions of sanction u/s 6 of the P. C Act, would exclude the application of the general provisions of sanction u/s 197 of the Code. This is indeed so, on general principles and would be more so, in view of the afore-quoted provisions of Sub-section (3) of Section 8 of the Criminal Law Amendment Act, 1952 which applies the Code only in so far as it is not inconsistent therewith to proceedings before a Special Judge. As I have already pointed out earlier, the two statutes have separate and distinct provisions with regard to sanction and these are in no way in pari materia.

12. The same result would also flow from Section 5 of the Code which may also be read:

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Once it is held as has been so done above, that the p. C. Act and the Criminal Law Amendment Act are special statutes, the provisions of the Code would not override the same and in any case cannot apply where they are inconsistent with the provisions of the Special Act.

13. What appears to be plain on principle and the language of the statute, seems to be equally buttressed by way of analogy from the precedents of the final Court. What calls for particular notice is that in S.A. Venkataraman Vs. The State, , their Lordships had elaborately considered Section 6 of the P.C. Act vis-a-vis Section 197 of the Code and even adverted in detail to precedents under the latter provisions, Nevertheless, whilst holding that Section 6 was not attracted, in the case of a public servant, who had ceased to be so at the time of the taking of the cognizance of the offence, they did not say nor remotely indicate that in that event Section 197 might

be attracted. Again in State of West Bengal and Others Vs. Manmal Bhutoria and Others, their Lordships, whilst reiterating Venkataraman''s case appear to be of the same view. What is of significance is that at the time of the decision of the later case, the change in Section 197 of the new Code had already been brought about in 1974.

14. In fairness to the learned Counsel for the appellant, reference must be made to the single Bench judgment of this Court in Rachhpal Singh v State of Punjab 1979 CLR 282. Therein, it was rightly held that Section 197 of the new Code had brought in a change of the law by inserting "or was" in between "is" and "a Judge" in the said Section and consequently sanction u/s 197 of the new Code would now be necessary irrespective of the fact whether the accused person is or has ceased to be a public servant. An analysis of this judgment, however, would disclose that the specific question whether Section 6 of the P.C. Act would altogether exclude application of Section 197 of the Code for trials before the Special Judge, was neither specifically raised nor adequately canvassed and debated. It was more or less assumed that the requirement of Section 197 of the Code would have to be satisfied. With the greatest respect, in view of the aforesaid discussion, such a view is untenable and this judgment has consequently to be overruled on this specific point.

15. It would follow from the aforesaid discussion that the special provisions of sanction u/s 6 of the P.C. Act would exclude the general provisions of sanction u/s 197 of the Code at least in all prosecutions before the special Judge. Consequently, Section 197 of the Code is not at all attracted to the trial of offences before him.

16. To conclude the answer to the first question is rendered in the negative, that is, no sanction u/s 6 of the Act is required for the prosecution of an accused public servant before a Special Judge where he has ceased to be a public servant on the date of the taking of cognizance of the offence by the said Court. The answer to the second question is also given in the negative, that is, Section 6 of the P.C. Act excludes the general provisions of Section 197 of the Code which is hence not attracted to the trial of offences before the Special Judge.

The appeal would now go back before the single Bench for decision on merits in the light of the answer given to the question above.

D.S. Tewatia, J.

17. I agree.