State of Bombay Vs Vishwakant Shrikant

Court: Bombay High Court

Date of Decision: April 17, 1953

Acts Referred: Penal Code, 1860 (IPC) â€" Section 161
Prevention of Corruption Act, 1947 â€" Section 6

Citation: (1954) CriLJ 284

Hon'ble Judges: Chainani, J; Bavdekar, J

Bench: Division Bench

Judgement

Bavdekar, J.
This is an application for revision of an order passed by the Special Judge, Greater Bombay, that the proceedings, which

were be-lore him in regard to an offence u/s 161 of the Penal Code committed by one Vishwakant Shrikant Pandit, were void for want of sanction

u/s 6 of the Prevention of Corruption Act, 1947.

2. The opponent, who was a public servant at the time when he is alleged to have com-, mitted the offence, was no longer in service at the time

when the learned Special Judge passed his order, and the learned Special Judge has passed it upon the footing that at the time when cognizance

was taken in the present case, the opponent, who has been dismissed from service, was no longer in service. The learned Special Judge held that

sanction was necessary under the provisions of Section 6 of the Prevention of Corruption Act, which runs as follows:

6. (1) No Court shall take cognizance of an offence punishable u/s 161 or Section 165 of the Penal Code or under Sub-section (2) of Section 5 of

this Act, 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 or some higher authority of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a Part A State and is not removable from his office save by or with the

sanction of the Provincial Government or Some higher authority, of the Provincial 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 whether the previous sanction as required under Sub-section (1) should be given by the

Central or 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.

The learned advocate, who appears on behalf Of the opponent, has pointed out, and with some force, that the section is modelled on Section 197,

Cr. P. C., which is as follows : ""197. (1) When any person who is a Judge within the meaning of Section 19 of the Penal Code, or when any

Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central

Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty,

no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in the case of a person employed in connection with the affairs of a State, of the State Government.

He then points out that the opening words of Section 197(1) raised a question as to whether sanction was or was not necessary in the case of a

person, who was no longer in service at the time when the Court is called upon to take cognizance of the offence committed by him. There was a

difference between the High Courts with regard to the question as to whether in such cases sanction was necessary, though it must be stated at the

outset that so far as the offences u/s 161 or Section 165 of the Penal Code are concerned, there was no difference of opinion, for the reason that

the view which prevailed when the Prevention of Corruption Act was enacted was that a public servant, who commits offences u/s 161 or Section

165, cannot possibly be said to be acting or purporting to act in the discharge of his official duty.

The learned advocate argues that even so, with regard to offences which could be said to have been committed by a public servant while acting or

purporting to act in the discharge of his official duty, there was a difference of opinion between the High Courts, and the Legislature must have

been aware of that difference; and it is because it was so aware that it has deliberately chosen to adopt a different phraseology in the opening part

of Section 6(1) of the Prevention of Corruption Act. Whereas Section 197(1), Cr. P. C., said : ""When any person who is a Judge within the

meaning of Section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or

with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been committed by him while acting

or purporting to act in the discharge of his official duty,..."" Section 6(1) of the Prevention of Corruption Act says, altering the order in which the

words were used in Section 197(1),

No Court shall take cognizance of an offence punishable u/s 161 or Section 165 of the Penal Code or under Sub-section (2) of Section 5 of this

Act, alleged to have been committed by a public servant except with the previous sanction

of the authorities mentioned in Clauses (a), (b) and (c) of Sub-section (1). He points out, besides, that whereas the marginal note of Section

197(1) was ""prosecution of Judges and public servants"", the marginal note of Section 6(1) is ""previous sanction necessary for prosecution"", taking

out the words "public servants" from the marginal note. Counsel contends that these changes are deliberate and they are made with a view to

making sanction necessary not only with regard to public servants, who are in office but those who are no longer in office.

3. Now, one can understand the contention that there is something to be said in favour of giving protection to public servants in regard to

prosecution of the offence mentioned in Section 6(1), even after they have ceased to be in service. But one thing which must be noted is that prior

to the enactment of Section 6(1), even a public servant, who was in service, enjoyed no protection in regard to the offences u/s 161 or Section

165, two of the offences with which Section 6(1) deals. The third offence with which it deals was actually created by the Prevention of Corruption

Act itself.

It is quite true that the Prevention of Corruption Act widened the scope of the offences which could be committed by a public servant. It created

for the first time the offence of criminal misconduct in discharge of official duty defined by Section 5, It at the same time granted for the first time

public servants the protection enacted in Section 6(1). That was that they were not liable to be prosecuted, except upon sanction accorded by the

authority mentioned in the section. It is contended, therefore, en behalf of the opponent that we should not approach the question of the

construction of Section 6(1) from the point of view that there was no sanction necessary in respect of the acts dealt with by that section which

were already offences before the Prevention of Corruption Act was enacted.

Even though there is force in this contention, it is necessary to remember that the Act itself is a Prevention of Corruption Act, and its object was the

more effective prevention of bribery and corruption. While bearing in mind, therefore, that it was considered desirable that there should be given to

a public servant protection from frivolous or vexatious prosecution, we ought not to extend the protection to persons, who are no longer in service,

unless the wording of that section makes Such an interpretation absolutely necessary.

4. Now, the section is not easy to interpret, firstly, because having been apparently modelled on Section 197, it changes the order of the words in

the opening part of Sub-section (1). It was that order which made it possible to hold that no person, who was not a public servant at the time when

the Court was called upon to take cognizance of the offence referred to in Section 197 (1), was protected because of the provisions of that

section. In the second instance, it is difficult to understand the use of the words ""alleged to have been committed by a public servant.

An offence in general can be committed by a public servant, just as it can be committed by others. But Section 6(1) deals with offences u/s 161

and Section 165 of the Penal Code and the offence u/s 5(2) of the Act. The last offence freshly created by the Act can only be committed by a

public servant and no one else. So also the offence u/s 165. It is only when we go to Section 161 that we find the solitary case of. an offence in

Section 6(1) which could be committed by a person, who is not a public servant at the time when he commits it. That offence is the offence of a

person who, expecting to be a public servant, takes a bribe. That is nude punishable u/s 161, in spite of the fact that the person, who takes the

bribe, is not a public servant at the time of the commission of the offence.

If we argue therefrom that inasmuch as all the offences, which are dealt with by Section 6(1), except the offence committed by a person, who,

expecting to be a public servant, takes a bribe, are offences which could be committed only by a public servant, and consequently the words

alleged to have been committed by a public servant"" are intended to exclude the case in. which a person, who, expecting to be a public servant,

takes a bribe, from the operation of the section, there is a further difficulty created by the wording of Clauses (a), (b) and (c), which define the

authority by which the Sanction is to be granted.

The learned Special Judge has been at pains to point out that the opening words of Section 6(1) ending with the words ""with the previous sanction

really speaking determine the cases in which previous sanction is necessary. He says that Clauses (a), (b) and (c) merely define the authority by

which the sanction has to be granted, provided sanction is necessary in the first place; but if he intended to mean thereby that the wording of

Clauses (a), (b) and (c) could not possibly control the opening words of Section 6(1), we do net think he is right there. Both the opening parts of

Section 6(1) and Clauses (a), (b) and (c) form part of the same sub-section. The sub-section is not divided in separate clause"s like (a), (b) and

(c). There are indeed Clauses (a), (b) and (c), but those clauses divide not the whole sub-section, but the persons, who have got to give the

sanction, into three classes (a), (b) and (c). In such a case, where in effect the whole of the sub-section is really speaking one clause, we know of

no principle which would prevent the meaning of the opening part from being determined by what follows subsequently in the three clauses.

Now, the principal word which is relied upon by the State in these three clauses is the verb "is", which is used in Clauses (a) and (b). Clauses-(a)

and (b) run as follows:

(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 or some higher authority, of the Central Government;

(b) in the case of a person who "is" employed in connection with the affairs of a Part A State and "is" not removable from his office save by or

with the sanction of the Provincial Government or some higher authority, of the Provincial Government.

The leaned Government Pleader says that these words show quite clearly that the person, in regard to whom sanction is necessary, must be in

service at the time when the Court is railed upon to take cognizance of the offence. Now, even though these clauses by themselves would not show

that the person in regard to whom sanction is necessary must be in service at the tine the Court is called upon to take or takes cognizance of the

offence, Clauses (a) and (b) are concerned with persons who are still in-service.

5. We cannot accept the suggestion made to us that we should interpret the word ""is"" to mean that the public servant must have been employed in

connection with the affairs, of the Union or the affairs of the Part A State, as the case may be, at the time when the offence was committed. It is

obvious that in that case the verb which would have been used is "was". There is no doubt whatsoever, therefore, that Clauses (a) and (b) deal

with the question of persons who are in service at the time when the Court is called upon to take cognizance of the offence.

6. It is contended, however, on behalf of the opponent that in case Clauses (a) and (b) are concerned with persons, who are in service, that would

not affect the necessity for sanction in regard to the offences alleged to have been committed by those who are not. Sanction would be necessary

in those cases because Clause (c) proceeds to say:

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

The argument is that the case of a person, who is no longer in service, will fall under Clause (c), if it does not fall under Clauses (a) and (b),

because by definition the case falls within the opening part of Section 6(1), and if it does not fall in Clauses (a) and (b), it must fall in the residuary

clause, namely, Clause (c).

7. On the other hand, it is contended on behalf of the State that Clause (c) must be read ''ejusdem generis'' with Clauses (a) and (b), and even if

the principle has no application, it can be seen quite easily that the persons contemplated by Clause (c) must also be in service at the time when the

Court is called upon to take cognizance of the offence.

8. It is difficult to apply the ''ejusdem generis'' rule to the interpretation of Clause (c), for the reason that it is obvious that it is a residuary clause.

Section 6(1) has in contemplation certain cases, in which sanction is necessary. Then it starts to deal with the question as to who is to give the

sanction, and by Clause (a) it enacts that the sanctioning authority in the cases covered by that clause is the Central Government. By Clause (b) it

enacts that the authority which is competent to give the sanction in cases covered by that clause is the Provincial Government. Then it makes a

provision for the ''remaining'' cases. In those cases sanction would be of the authority competent to remove the person, who committed the

offence, from his office. But, in our view, if the intention was that persons, who are not in service, are to be included in Clause (c), Clause (c)

would have run:

in the case of any other person,

(i) if he is still in service, of the authority competent to remove him from his office; (ii) if he is not in service, of the authority which was competent to

remove him from his office at the time when the offence was committed.

If we read Clauses (a), (b) and (c) together, it seems to us that Clause (c) implies that the person is still in service at the time when the Court is

called upon to take cognizance of the offence, and that must be determinative of the question before us. It has to be remembered that the opening

part of Section 6(1) is capable of two interpretations. One is that the person, in regard to whom sanction is necessary, must be a public servant at

the time when he committed the offence,

In view of the fact that Section 161 comprises at least one case in which an offence under that section can be committed by a person who is not a

public servant on the date of its commission, it cannot possibly be said that the words ""alleged to have been committed by a public servant"" would

be unnecessary, if the intention was that sanction was necessary in the case of all offences under Sections 161 and 165 of the Penal Code or

Section 5(2) of the Prevention of Corruption Act; but those words are quite capable of having another meaning also, and that is, that when an

offence u/s 161 or Section 165 of the Penal Code, or u/s 5(2) of the Prevention of Corruption Act was committed by a person, who is a public

servant at the time when the Court is called upon to take cognizance of the offence, and if either interpretation is possible, then it is obvious that

that interpretation should be accepted which fits in the language which has been used by the Legislature in Clauses (a), (b) and (c) of that sub-

section.

9. An argument has been addressed to us based on Sub-section (2) of Section 6 of the Prevention of Corruption Act that that section shows that

the material time for the determination of the question as to who is to give the sanction is the time when the offence was committed, and it is said

that that Suggests that all that Section 6 (1) requires in order that sanction should be necessary is that the accused should have been a public

servant, when he committed the offence. Now, Sub-section (2) of Section 6 is a sub-section enacted for the removal of a doubt, which may arise

from any cause whatsoever as to which is the authority competent to give the sanction.

Now, upon the interpretation that before it could be said that sanction to the prosecution of a person is necessary, he must be a public servant at

the time when the Court is called upon to take cognizance of the offence, inasmuch as Clauses (a) and (b) have obviously got reference to the time

when the Court is called upon to take cognizance of the offence, a doubt may arise, because it is not clear whether the person is employed in

connection with the affairs of a Union, or in connection with the affairs of a Part A State. It may possibly be that a person may be holding

substantively an office under the Government of a Part A State while he may be simultaneously acting in an office in which he has to discharge

functions connected with the affairs of the Union. Another way in which on this interpretation a difficulty may arise would be when there is a doubt

as to whether a person''s employment has reference to the affairs of the Union, or to the affairs of a Provincial Government. The third case in which

a doubt may arise would be where it is not clear which is the authority competent to remove him.

Now, what Sub-section (2) of Section 6 does is that if in trying to find out who was the competent authority by applying the tests laid down in

Clauses (a), (b) and (c) a doubt arises, ignore in the first instance the question as to whether the person was employed in connection with the

affairs of the Union, or is employed in connection with the affairs of a Part A State. Secondly, consider the question, as to who was the authority

which would have been competent to remove him from office by reference to the time when the offence is alleged to have been committed.

10. But there is nothing in the second subsection which would show that Section 6(1) requires Sanction even in the case of persons who are no

longer in public service. Just as in the case of the other interpretation, upon the interpretation that the words "public servant" in Section 6 (1)

include a person who is not in service at the time when the Court is called upon to take cognizance of the offence, but was in service when the

offence was committed, if a doubt arises for any reason, one has to do the Same thing, i.e. ignore the question whether the employment" is in

connection with the affairs of the Union or a Part A State and find out the authority competent to remove the public servant from office at the time

the offence was committed.

Inasmuch as upon this interpretation sanction would be necessary, even when the accused is no longer in service, all the cases which would arise

upon the other interpretation would arise in this case also. There may possibly arise others, but Sub-section (2) cannot be said to be determinative

of the question in what cases Sanction is necessary, unless it can be said that that sub-section was enacted because a doubt would arise only in

those cases in which the accused person is no longer in service when he is prosecuted.

The words ""for any reason whatsoever"" indicate that the sub-section is intended to cover a wider field. As a matter of fact, the sub-section is not

determinative of the authority who is to give the sanction, because even upon the interpretation that the words ""public servant"" in Section 6(1)

include a person who was a public servant at the time when the offence was committed, but is no longer one, it is not possible to have recourse to

Sub-section (2) unless, in the first instance, a doubt arises when trying to apply Clauses (a), (b) and (c) of the section. Such a doubt could not arise

when there was throughout his service only one authority competent to remove him. In our view, therefore, the words ""public servant"" in Section

6(1) mean a person who is in service at the time when the Court is called upon to take cognizance of the offence. Section 6(1) has consequently no

application to the case of the public servant who is no longer in service.

11. So far as the marginal note is concerned, there has been a difference of opinion whether it can or cannot be used in order to aid in the

interpretation of the language of a statute. It cannot, of course, be used to control the plain meaning of an Act. but one view has been that it can be

taken into consideration when there is a doubt as to what certain words which are employed in an enactment mean. If we look at the marginal note

in the present case, that is perfectly general, and it throws no light whatsoever upon the meaning of the section if we take it by itself. The argument

really speaking is that what throws light upon the meaning of the sub-section is the change in the marginal note, if we compare the marginal note of

Section 197(1), upon which Section 6(1) is modelled, with the language of the latter. But we find no authority whatsoever for making a use of the

change in such a manner, when the enactments are not the same, but are statutes which can possibly be said to be "in pari materia". In the second

instance, the difficulty, which We find with regard to the interpretation of Section 6(1), Clause (c), if we were to accept : he interpretation

suggested by the change of the marginal note, remains.

12. We, therefore, set aside the order quashing the proceedings against the opponent and ask the learned Special Judge to proceed further with

the case in accordance with the law.