

(1980) 01 DEL CK 0001

Delhi High Court

Case No: Criminal Revision Appeal No. 238 of 1974

Electrical
Manufacturing Co.
Ltd.

APPELLANT

Vs

D.D. Bhargava

RESPONDENT

Date of Decision: Jan. 29, 1980

Citation: (1980) 17 DLT 251

Hon'ble Judges: Leila Seth, J

Bench: Single Bench

Advocate: A.N. Mulla Bishambar Lal, B.L. Mehta and P.P. Malhotra, for the Appellant;

Judgement

Leila Seth, J.

(1) This Criminal revision petition is directed against the Orders dated 12th January, 1973 and 23rd March, 1974 passed by the then Additional Chief Judicial Magistrate and the Additional Sessions Judge, Delhi, respectively, dismissing the application of the petitioner and holding that the sanction accorded was valid.

(2) The controversy is concerning the consent to initiate the proceedings, granted by the Chief Commissioner of Delhi u/s 196A of the Code of Criminal Procedure, 1898. The point urged is, that it was issued without application of mind and as such is invalid.

(3) The brief facts are that a complaint was filed in 1962 by Mr. D.D. Bhargava, Deputy Chief Controller of Imports and Exports against the petitioner and four others. The offences alleged were u/s 120-B read with Section 420 of the Indian Penal Code and Section 5 of the Imports and Exports (Control) Act, 1947; as also u/s 420 of the Indian Penal Code and Section 5 of the Imports and Exports (Control) Act, 1947.

(4) The Complaint is said to have been filed after having obtained the consent of the Chief Commissioner of Delhi u/s 196A, Criminal Procedure Code, 1898. The petitioner, by an application dated 14th November, 1968 challenged both the factum and the validity of the consent purported to have been given by the Chief Commissioner, Delhi. He submitted that the consent, being a condition precedent, the trial could not proceed. The Trial Magistrate, however, rejected the petitioner's application. On a revision petition against the said order, this Court, by its order dated 7th December, 1971, directed that the respondent prove the grant of the requisite consent.

(5) In pursuance of this order, two prosecution witnesses were produced. P.W. 21, Mr. Om Prakash Grover, an upper division clerk was summoned with the file from the Home Department of the Delhi Administration. This file No. F2/368/62, Home contained the consent of the Chief Commissioner of Delhi to initiate the proceedings.

(6) Public Witness . 22, Mr. K.M.L.Gupta, Deputy Secretary, Home Department, U. P. Government, was examined. His evidence was recorded on 29th April, 1972. He deposed that he was the Under Secretary, Home, Delhi Administration, Delhi in December, 1962.

(7) In his deposition he has stated that a draft sanction (Exhibit Public Witness . 22/C) was received on 17th November, 1962. On 24th November, 1962 he marked this draft sanction to be vetted by the Secretary (Judicial). He then adds that the nothings on the file do not indicate when it was so placed. But it was so vetted on 29th November, 1962 after which the draft was returned. The draft prosecution order was flagged and it was noted, by the section that the brief facts of the case had been included in the draft order. It was further noted that as the criminal conspiracy related to a non-cognizable offence, the sanction of the Chief Commissioner was necessary for the trial. The names of the five accused were mentioned in the note. This note was placed before the deponent on 30th November, 1962. Thereafter it was sent to the Chief Secretary who initialled it. The Chief Secretary desired that brief allegations be given. This was done and the proceedings thereafter are as contained in Exhibit Public Witness .22/B.

(8) It appears that the file, which bears, inter alia, the original signature of the then Chief Commissioner, Mr. Bhagwan Sahai, dated 8th December, 1962, which was brought by Public Witness . 21 as mentioned above, was returned to the Home Department by an order of the Judicial Magistrate dated 29th April, 1972. However an authenticated copy of certain nothings on the file has been treated as Exhibit Public Witness . 22/B. This contains a summary of the allegations, as prepared by the office, the initial of the Superintendent, the comments of the Under Secretary, Mr. K.M.L. Gupta, and his signature dated 5th December, 1962, the signature of the Chief Secretary dated 7th December, 1962 as also the word "sanctioned" as written by the Chief Commissioner and his signature dated 8th December, 1962.

(9) Thereafter the formal sanction order dated 12th December, 1962 (Exhibit Public Witness . 22/A) was issued by Mr. K.M.L. Gupta, Public Witness . 22. This is indicated from the words "Given under my hand, by order of the Chief Commissioner.....".

(10) In cross-examination, Mr. K.M.L. Gupta, Public Witness . 22 has stated that neither any F.I.R. nor any statements recorded by the police u/s 161, Criminal Procedure Code were received in the office of the Home Ministry. With respect to the file on which the word "sanctioned" had been noted, he states, "The file must have been received by the Chief Commissioner either on 7.12.1962 or 8.12.1962".

(11) On the basis of these averments, Mr. A.N. Mulla, learned counsel for the petitioner first submitted that there is no evidence that the file was placed before the Chief Commissioner, Delhi i.e. the sanctioning authority. Alternatively, he contended that even if, the file was placed before the Chief Commissioner, Delhi there was no material in the file on the basis of which he could have applied his mind and given the consent to initiate the proceedings as required u/s 196A, Criminal Procedure Code, 1898.

(12) The first submission of learned counsel for the petitioner is obviously erroneous. All the nothings are on the file and Exhibit Public Witness . 22/B is only an authenticated copy of an extract of some of the nothings from the file. It is not, as if, only this extracted portion was before the Chief Commissioner, when he signed. The original file was produced in Court, as above noticed, by Mr. Om Prakash Grover, Public Witness . 21. Mr. K.M.L. Gupta, Public Witness . 22 referred to the nothings on the file in his deposition, as also the signature of the Chief Commissioner, and the fact that the draft sanction order Exhibit Public Witness . 22/C had been flagged. In fact, it is not disputed, by learned counsel, Mr. A.N. Mulla, that the word "sanctioned" was written and signed by the Chief Commissioner on 8th December, 1962. From the statement of Mr. K.M.L. Gupta, P.W. 22 that the file must have been received on either 7th or 8th December. 1962, by the Chief Commissioner, it cannot be inferred, as submitted by Mr. A.N. Mulla, that the file was not received by the Chief Commissioner at all. In fact, what the statement conveys is that the file would have been received either on the 7th or 8th of December, 1962. The only doubt is with regard to which of the set wodate sit was received. In any case, this is not material as it is patent, that the file was with the Chief Commissioner on 8th December, 1962 when he wrote the word "sanctioned" and signed it.

(13) With regard to his alternate contention, Mr. A.N. Mulla has relied on two decisions of the Supreme Court in [Jaswant Singh Vs. The State of Punjab](#), and [Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh](#), .

(14) However, Mr. R.L. Mehta, learned counsel for the respondents has relied on [The State of Rajasthan Vs. Tarachand Jain](#), .

(15) It is, Therefore, necessary to examine these decisions of the Supreme Court relied upon by learned counsel for the parties.

(16) In *Jaswant Singh v. State of Punjab* (supra), Kapur J. speaking for the Court opined that sanction under the Prevention of Corruption Act is not intended to be an automatic formality and the provisions relating to it should be strictly observed. The object of the provisions being that the sanctioning authority must be able to consider for itself the material before coming to a conclusion whether the prosecution should be sanctioned.

(17) In *The State of Rajasthan v. Tarachand Jain*, (supra), Khanna, J., on behalf of the Court, while dealing with a case of sanction on u/s 6 of the Prevention of Corruption Act, 1947, observed that the burden of proof that a requisite sanction has been obtained rests upon the prosecution. This includes proof of the fact that the sanction has been given with reference to the facts on which the proposed prosecution is based. This may be apparent on the face of the sanction or else be established by independent evidence that the sanction was accorded after those facts had been placed before the sanctioning authority.

(18) In that case the formal sanction signed by the Special Secretary to the Government, contained the facts Constituting the offence. As such, it was held that it was not necessary to lead separate evidence to show that the relevant facts had been placed before the Chief Minister, the sanctioning authority. The fact, that the Chief Minister signed the sanction for the prosecution on the file and not the formal sanction produced in Court made no material difference.

(19) In *Mohd. Iqbal Ahmed v. State of Andhra Pradesh*, (supra), Fazal Ali. J. opined on behalf of the Court that any case instituted without a proper sanction must fail as it is a manifest defect in the prosecution and the entire proceedings are rendered void ab initio. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act. It affords protection to Government servants against frivolous prosecution and there must be strict compliance. It is incumbent on the prosecution to prove that a valid sanction has been granted after the sanctioning authority has satisfied itself. This can be either by producing the original sanction which itself contains the facts Constituting the offence and the grounds of satisfaction or by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it.

(20) In that case, the Court held that the prosecution, had been launched without any valid sanction. The reason was that the resolution of the Standing Committee granting the sanction u/s 6 of the Prevention of Corruption Act did not reveal the facts Constituting the offence. referred to a note of the Commissioner in which the offence was noticed and on the basis of which the sanction was accorded. The Supreme Court opined) that the prosecution, could have established the facts, Constituting the offence, which were placed before the sanctioning authority, by

producing the note. They failed to do so. Nor did they lead any evidence with regard to the contents of the note. What they did produce, is the subsequent irnpleinenta- corporation of the resolution. This docuirement, no doubt, contained the facts consti- tuting the offence. But what the Courts has ^o see is whether or not the sanctioning authority was aware of the "facts "Constituting the offence and applied its mind at the time of granting the sanction. Any subsequent fact which comes into existence after the grant of the sanction is irrelevant.

(21) The principles that emerge from these decisions are : " 1. Prosecution without a valid sanction must fail. 2. The object of sanction is to avoid frivolous litigation and harassment. 3. Therefore, the compliance must be strict and not an idle formality. 4. The sanctioning authority must apply its own rnind before issuing the sanction as such) the facts must be before it. 5. The onus of proving the sanction is" on the prosecution. 6. -This can be done by producing the original sanction, if it contains the facts Constituting the offence, Ifno by estab- lishing that the facts were placed before the sanctioning authority. - 7. In such a case, the subsequent formal sanction setting out all the facts cannot be proof of application of mind of the sanc- tioning authority. - 8. However, if it is established that the facts were before the sanctioning authority, the signature of the sanctioning autho- rity need not be on the formal sanction, if he has signed the file.

(22) Applying these principles to the facts of the present case, can it be .said that the grant of a valid sanction has been estabiished ?. It-would appear s0 to me. This is despite the fact that the. formal or 3e^ of-, sanction dated 12th December" 1962, setting out all the facts" has not been signed by the Chief Commissioner and cannot, "therefore, I relied on to establish his application of mind.

(23) However, when giving his written consent to initiation of the proceedings ,the Chief Commissioner had before him in the file, the flagged draft sanction order (Exhibit f.W. 22./C) which contained the .detailed facts. Constituting the offences as also a brief summary of the facts as contained iT)..ExhibifaP.W.2^/B before he granted his written consent: This would indicate that the facts "Constituting the offences were ^before him when he sanctioned the initiation of proceedings, , is conceded by learned counsel, Mr. A.N. Mulla, that the draft sanction (Exhibit Public Witness . 22/C) is almost identical to the formal sanction order (Exhibit JP.W. 22/A). The material, Therefore, having been available to the sanctioning authority When it applied its mind and granted the sanction, it would make

(24) Mr. Mehta had made an alternative submission, that even assuming the sanction order to be invalid, it would affect only the prosecution u/s 120B) Indian Penal Code, read with Section 5 of the Imports and Exports (Control) Act, 1947. He contended that in terms of Section 196A, Criminal Procedure Code, no sanction is necessary for the substantive offences u/s 420 Indian Penal Code, and Section 5 of the Imports and Exports (Control) Act 1947, nor for the offence u/s 120B read with Section 420, Indian Penal Code. Therefore, he submitted that the case would have to

proceed with respect to these offences. He relied on certain decisions to fortify his argument. These are : [Madan Lal Vs. State of Punjab,](#) , [Bhanwar Singh and Another Vs. State of Rajasthan,](#) and [Gurbachan Singh Vs. State,](#) .

(25) In view, of my decision that a valid sanction has been established, as above noticed, I need not dilate on this submission.

(26) The revision petition is, accordingly, dismissed.

(27) The record which had been summoned should be immediately returned to the trial court, so that the case can proceed.