(2006) 02 CAL CK 0007

Calcutta High Court

Case No: C.R.R. No. 3218 of 2005

Satyendra Prasad		APPELLANT
	Vs	
Central Bureau of Investigation/ACB, CBI/ACB		RESPONDENT

Date of Decision: Feb. 10, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 197(1), 482, 6
- Food Corporation of India Staff Regulations, 1971 - Regulation 30, 31, 32, 32(A)(5)
- Penal Code, 1860 (IPC) - Section 120B, 406, 409, 420, 477A
- Prevention of Corruption Act, 1988 - Section 10, 11, 13, 13(1), 13(2)

Citation: (2006) 4 CHN 240

Hon'ble Judges: S.P. Talukdar, J

Bench: Single Bench

Advocate: Sambhu Nath Ray, Sharmistha Achayya and S. Roy Chowdhury, for the Appellant; Ranjan Roy, for the Respondent

Judgement

S.P. Talukdar, J.

This case arises out of an application u/s 482 of the Criminal Procedure Code. By filing such application the petitioner sought for quashing of all the proceedings arising out of the chargesheet No. 21/2003 dated 29.10.2003 submitted by the Central Bureau of Investigation. It was in connection with the Special Case No. 2 of 2004 now pending before the learned Court of Additional Sessions Judge, Durgapore, Burdwan.

2. Grievances of the petitioner may briefly be stated as follows:

While posting as Assistant Grade-II (Department) FCI, ARDE-Gopalpur, the petitioner was placed under suspension by office memo dated 29.05.1999 issued by the Senior Regional Manager, Food Corporation of India, Calcutta. He submitted a representation dated 04.04.2000 praying for revocation of suspension order. By

office memo dated 27.07.2000 the Senior Regional Manager, served the petitioner with a chargesheet. Upon receipt of the same, the petitioner submitted a reply dated 07.08.2000 wherein he specifically denied to have issued any fictitious work-done certificate to the departmental labourers. The petitioner denied to have acted in contravention of the established norms under Regulations 31(a), (b), (c), 32, 32(A)(5) and 30 of F.C.I. (Staff) Regulations, 1971 (as amended). By office memo dated 31.10.2000, the Senior Regional Manager issued a letter to all concerned stating therein that the petitioner as well as some other officials of F.C.I. are jointly concerned in a disciplinary proceeding while working under District Manager, Durgapore. Disciplinary proceeding was, thus, initiated with the Senior Regional Manager as the disciplinary authority.

3. One Mr. P.K. Mukherjee, retired Manager (F & A), F.C.I., Calcutta was appointed to enquire into the articles of charges framed against the petitioner. The petitioner in reply to the said charges denied and disputed all the material allegations and prayed for exonerating him from the aforesaid charges. By memo dated 24.04.2001, the Assistant Manager, Vigilance served a copy of the enquiry report upon the petitioner wherefrom it could be seen that the charge indicated in Article I in respect of the petitioner and few others were proved. Petitioner submitted a representation dated 26.05.2001 challenging the said findings. This was followed by the petitioner''s receipt of the final order of dismissal from service. An appeal was preferred. By order dated 04.04.2002 that appellant authority confirmed the penalty imposed by the disciplinary authority, thereby rejecting the appeal. A writ application was, thereafter, filed by the petitioner in the High Court, at Patna. It was dismissed for lack of territorial jurisdiction. But such dismissal was not to stand in the way of the petitioner''s approaching the Court of competent jurisdiction.

4. The Central Bureau of Investigation registered the case on 31.01.2001 under Sections 120B/420 and 477A of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. This gave birth to the said Special Case No. 2/04 which is now pending before the learned Court of Additional Sessions Judge, Durgapore, Burdwan. Investigating authority submitted chargesheet on 29.10.2003. Learned Judge fixed 03.09.2005 for consideration of charge.

5. One Madanlal, filed an application challenging the impugned proceeding under Prevention of Corruption Act stating therein that no sanction u/s 197(1)(a) of the Cr.PC and u/s 19(i)(a) of the Prevention of Corruption Act was obtained by the prosecution and, as such, there could be no scope to frame charge against Madanlal. The learned Court opined that no sanction is required u/s 6 for prosecuting an accused public servant when he ceased to be a public servant on the date of taking cognizance of the offences by the learned Court. The present petitioners stand on the footing same to that of Madanlal. The order dated 03.09.2005 being binding on all the accused persons, the present petitioner filed the

revisional application u/s 482of the Cr.PC praying for discharge.

6. Admittedly, the petitioner was a public servant but he was not so on the date of taking of cognizance as he was dismissed from service prior thereto. There is also no factual dispute that sanction either u/s 197 of the Cr.PC or u/s 19 of the Prevention of Corruption Act, 1988 was not obtained. Learned Counsel for the petitioner submitted that the learned Trial Court was not justified in holding that such previous sanction was not necessary as the petitioner was no longer in service because of his dismissal. It was submitted that such sanction was essential before the learned Court could take cognizance of the offences and in absence of such sanction the entire proceeding is liable to be quashed.

7. It was also contended on behalf of the petitioner that having regard to the status, role and functioning of the CBI, it is outside the scope of any Court to direct investigation by the said authority.

8. Learned Counsel for the petitioner referred to the decision in the case of State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, , in support of his contention that sanction should have been obtained before taking of cognizance in this case. It was held in the said judgment that-

Use of the words, ''no'' and ''shall'' make it abundantly clear that the bar on the exercise of power by the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black''s Law Dictionary the word ''cognizance'' means ''jurisdiction'' or ''the exercise of jurisdiction'' or ''power to try and determine causes''. In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his duty.

9. The Apex Court held that so far public servants are concerned the cognizance of any offence, in any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence alleged to have been committed was in discharge of official duty.

10. It was also held that the protection afforded by Section 197 of the Cr.PC would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. It was observed in-

the ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant.

11. The Apex Court held that it was in pursuance of this observation that the expression "was" come to be employed after the expression "is" to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.

12. Before proceeding further it may perhaps be mentioned that the present case does not relate to any CBI investigation on the basis of any order of any judicial authority and, as such, there can be no scope for any controversy in that regard.

13. In response to the stand taken by the petitioner, learned Counsel Mr. Roy appearing for the CBI submitted that the question of need for obtaining sanction requires to be examined in the context of the act of complaint of. True, it is the settled principle of law that such sanction is required only in respect of an offence which was allegedly committed in the discharge of official duty.

14. Referring to the decision in the case of State of Kerala Vs. V. Padmnabhan Nair, it was submitted that an accused facing prosecution for offences under the Prevention of Corruption Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the Court took cognizance of the said offences. It was also contended that for offences like u/s 406 and Section 409 read with Section 120B of the IPC, sanction u/s 197 of the Cr.PC cannot be said to be a condition precedent as it cannot be a part of the duty of the public servant.

15. In fact, in the case of P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, , it was held that for necessity of sanction, there must be reasonable connection between act complained of and official duty.

16. Reference was also made to the decision in the case of R. Balakrishna Pillai Vs. The State and Another, in support of the contention that the accused ceasing to be a public servant on the date of taking cognizance, there cannot be any need for taking sanction.

17. In fact, learned Counsel sought to derive further support from the decision in the case of Inspector of Police and Anr. v. CBI reported in 1996 (1) All C LR 74, in this regard.

18. After taking into consideration all relevant facts and circumstances of the present case, it cannot be denied that there is considerable force in the submission made on behalf of the petitioner that sanction for prosecution was required to be obtained before taking of cognizance, having regard to the fact that the present petitioner was undoubtedly a public servant within the meaning of the Prevention of Corruption Act, 1988. This accepted position of law, however, undergoes radical change in the context of the argument advanced on behalf of the CBI that the act complaint of could not by any stretch of imagination be said to be an act in the discharge of official duty. That being the position, the strength of the argument of the learned Counsel for the petitioner, as referred to earlier, gets significantly

diluted.

19. Mr. Roy invited attention of the Court to the fact that one Madanlal who is a co-accused before this case before the learned Court filed an application before the learned Court challenging the proceeding on the ground of want of sanction. According to him, the present petitioner did not file any such application. But having regard to the fact that the order under challenge affects the present petitioner as well, I do not find any strength in the argument made in this regard. It is very much within the competence of the present petitioner to raise this issue before this Court by filing an application u/s 482 of the Criminal Procedure Code.

20. Another significant point raised by the learned Counsel for the CBI requires to be now taken into consideration. It relates to the effect of non-obtaining sanction. Mr. Roy invited attention of the Court to Section 19(3) of the Prevention of Corruption Act, 1988 which, for the sake of convenience, may be reproduced hereunder:

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 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.

(3) Notwithstanding anything contained in the Code of Criminal Procedure. 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in Appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under Sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under Sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the-objection could and should have been raised at any earlier stage in the proceedings.

Explanation.�For the purposes of this section,-

(a) error includes competence of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

21. It was then submitted that there can be no scope for staying any proceeding under the Prevention of Corruption Act, 1988 on the ground of any error, omission or irregularity in the sanction, granted by the authority unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

22. Borrowing the language of the Apex Court in the decision in the case of Central Bureau of Investigation Vs. V.K. Sehgal and another, , it can be said that-

by adding the explanation the said embargo is further widened to the effect that even if the sanction was granted by an authority who was not strictly competent to accord such sanction, then also the Appellate as well as Revisional Courts are debarred from interfering with the conviction and sentence merely on that ground.

23. Thus, it was argued, even omission to obtain sanction does not by itself be justification for any interference by this Court in the way of quashing of the proceeding.

24. Considering all these facts and materials it appears that there is no such merit in the grievances, as ventilated in the present application. Accordingly, the present case being C.R.R. 3218 of 2005 be dismissed on contest. Interim order, if any, stands vacated.

25. Let a copy of this order along with LCR, if any, be sent to the learned Trial Court for information and necessary action.

26. Department is directed to supply xerox certified copy of this order, if applied for, to the learned Counsel of the parties as expeditiously as possible.