S. A. Venkataraman

Vs

The State (and connected appeal)

Criminal Appeal No. 130 of 1956

(B. P. Sinha, Syed Jafar Imam, J. L. Kapur JJ)

03.12.1957

JUDGMENT

IMAM J. -

A question of law, common to these appeals by special leave, requires determination; hence they were heard together. Special leave in Criminal Appeal No. 130 of 1956 was limited to the question whether the trial court had jurisdiction to take cognizance of the offence for want of sanction under s. 6 of the Prevention of Corruption Act, 1947 (Act II of 1947), hereinafter referred to as the Act. Criminal Appeal No. 25 of 1956 was not so limited and additional points were raised for our consideration, to which reference will be made when that appeal is specifically dealt with.

The question of law, common in both these appeals, is whether there was any necessity for a sanction under s. 6 of the Act before a court could take cognizance of an offence under s. 161 of the Indian Penal Code or s. 5(2) of the Act or both, alleged to have been committed by a person who at the time the court was asked to take cognizance was not a public servant but was so at the time of the commission of the offence.

In Criminal Appeal No. 130 of 1956, the appellant was convicted under s. 5(2) of the Act and sentenced to six months, simple imprisonment by the Special Judge, Delhi. He appealed against his conviction and sentence to the Punjab High Court. That Court while admitting the appeal issued notice upon the appellant to show cause why his sentence should not be enhanced. The High Court ultimately dismissed his appeal and enhanced the sentence of six months' imprisonment to two years' rigorous imprisonment. As in this appeal special leave has been granted limited to the question already stated, it is unnecessary to set out the prosecution case against the appellant.

In Criminal Appeal No. 25 of 1956 the appellant had applied to the Allahabad High Court under s. 561A of the Code of Criminal Procedure for the quashing of the proceedings pending against him before the Special Judge. The application was dismissed. It is against the order dismissing his application that this appeal has been filed by the appellant.

It is admitted that at the time the Special Judges concerned purported to take cognizance the appellants were not public servants and that no order of sanction under s. 6 of the Act by a competent authority was on the record. At the time that the appellants are alleged to have committed the offence they were public servants.

Section 6 of the Act states :

"6. Previous sanction necessary for prosecution :

(1) No court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code (Act 45 of 1860), 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, of the Central 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 the State 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."

There is no dispute that if at the time when a court purports to take cognizance of offences punishable under s. 161, 164 or s. 165 of the Indian Penal Code or s. 5(2) of the Act committed by a public servant and that person is a public servant, cognizance cannot be taken by a court unless a sanction by the competent authority has been previously accorded. The real controversy in these appeals is whether such a sanction is required before a court can take cognizance in the case of a person who is not a public servant at the time the court is asked to take cognizance, although the offence alleged against him was committed by him as a public servant. To determine this question s. 6 of the Act requires to be interpreted.

In substance, it was urged on behalf of the appellants that on a proper interpretation of s. 6 of the Act the status of the accused at the time of the commission of the offence alleged against him was the essence of the matter and not his status at the time the court was asked to take cognizance of the offence, in which case a sanction under s. 6 of the Act was necessary before a court could take cognizance although at that stage the accused had ceased to be a public servant.

On the other hand, the Solicitor-General contended that on a proper interpretation of the provisions of s. 6 of the Act not only an offence mentioned therein must be committed by a public servant but that that person is still a public servant removable from his office by a competent authority at the time a court was asked to take cognizance of the offence.

Before we proceed to construe the provisions of s. 6 of the Act it is necessary to refer to some of the submissions made by the learned counsel for the appellants. It was said that in construing the provisions of a statute a court must attempt to ascertain in intention of the legislature and it must do this not only from the language of the statute, but also from the consideration of the social conditions which gave rise to it, and of the mischief which it was intended to remedy. It must supplement the written word so as to give force and life to the intention of the legislature. Reliance

was also placed upon certain decisions construing the provisions of s. 197 of the Code of Criminal Procedure. Reference was also made to Art. 361 of the Constitution and s. 197A of the Code of Criminal Procedure in aid of the construction which the learned counsel contended for with reference to the words used in s. 6 of the Act.

In construing the provisions of a statute it is essential for a court, in the first instance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a court is entitled to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration other matters and the circumstances which led to the enactment of the statute. Observations of Denning, L.J., as he then was, in the case of Seaford Court Estates Ltd. v. Asher [(1949) 2 K.B. 481, 498] were relied upon by Mr. Chatterjee. It is, however, clear that the observations of the learned Judge were made with reference to the provision of a statute which was ambiguous. We cannot construe the observations to mean that where the language of a statute was free from ambiguity a duty was cast upon the court to do anything more than to give effect to the words used. Although reference was made to Art. 361 of the Constitution and s. 197A of the Code by Mr. Sethi, we are unable to see how the words used therein assist us in construing the provisions of s. 6 of the Act.

Reliance was placed on the decisions of the Nagpur High Court in the case of S.Y. Patil v. Vyankataswami [I.L.R. (1939) Nag. 419] and the decision of the Court of the Judicial Commissioner of Sind in the case of Suganchand v. Seth Naraindas [A.I.R. (1932) Sind. 177], in support of the submission that even if a person had ceased to be a public servant before the prosecution started, such a person was protected by the provisions of s. 197 of the Code and a sanction was necessary before a court could take cognizance. It is true that so far as s. 197 of the Code is concerned these two decisions do lend support to the submission made by the learned Counsel for the appellants. It is, however, to be noticed that the decision of the Nagpur High Court, which was of a single Judge, was overruled by a Division Bench of that Court in the case of the State v. Hifzul Rahman [I.L.R. (1951) Nag. 764], where it was held that the person accused must be as public servant at the time of the accusation and s. 197 of the Code afforded no protection to a public servant if he had ceased to hold office. In the case of Prasad Chandra Banerji v. Emperor [I.L.R. (1944) 1 Cal. 113], the Calcutta High Court held that the protection given by s. 197 of the Code applied only to a person who is still a public servant at the time the prosecution is launched and does not extend to a person who is no longer a public servant at that time but was in office when the offence charged was alleged to have been committed. Accordingly, no sanction under s. 197 of the Code was necessary in order to prosecute a person who had ceased to be a public servant at the time of the launching of the prosecution. A similar view was taken by the Bombay High Court in the in the case of Imperator v. Joshi [I.L.R. (1947) Bom. 706], and by a single Judge of the Allahabad High Court in the case of Emperor v. Suraj Narain Chaube [I.L.R. (1938) All. 776]. It would thus appear that the High Court of Calcutta, Bombay, Allahabad and Nagpur are agreed that s. 197 of the Code affords no protection to a person who is not a public servant at the time he is accused of an offence before a court although at the time he committed the offence he was a public servant. The decision of the Punjab High Court in the case of State v. Gurcharan Singh [A.I.R. (1952) Pun. 89], was brought to our notice wherein it was held that in view of the form of wording in the two sections, namely, s. 197 of the Code and s. 6 of the Act, the same principles would apply to them, having regard to the decisions of the Calcutta and Bombay High Courts and the protection afforded by s. 197 of the Code was available to a person who was a public servant while still in office but was not available to him when he had already been discharged from service before he was prosecuted. These cases may render assistance in understanding the reason why a public servant, while he is public servant, cannot be prosecuted without a previous sanction for offences committed

by him as a public servant and thus may be of some indirect help in construing the words used in s. 6 of the Act. Section 6, however, must be construed with reference to the words used therein independent of any construction which may have been placed by these decisions on the words used in s. 197 of the Code.

Before an attempt is made to construe the words contained in s. 6 of the Act some reference may be made to the power vested in a court to take cognizance of an offence. Section 190 of the Code of Criminal Procedure confers a general power on a criminal court to take cognizance of offences, but the exercise of such power in certain cases is prohibited by the provisions of ss. 195 to 199 of Code unless the conditions mentioned therein are complied with. Under the Criminal Law (Amendment) Act, 1952 (XLVI of 1952), Special Judges are appointed to try offences under s. 161, 162, 163, 164, 165 or s. 165A of the Indian Penal Code or s. 5(2) of the Act. They are authorized to take cognizance of these offences without the accused person being committed to them for trial. The exercise of this general power to take cognizance by them is prohibited with respect to offences committed under s. 161, 164 or s. 165 of the Indian Penal Code or under s. 5(2) of the Act by a public servant without the previous sanction of a competent authority. In our opinion, if a general power to take cognizance of an offence is vested in a court, any prohibition to the exercise of that power, by any provision of law, must be confined to the terms of the prohibition. In enacting a law prohibiting the taking of cognizance of an offence by a court, unless certain conditions were complied with, the legislature did not purport to condone the offence. It was primarily concerned to see that prosecution for offences in cases covered by the prohibition shall not commence without complying with the conditions contained therein, such as a previous sanction of a competent authority in the case of a public servant, and in other cases with the consent of the authority or the party interested in the prosecution or aggrieved by the offence. There can be little doubt that in the case of a public servant the Central Government or the State Government or the authority competent to remove him from service is vitally interested in the matter of his prosecution. Such authority is directly concerned in the matter as it has to decide whether to accord or not to accord its sanction for the prosecution of one of its servants. The authority concerned may refuse to accord such sanction on the ground that the prosecution is frivolous or vexatious or on the ground that in the public interest it would be inexpedient to do so. Without some safeguard of this kind a public servant may find it impossible to carry on his official duties efficiently.

The object of the Act was to suppress bribery and corruption. Its provisions are severe. Certain presumptions of guilt of offences committed under ss. 161 and 165A of the Indian Penal Code were enjoined by s. 4 of the Act unless the contrary was proved by the accused. Section 5 of the Act created the offence of criminal misconduct on the part of a public servant, an offence unknown to any of the provisions of the Indian Penal Code dealing with bribery or corruption. Sub-section (2) made such an offence punishable with imprisonment which may extend to a term of 7 years, or with fine, or with both. Under sub-s. (3) a court shall presume that the accused was guilty of misconduct if it was proved that he or any other person on his behalf was in possession, for which the accused person could not satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. These provisions of the Act indicate that it was the intention of the legislature that it was the intention of the legislature to treat more severely than hitherto corruption on the part of a public servant and not to condone it in any manner whatsoever. If s. 6 had not found a place in the Act, it is clear that cognizance of an offence under s. 161, 164 or s. 165 of the Indian Penal Code or under s. 5(2) of the Act committed by a public servant could be taken by a court even if he had ceased to be a public servant. The mere fact that he had ceased to be a public servant after the commission on the offence would not absolve him from his crime. Section 6 certainly does prohibit the taking of cognizance of his offence, without a previous sanction, while he is still a

public servant but does that prohibition continue after he has ceased to be a public servant ? It is to determine that question which requires us to examine and construe the provisions of s. 6 of the Act and to express our opinion thereon.

When the provisions of s. 6 of the Act are examined, it is manifest that two conditions must be fulfilled before its provisions become applicable. One is that the offences mentioned therein must be committed by a public servant and the other is that that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or the State Government or is a public servant who is removable from his office by and other competent authority. Both these conditions must be present to preventa court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central Government or the State Government or the authority competent to remove the public servant from his office. If either of these conditions is lacking, the essential requirements of the section are wanting and the provisions of the section do not stand in the way of a court taking cognizance without a previous sanction. An offence under s. 161 of the Indian Penal Code can be committed by a public servant or by a person expecting to be a public servant, but s. 6 of the Act refers only to an offence committed by a public servant under that section. If, therefore, at the time a court was asked to take cognizance of an offence under s. 161 of the Indian Penal Code, the accused is a public servant but was not so at the time that the offence was committed, but at which time he was merely expecting to be a public servant, a previous sanction would be unnecessary before a court could take cognizance, as the provisions of the section would be inapplicable. Conversely, if an offence under s. 161 of the Indian Penal Code was committed by a public servant, but, at the time a court was asked to take cognizance of the offence, that person had ceased to be a public servant one of the two requirements to make s. 6 of the Act applicable would be lacking and a previous sanction would be unnecessary. The words in s. 6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in s. 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed. It was suggested that cl. (c) in s. 6(1) refers to persons other than those mentioned in cls. (a) and (b). The words "is employed" are absent in this clause which would, therefore, apply to a person who had ceased to be a public servant though he was so at the time of the commission of the offence. Clause (c) cannot be construed in this way. the expressions "in the case of a person" and "in the case of any other person" must refer to a public servant having regard to the first paragraph of the sub-section. Clauses (a) and (b), therefore, would cover the case of a public servant who is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government and cl. (c) would cover the case of any other public servant whom a competent authority could remove from his office. The more important words in cl. (c) are "of the authority competent to remove him from his office". A public servant who has ceased to be a public servant is not a person removable from any office by a competent authority. Section 2 of the Act states that a public servant, for the purpose of the Act, means a public servant as defined in s. 21 of the Indian Penal Code. Under cl. (c), therefore, any one who is a public servant at the time a court was asked to take cognizance, it does not come within the description of a public servant under cls. (a) and (b), is accused on an offence committed by him as a public servant as specified in s. 6 would be entitled to rely on the provisions of that section and object to the taking of cognizance without a previous sanction. To read cl. (c) in the way suggested on behalf of the appellants, would be to give a meaning to this clause which is not justified by the words employed therein. It was further suggested that the provisions of the sub-

s. (2) of s. 6 indicate that it was the status of the accused at the time of the commission of the offence which was relevant rather than his status at the time a court was asked to take cognizance. This sub-section was inserted into the Act by the Prevention of Corruption (Second Amendment) Act, 1952, and it purported to finally settle any doubts which may arise as to which authority should grant the sanction in the case of a public servant who had committed an offence mentioned in s. 6(1) and who at the time the court was asked to take cognizance is still a public servant. For example, it is not difficult to imagine cases where a public servant employed by a State Government is subsequently employed by the Central Government and a question arises as to which of the two Governments is to grant the sanction for his prosecution. This sub-section resolves the difficulty by directing that where a doubt arises, the authority which was to grant the sanction was the one which was competent to remove him from his office at the time of the commission of the offence. If the provisions of sub-s. (1) bear the construction which we place upon them, there is nothing in sub-s. (2) which is in conflict with that construction. Besides, there is nothing in the language of sub-s. (2) which carries the meaning suggested on behalf of the appellants or which assists us in construing the provisions of sub-s. (1). We cannot construe the words "is employed" and "is not removable" in cls. (a) and (b) and, "competent to remove him from his office" in cl. (c) as "was employed" and "was not removable" and "would have been competent to remove from his office". To do so would be to substitute our own words for the statute as contained in these clauses.

In Criminal Appeal No. 122 of 1954, dealt with by another judgment, where a similar question had been raised, the appellant had suggested that two defects appearing in s. 197 of the Code of Criminal Procedure were intended to be remedied by the Act : (1) that s. 197 did not apply to a public servant who had ceased to be a public servant at the time of the taking of cognizance of an offence and (2) that an offence under s. 161 of the Indian Penal Code committed by a public servant was not covered by s. 197 of the Code, as such offence could not be said to have been committed by him while acting or purporting to act in the discharge of his official duty, having regard to the decisions of the courts in India and of the Privy Council. We cannot see how this assists us in construing s. 6 of the Act. Whatever the phraseology of s. 197 of the Code may have been in the past, the decisions of the courts in India that s. 197 of the Code does not apply to a person who had ceased to be a public servant at the time a court was asked to take cognizance were based upon the words used in that section at the time the judgments were pronounced. These decisions laid emphasis on the words "when any person who is a judge within the meaning of s. 19 of the Indian Penal Code.....or when any public servant who is not removable from his office.....". It was held in these decisions that these words meant that the person must be a public servant at the time a court was asked to take cognizance, although he may have been a public servant at the time of the commission of the offence. It is true that unlike s. 197 of the Code, s. 6 of the Act does not contain the words "while acting or purporting to act in the discharge on his official duty". We have to construe s. 6 of the Act as we find it and the absence of these words from the section renders us no assistance in its construction.

In our opinion, in giving effect to the ordinary meaning of the words used in s. 6 of the Act, the conclusion is inevitable that at the time a court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of s. 6 can apply. In the present appeals, admittedly, the appellants had ceased to be public servants at the time the court took cognizance of the offences alleged to have been committed by them as public servants. Accordingly the provisions of s. 6 of the Act did not apply and the prosecution against them was not vitiated by the lack of a previous sanction by a competent authority.

Criminal Appeal No. 25 of 1956.

In this appeal apart from the question that the Court could not take cognizance of the offence alleged against the appellant without a previous sanction of a competent authority, additional points had been taken for quashing the prosecution pending against him. The appellant was appointed Deputy Assistant Director, Enforcement in the Ministry of Industry and Commerce on March 25, 1949 and was promoted to the office of Assistant Director on 14, July 1949. It was alleged that he accepted on September 11, 1951, a sum of Rs. 10,000 as bribe in part payment out of an agreed amount of Rs. 30,000. An enquiry under rule 55 of the Civil Service Rules took place and thereafter he was dismissed from service on September 25, 1953. In the meantime, it appears that correspondence had ensued between the appellant and the Government. On September 18, 1952, a final report was submitted to the court under s. 173 of the Code of Criminal Procedure wherein it was stated that although a prosecution was recommended, the order of the Ministry of Commerce and Industry was that the appellant would be dealt with departmentally. On September 19, 1952, the Magistrate, by his order, approved of the closing of the investigation, discharged the appellant from his bail and directed that the sum of Rs. 10,000 seized from him, was to be returned to the complainant. The prosecution of the appellant was, however, recommended on February 11, 1954, on the same materials and same allegations but on a fresh complaint.

It was contended on behalf of the appellant, that once a sanction had been refused then that was the end of the prosecution for all times. If once the sanction was refused it could not ever be granted later on. If the prosecution had been dropped, then it could not be revived in a case where a sanction was necessary prior to a prosecution, and a promise not to prosecute prevented a reconsideration of the matter. Lastly, it was urged that in the circumstances of the case it was an abuse of the process of the court to allow a prosecution to be recommenced after it had been withdrawn.

We have examined the correspondence which has been referred to in the petition for special leave and which is to be found on the record of this case. There is nothing in them to establish the allegation that a sanction for the prosecution of the appellant was positively refused. All that is indicated is that the Government chose to proceed against the appellant departmentally. It can hardly be said that in doing so the Government had positively refused to grant sanction for the prosecution of the appellant. Indeed, it may be legitimately said that the Government preferred to await the result of a departmental enquiry. If that enquiry exonerated the appellant, the occasion for granting a sanction may not arise. If, on the other hand, the departmental enquiry established the allegation against the appellant, the Government, might find itself in possession of more material than that disclosed by the police investigation on which to decide whether a sanction should or should not be granted. We cannot read into the correspondence, as was suggested on behalf of the appellant, that there was a promise on the part of the Government not to prosecute the appellant.

It is true that there was a final report and a withdrawal of the case before a Magistrate. At the stage when the withdrawal took place the appellant was still a public servant and the court could not take cognizance of the offence under s. 161 of the Indian Penal Code and under s. 5(2) of the Act without a previous sanction. The withdrawal of the case at that stage meant no more than this that the appellant was discharged. A withdrawal of a case resulting merely in a discharge does not prevent the prosecution being recommenced on a fresh complaint. On 11 February 1954, when the fresh complaint was filed the appellant was not a public servant and therefore the court could take cognizance without a previous sanction.

It is unnecessary for us to say whether once a sanction is positively refused a fresh sanction cannot

be granted, because we are satisfied, on the materials before us, that, is fact, there was no positive refusal to sanction the prosecution of the appellant.

We are also satisfied that the circumstances do not establish that there had been any abuse of the process of the court and the provisions of s. 561A of the Code of Criminal Procedure do not apply.

As the points urged in these appeals have failed, the appeals must accordingly, be dismissed.

Appeals dismissed.

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