
(2010) 01 JH CK 0013

Jharkhand High Court

Case No: None

Satyendra Kumar Singh
@ S.K. Singh

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: Jan. 8, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 109, 120B, 201, 21, 406
- Prevention of Corruption Act, 1988 - Section 10, 11, 13, 15, 19

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.R. Prasad, J.

Through this writ application the order dated 14.12.2004 passed in Vigilance case No. 51 of 1995 (Special Case No. 12 of 1995) under which cognizance of the offence was taken against the petitioner has been sought to be quashed and at the same time, the order granting sanction for prosecution against the petitioner by the Secretary-cum-Legal Remembrancer, Government of Jharkhand has also been sought to be quashed.

2. The facts giving rise this application are that one Kamlesh Kumar, the then Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna on holding preliminary enquiry came to the conclusion, prima facie, that in the year 1989-90, 1990-91 and 1991-92, one Vijay Kant Sahay, the then Divisional Forest Officer, Social Forestry Division, Latehar in conspiracy with other officials of the Forest Department including the petitioner have shown to have received 5% Aldrine manufactured of Nacil Company worth Rs. 3,97,000/-from the suppliers, namely, Bhumi Vikas Kendra, Ratu Road, Ranchi but, in fact, the said material had never been purchased, still it was shown

to have been purchased from a nonexistent firm by making forgery in the relevant documents and thereby the accused persons caused the State exchequer to a great loss. Having come to that conclusion, the said Kamlesh Kumar, the then Superintendent of police submitted a written report, upon which Vigilance case No. 51 of 1995 (Special Case No. 12 of 1995) was registered under Sections 420, 467, 468, 471, 409, 201, 109 and 120B of the Indian Penal Code and also u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act against 13 named accused persons including the petitioner.

3. The vigilance after investigating the case did find the allegation, prima facie, to be true against the accused persons including the petitioner and submitted its report on 9.12.2004 after obtaining the order of sanction for the prosecution against the public servants including the petitioner. Upon which learned Special Judge, Vigilance, Ranchi, vide its order dated 14.12.2004 took cognizance of the offences under Sections 420, 467, 468, 471, 409, 109 and 120B of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

4. Being aggrieved with the said order, this writ application has been filed praying therein to quash the order taking cognizance and also the order under which sanction for prosecution was accorded by the Secretary-cum-Legal Remembrancer, State of Jharkhand against the petitioner.

5. Learned Counsel appearing for the petitioner submit that the petitioner, being a direct recruit of Indian Forest Service, was appointed by the President of India and after his appointment, was posted in the State of Bihar and has never been employed in connection with the affairs of the State of Jharkhand and as such, the Secretary-cum-Legal Remembrancer would never be competent to grant sanction for prosecution against the petitioner, rather the competent authority would be the Central Government in terms of the provision of the Prevention of Corruption Act and as such, any order taking cognizance of the offences on the basis of invalid order of sanction would be bad, illegal and without jurisdiction and hence, the order taking cognizance as well as the order granting sanction are fit to be set aside.

6. A counter affidavit has been filed on behalf of the Vigilance Bureau as well as on behalf of the State of Jharkhand stating therein that the offences were committed at Latehar by the accused persons including the petitioner, who at the relevant point of time was posted as Divisional Forest Officer and as such, the Secretary, Law and Justice was competent to accord sanction in terms of the provision as contained in Section 19 of the Prevention of Corruption Act and as such, the order granting sanction upon which cognizance of the offences was taken against the petitioner never suffers from any illegality whatsoever and hence, it never warrants to be interfered with by this Court.

7. On the other hand, in the counter affidavit filed on behalf of the State of Bihar, it has been stated that the petitioner is presently posted in Indian Forest Service cadre in the State of Bihar and as such, Forest and Environment Department, Government of

Jharkhand had made request, vide its letter No. 1669 dated 27.4.2004 to the State of Bihar to do needful in the matter of grant of sanction against the petitioner and accordingly, the matter relating to grant of sanction is in active consideration of the Government of Bihar.

8. In the light of the statements made in the counter affidavit filed on behalf of the State of Bihar, it was submitted on behalf of the petitioner that plea taken by the petitioner that Secretary-cum- Legal Remembrancer, State of Jharkhand is not a competent authority to grant sanction for prosecuting, has also been accepted by the State of Bihar where the petitioner is presently posted, as according to statements made in the counter affidavit, the matter relating to grant of sanction is in active consideration of the Government of Bihar and, therefore, the case be disposed of in terms of the decision rendered in a case of [State of Goa Vs. Babu Thomas](#), wherein the Hon"ble Supreme Court having found that the order granting sanction has not been passed by the competent authority, the order granting sanction against the respondent of that case was quashed but at the same time, the competent authority was permitted to issue fresh sanction order.

9. Having heard learned Counsel appearing for the parties it does appear that the case was lodged on the allegation that the then Divisional Forest Officer in conspiracy with other officials of the Forest Department including the petitioner posted at the relevant point of time in the Social Forestry Division, Latehar put the State exchequer to a great loss by showing purchase of Aldrine from the fake firm though, in fact, it had never been purchased. The Investigating Officer having found the allegation, prima facie, true submitted charge sheet after obtaining order of sanction for prosecution, upon which learned Special Judge, Vigilance, Ranchi took cognizance of the offences under Sections 420, 467, 468, 471, 409, 109 and 120B of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act on 14.12.2004 on which date, according to the case of the petitioner itself, he was working in the State of Bihar.

10. It would be worth while to mention here that the petitioner has taken stand that he was never posted in the State of Jharkhand, on being appointed as Divisional Forest Officer but this fact has been denied in the counter affidavit filed on behalf of the Vigilance and the State of Jharkhand and, therefore, this issue cannot be decided in this writ application, rather it would be a subject matter of the trial, particularly when the allegations are there that the then Divisional Forest Officer in conspiracy with other Forest Officials including the petitioner committed offence as stated above. However, one fact remains admitted that at the time when the cognizance of the offence was taken, the petitioner had been posted in the State of Bihar and perhaps for that reason, the State of Bihar by assuming that it is only the State of Bihar, who is competent to grant sanction for prosecution against the petitioner, has taken the matter relating to grant of sanction for prosecution. But keeping in view the allegations which relates to offence of forgery, misappropriation and the criminal misconduct by a public servant, an offence under the Prevention of Corruption Act question would be as to whether any sanction would be required at all for launching the prosecution.

11. Coming to the point relating to sanction in terms of Section 197 of the Code of Criminal Procedure, it be stated that so far grant of sanction u/s 197 of the Code of Criminal Procedure is concerned, it is mandatorily required to have it for launching prosecution, if the alleged act is done in discharge of the public duty. But any act attracting offence under Sections 406, 409, 420 read with Section 120B of the Indian Penal Code or even the act which constitutes offences under Sections 467, 468 and 471 of the Indian Penal Code can never be considered to be an act done in discharge of public duty and, therefore, no sanction in terms of Section 197 of the Code of Criminal Procedure is required to be taken for launching the prosecution.

12. In this respect, I may refer to a decision rendered in a case of [State of H.P. Vs. M.P. Gupta](#), [State of Kerala Vs. V. Padmnabhan Nair](#), [Shreekantiah Ramayya Munipalli Vs. The State of Bombay](#), and Amrik Singh v. State of Pepsu AIR 1955 SC 30.

13. In view of the settled principle and keeping in view the allegation made against the petitioner, I am of the considered view that no sanction u/s 197 of the Code of Criminal Procedure is required to be had for launching the prosecution against the petitioner.

14. Coming to the next point relating to grant of sanction u/s 19 of the Prevention of Corruption Act, I may first refer to the provision of Section 19 of the Prevention of Corruption Act which reads as under:

19. Previous sanction necessary for prosecution - (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under Sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

15. From perusal of the aforesaid provision, it would appear that Clauses (a) and (b) of Sub-section (1) specifically provide that in case of a person who is employed and is not

removable from his office by the Central Government or the State Government, as the case may be, save and except with the sanction for prosecution needs to be obtained either from the Central Government or the State Government. In both the Clauses (a) and (b) emphasis has been given on the words "who is employed" in connection with the affairs of the Union or the State Government. Natural corollary would be that if he is not employed then the question of having sanction does not arise. Furthermore, under Sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In the event of a person not holding the said office on account of various reasons, then the question of removing him would never arise. Thus conjoint effect of Sub-section (1) and Sub-section (2) of Section 19 would be that if a person committed any wrong punishable under Sections 7, 10, 11, 13 and 15 of the Prevention of Corruption Act while holding the office but by the time when the charge sheet is submitted or cognizance is taken, if he demits the said office, then there would be no question of obtaining any previous sanction of the appropriate Government.

16. The aforesaid proposition of law has been laid down by the Hon"ble Supreme Court in the case of [R.S. Nayak Vs. A.R. Antulay](#), where the question fell for consideration as to whether any sanction of the Governor was necessary when the appellant in his tenure as Minister had committed certain offences but subsequently at the time of launching prosecution he was a member of the Legislative Assembly. This question was dealt with in paragraph 24 of the said decision which reads as follows:

24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used (sic misused) nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used (sic misused) or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned Counsel that a minister who is indisputably a public servant greased his palms by abusing his office as minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and, therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a minister, would a sanction be necessary and that too of that authority competent to remove him

from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defect the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant u/s 21 of the Indian Penal Code and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd end product which is necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue's character.

17. The Hon"ble Court after considering the earlier decision emphatically held that the decision which lays down that in case where the public servant has ceased to hold the office, sanction is required to be obtained, is not the correct interpretation of Section 6 (as it was). The relevant discussion appears to be at paragraph 25 which reads as under:

We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decision in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6.

18. The same view has been reiterated subsequently in a case of [Parkash Singh Badal and Another Vs. State of Punjab and Others](#), Again in a case of Balakrishnan Ravi Menon v. Union of India (2007) 1 SCC 45, the question fell for consideration as to whether sanction for prosecution is at all necessary in terms of Section 19 of the Prevention of Corruption Act when the petitioner holding post of Chairman and Managing Director, Goa Shipyard Hotel committed certain offences under the Prevention of Corruption Act but retired and subsequently, appointed as Chairman and Managing Director of Transformers and Electricals Limited by the State of Kerala at the time of the submission of the charge sheet. The Court after taking notice of the provision as contained in Section 19 of the Prevention of Corruption Act and also the ratio laid down in A.R. Antulay's case did hold categorically that as the petitioner was not holding office of the Chairman and Managing

Director of Goa Shipyard Limited at the relevant time when the charge sheet was submitted, question of obtaining any previous sanction of the Central Government does not arise. Similar proposition of law was laid down by this Court in a case of Jagannath Mishra v. State of Bihar through S.P, CBI 2009 (4) East. Cr.C. 148 (jhr).

19. In the instant case, as I have noted earlier that on the day when the cognizance of the offence was taken, the petitioner had never been holding any post in Social Forestry Division, Latehar, rather the petitioner admittedly was posted somewhere in the State of Bihar, therefore, there would be no hesitation in holding that the sanction for prosecution in terms of Section 19 of the Prevention of Corruption Act is not required to have for launching prosecution against the petitioner, as the petitioner was not holding any post in the Social Forestry Division, Latehar when the prosecution was launched against him.

20. So far as the decision relied upon on behalf of the petitioner rendered in a case of State of Goa v. Babu Thomas (supra) is concerned, the issue which is related to this case was never before the Hon"ble Supreme Court, rather the issue was as to whether sanction has been accorded by the competent authority. The court having found that the sanction had never been accorded by the competent authority the order granting sanction was quashed and the competent authority was directed to issue fresh sanction order. In that view of the matter, the said decision would not be helpful to the petitioner.

21. In view of the finding made above, any issue relating to illegality or impropriety of the order granting sanction, pale into insignificance.

22. Thus, I do not find any merit in this application. Hence, this application is dismissed.