
(2006) 6 MhLj 244

Bombay High Court (Nagpur Bench)

Case No: Criminal W.P. No. 574 of 2005

Prakash Tare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Aug. 11, 2006

Acts Referred:

Constitution of India, 1950 " Article 226, 227#Criminal Procedure Code, 1973 (CrPC) " Section 197, 197(1), 239, 482#Penal Code, 1860 (IPC) " Section 120B, 409#Prevention of Corruption Act, 1947 " Section 5(1), 5(2), 6

Citation: (2006) 6 MhLj 244

Hon'ble Judges: K.J. Rohee, J

Bench: Single Bench

Advocate: Mohan Sudame, for the Appellant; P.D. Kothari, Assistant Public Prosecutor, for the Respondent

Judgement

K.J. Rohee, J.

By this petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal

Procedure, the petitioner seeks to quash Criminal Case No. 17/1992 pending against him before Special Court, Amravati.

2. The petitioner is in the employment of Accountant General (A and E) II Maharashtra, Nagpur, as a Senior Division Accounts Officer. During

1982 the petitioner was deputed as Divisional Accountant in the office of Executive Engineer, Upper Wardha Canal Division No. 3, Dhamangaon,

District Amravati. Shri S. K. Gite (accused No. 1) was the Executive Engineer and Shri M. B. Pande (accused No. 2) was the Divisional Store

Keeper during the said period.

3. Charge-sheet dated 30-8-1992 was filed by the respondent before Special Court, Amravati on 3-11-1992. It was registered as Special

Criminal Case No. 17/92. Shri Gite is accused No. 1, Shri Pande is accused No. 2 and the petitioner is accused No. 3. It is alleged that the

accused persons made purchases without requirement and necessity; without giving advertisement through press; by showing in the outward

register that quotation notices and supply orders were issued to the suppliers of materials; accused No. 1 Gite did not take any action against

accused Nos. 2 and 3 working under him; accused No. 2 Pande did not inquire about the reasonability of the rates of the material in the local

market; accused No. 3 (the petitioner) did not raise objection against the irregular purchases and failed to write objection in Form 1 (the Divisional

Accountant's Objection Book P.W. 512). It was alleged that the accused persons acted dishonestly by conspiring for their own financial gain and

caused illegal loss of Rs. 1,58,296/- to the Government. Thus accused Nos. 1 to 3 committed offence u/s 409 (Criminal breach of trust) and 120-

B (Conspiracy) of Indian Penal Code. In addition to this, accused Nos. 1 and 2 were also charged for having committed offence u/s 5(1)(c)(d)

and 5(2) of the Prevention of Corruption Act, 1947. The charge-sheet discloses that sanction to prosecute accused No. 3 (the petitioner) was not

obtained as it was not required.

4. On 6-10-2000 the petitioner moved an application for discharge u/s 239 of the Code of Criminal Procedure. However, the said application was

subsequently withdrawn and the present writ petition was filed on 13-9-2005.

5. The quashing of criminal proceedings against the petitioner is sought on two grounds; firstly the prosecution is not tenable for want of sanction

u/s 197 of Criminal Procedure Code and secondly unreasonable and unjustified delay in filing the charge-sheet and in the trial.

6. I have heard Mr. Mohan Sudame, Advocate for the petitioner and Mr. P. D. Kothari, A.P.P. for the respondent/State.

7. As regards the first ground, Mr. Sudame, the learned Counsel for the petitioner, pointed out that the charge-sheet shows that accused No. 3

(the petitioner) is the servant in the Undertaking of Central Government; that he committed offence punishable under Sections 409 and 120-B of

Indian Penal Code and hence no sanction is required to prosecute accused No. 3 (the petitioner) u/s 6 of the Prevention of Corruption Act, 1947.

The charge-sheet further shows that sanction as regards accused Nos. 1 and 2 u/s 6 has been obtained. Mr. Sudame submitted that the

prosecution has suppressed the fact that it had applied to the competent authority of the petitioner for grant of sanction by letter dated 29-11-1988

and the competent authority after examining the material and the circumstances of the case, refused to accord sanction by communication dated 2-

3-1989. The petitioner has produced the copy of the said communication at Annexure III page Nos. 37-38. It is thus obvious that the prosecution

had approached the competent authority for grant of sanction to prosecute the petitioner, but the same was refused. This fact has not been

disclosed in the charge-sheet, but has been suppressed by the prosecution.

8. The very fact that the prosecution had approached the competent authority for grant of sanction to prosecute the petitioner shows that the

prosecution was satisfied that sanction to prosecute the petitioner was required and when the competent authority refused to grant sanction, the

prosecution changed its plea by submitting that no sanction was required.

9. Mr. Sudame submitted that Chapter 4.2.2 (Annexure IV-Page 39) of the Maharashtra Public Works Accounts Code shows that the Divisional

Accountant as internal checker is charged with the responsibility of applying certain preliminary checks to the initial accounts, vouchers etc.

Chapter 4.2.3 of the said Code shows that the Divisional Accountant is expected to see that the rules and orders in force are observed in respect

of all the transactions of the division which come within his sphere of duties. If he considers that any transaction or order affecting receipts or

expenditure is such as would be challenged by the Accountant General if the internal check entrusted to the Divisional Accountant were applied by

the former, it is his duty to bring this fact to the notice of the Divisional Officer with a statement of his reasons, and to obtain the orders of that

officer. It will then be his duty to comply with the orders of that officer, but if he has been overruled and is not satisfied with the decision, he should

at the same time make a brief note of the case in the Register of Divisional Accountant's Objection Form 1 (P.W. 512) and lay the register before

the Divisional Officer. It is alleged by the prosecution that the petitioner did not raise objection to the irregular purchases and did not take note in

the Register of Divisional Accountant's Objection Form 1 (P.W. 512). Thus the charge-sheet shows that the petitioner neglected towards his duty

by entering into conspiracy with accused Nos. 1 and 2 committing criminal breach of trust for illegal gain to themselves and illegal loss to the

Government.

10. The question is whether the inaction on the part of the petitioner in not applying preliminary checks, in not bringing the irregularities in purchase

to the notice of accused No. 1 and in not taking note in the Register of Divisional Accountant's Objection Form 1 (P.W. 512) has been committed

while acting or purporting to act in the discharge of his official duty. If it is so previous sanction of the Central Government would be necessary to

prosecute the petitioner and if it is not so then no sanction of the Central Government is necessary. In this respect Mr. Sudame placed reliance on

5. Shri S.K. Zutshi and Another Vs. Shri Bimal Debnath and Another, and State of Orissa through Kumar Raghvendra Singh and Others Vs.

Ganesh Chandra Jew, , in both the above cases it has been held that:

The protection given u/s 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences

alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford

adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties

without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the

prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with

the discharge of his official duty and is not merely a cloak for doing the objectionable act....The question is not as to the nature of the offence such

as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed

by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be

shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the

discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in

the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant

concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of

his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official

duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of

the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to

this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty

and there was every connection with the act complained of and the official duty of the public servant.

11. In both the above cases the Supreme Court has referred to the observations in B. Saha and Others Vs. M.S. Kochar, which are as under:

The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in

Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will

be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will

take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed

or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not

every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section

197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said

provision.

12. It is worthwhile to note that the inaction on the part of the petitioner in not performing his duties amounts to dereliction of duty which could

have made him answerable for a charge of dereliction of his official duty. As such the omission or neglect on the part of the petitioner to act as per

the duty list falls within the scope and range of the official duties. Hence cognizance of the offence alleged to have been committed by the petitioner

could not have been taken without previous sanction by the Central Government. It may be noted that the competent authority was moved for

grant of sanction and the same was refused. In such circumstances the Court could not have taken cognizance of the offence against the petitioner.

On this count itself the prosecution against the petitioner is liable to be quashed and set aside.

13. Mr. Kothari, the learned APP, submitted that for the prosecution of public servant for the offence of criminal breach of trust punishable u/s

409, Indian Penal Code no sanction is necessary. In support of his submission Mr. Kothari, relied on Baijnath v. State of M.P. AIR 1965 SC 220.

It may be noted that in the said case it was held by the Apex Court that sanction was not necessary for the prosecution u/s 409 of Indian Penal

Code because the act of criminal misappropriation was not committed by the appellant therein while he was acting or purporting to act in the

discharge of his official duties and that the offence had no direct connection with the duties of the appellant as a public servant. It was further

observed that the official status of the appellant only furnished the appellant with an occasion or an opportunity of committing the offence. It may be

seen that it cannot be laid down that an offence u/s 409 of Indian Penal Code can never be committed by public servant in the discharge of his

official duties. Thus Baijnath's case is distinguishable on facts. Hence it would not be of any help to the prosecution.

14. As regards the second ground Mr. Sudame, the learned Counsel for the petitioner, pointed out that the alleged offence relates to the period

from April 1982 to December, 1982. The charge-sheet was prepared on 30-8-1992 and was presented before the Court on 3-11-1992. Thus,

the period of ten years elapsed from the commission of the alleged offence till filing of the charge-sheet. Since then prosecution is going on for more

than 13 years for no fault of the petitioner. The petitioner has got fundamental right to have speedy trial. In the present case the said fundamental

right has been violated by inordinate and unexplained delay and on this ground the prosecution is liable to be quashed. In support of this submission

Mr. Sudame, the learned Counsel for the petitioner, relied on the following cases:

(i) Aladankandu Puthiyapurayil Abdulla Vs. Food Inspector, Cannanore and Another, . (ii) T.J. Stephen and Others Vs. M/s. Parle Bottling Co.

(P) Ltd. and Others, . (iii) Narayan Sambhaji Shinde v. State of Maharashtra 1989 Mh.LJ. 844. (iv) Abdul Rehman Antulay Vs. R.S. Nayak and

another etc. etc., . (v) 966463--> . (vi) Mahendra Lal Das Vs. State of Bihar and Others, .

15. It is true that there has been inordinate delay at the stage of investigation as well as after filing of the charge-sheet. However the offence relates

to misappropriation of government money to the tune of Rs. 1,58,296/-. In view of this it would not be in the interest of justice to quash

proceeding on the ground of infringement of the right to speedy trial. Hence, second ground for quashing the prosecution is not accepted. Hence

the order:

16. The criminal writ petition is allowed. Criminal Case No. 17/1992 pending before Special Judge, Amravati is hereby quashed and set aside so

far as the petitioner (accused No. 3) is concerned.

17. Rule is made absolute in the above terms.