The State of Rajasthan

Vs

Tarachand Jain

Criminal Appeal No. 24 of 1970

(I.D. Dua, H.R. Khanna JJ)

01.05.1973

JUDGMENT

KHANNA J. –

1. Tarachand Jain respondent was convicted by special Judge, Balotra for an offence under Section 161, Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000, or in default to undergo rigorous imprisonment for a further period of six months. On appeal the Rajasthan High Court set aside the conviction of the respondent on the ground that no valid sanction for his prosecution had been proved. All the proceedings against the respondent were quashed and the whole trial was held to be null and void for want of valid sanction. It was, however, made clear that the order of the High Court would not bar a subsequent trial of the respondent on the basis of valid and prior sanction if the State was so advised to take that course. The present appeal has been filed in this Court by the State of Rajasthan on certificate of fitness granted by the High Court against its above judgment.

2. The respondent was a member of Rajasthan Administrative Service and was posted at the material time as Sub-Divisional Magistrate, Barmer. It is alleged that between November, 1959 and March, 1960, the respondent accepted illegal gratification from various parties to the cases which were pending before him on the pretext of showing undue favour to them. One Hazi Ali Mohammed was an accused in a passport case pending before the respondent. Hazi Ali Mohammed made a compliant to the Deputy Superintendent Police, Anti Corruption Department, Jodhpur on March 30, 1960, that the respondent had made a demand of bribe from him. A trap was accordingly laid during the course of which the respondent was stated to have accepted an amount of Rs. 500 in marked currency notes as bribe. Those currency notes were thereafter recovered from the possession of the respondent. During the course of investigation, a further sum of Rs. 11,450 which was lying concealed in the respondent's house was also recovered. The respondent had a bank balance of Rs. 5,534.68 and he used to deposit a major part of his salary every month in the bank. The respondent was put up for trial on the above allegations for offences under Section 161, Indian Penal Code and Section 5(2) of the Prevention of Corruption Act after sanction for his prosecution had been obtained. The material part of the sanction which was subsequently exhibited as P. 34 was as under.

> "GOVERNMENT OF RAJASTHAN
>
> Appointments (A-III) Department
>
> Order

No. F. 19(33) Apptts. (A)/60/Group III, Jaipur the 6th October, 1960.

Whereas it has been brought to the notice of the Governor of Rajasthan that Shri Tara Chand Jain, RAS S/o Shri Kesar Lal Jain, resident of Panch Batti Baxhi Bhawan, Jaipur City, and posted at Barmer as Sub-Divisional Magistrate has accepted or obtained Rs. 500/- for himself from Shri Hazi Ali Mohammed s/o Shri Hari Musalman resident of village Sivar, District Barmer accused in case No. 82 of 1959 and No. 462 of 1969 State v. Shri Hazi Ali Mohammed under Section 3/6, Indian Passport Rules and State v. Hazi Ali Mohammed under Section 13/11, Rajasthan Religious Building and Places Act respectively pending in his court on March 30, 1960, at his residence at Barmer, as gratification other than legal remuneration as a motive or reward for showing favour to him in the exercise of his official functions by extending a promise to decide the cases in his favour by corrupt and illegal means or by otherwise abusing his position as a public servant has obtained for himself pecuniary advantage in the form of G.C. notes of Rs. 500/- in discharge of his duty and which gratification of Rs. 500/- was also recovered from his possession by the Deputy Superintendent of Police, Anti-Corruption Shri Nand Singh in the presence of Motbir witnesses, complainants and Police party, and which acts of said Sub-Divisional Magistrate are punishable under Section 161, I.P.C. and 5(1)(d)(2) of P.C. Act 1947.

And whereas it has also been brought to the notice of Governor of Rajasthan that Shri Tara Chand Jain, RAS, Sub-Divisional Magistrate, Barmer has habitually accepted or obtained the following amount from the following persons in cases against them in his Court, as gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code.

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And whereas from the perusal of the facts on the record of his case placed before the Governor of Rajasthan he is satisfied that there are reasonable grounds to believe that Shri Tara Chand Jain, Sub-Divisional Magistrate, has committed the offence within the meaning of Section 161, I.P.C. and has also committed the offence of criminal misconduct in the discharge of his duties falling under Clauses 5(1)(a) and 5(1)(d), read with Section 5(2) of P.C. Act (II of 1947), on the basis of facts stated above.

And whereas there is no other ground whatsoever to refuse or withhold the sanction for the prosecution of Shri Tara Chand Jain;

Now, therefore, in pursuance of Section 6(1)(b) of the Prevention of Corruption Act, 1947 the Governor of Rajasthan being the competent authority to remove Shri Tara Chand Jain from his office do hereby accords sanction for the prosecution of the said Shri Tara Chand for the offences under Section 161, I.P.C. and Section 5(2) read with Section 5(1)(a) and 5(1)(d) of P.C. Act, 1947 (No II of 1947), or any other offence or offences which may be found to have been committed by Shri Tara Chand Jain in his connection.

BY ORDER OF THE GOVERNOR (A). Sd/- (B) (R. D. Thapar), IAS, Special Secretary to the Government."##

3. The respondent at the trial denied the allegations against him about his having demanded or accepted bribe.

4. The Special Judge examined 28 prosecution witness till August 18, 1961. On that date the evidence of Umraomal, Section Officer, Appointments A-III Department, Government of Rajasthan had to be recorded. Before, however, the statement of Umraomal could be recorded, the Special Public Prosecutor filed an application wherein it was stated that on examination of the record it had been found "that the original sanction of prosecution though having passed through the various requisite processes of the Government is lacenic in the absence of specific approval of the Governor of the State in writing which is requisite under Section 6 of the Prevention of Corruption Act, 1947". It was submitted that the said 'Lacuna' was a procedural irregularity and was curable at any stage. Prayer was accordingly made for adjournment to enable the prosecution to file the requisite sanction.

5. On September 30, 1961, the Deputy Government Advocate filed another application repudiating the stand taken in the Special Public Prosecutor's application, dated August 18, 1961. It was stated that the earlier application had been filed by the Special Public Prosecutor under some misconception of legal points. According to the application, dated September 30, 1961, the Governor had not reserved unto himself the right of sanctioning prosecution and therefore, it was futile to send the papers to the Governor. The sanction was stated to have been properly accorded. It was also claimed that the executive order issued by the Government in the name of the Governor was not justiciable and could not be challenged.

6. On October 28, 1961, an application was filed on behalf of the respondent questioning the validity of the sanction. Reference was made to Rule 31 of the Rules of Business and it was stated that any proposal for dismissing or removing an officer should be submitted to the Governor and the Chief Minister before the issue of orders. The respondent was stated to be removable from office under the orders of the Governor. There was, according to the respondent, no valid sanction. Prayer was made that the question of the validity of the sanction should be decided before proceeding further with the case.

7. The special Judge thereafter considered the matter and passed order, dated November 3, 1961. In the course of that order the Special Judge stated :

> "The accused at the time of commission of the alleged offences was the Rajasthan Administrative Service and thus was in State service. This fact is not disputed. The sanction to prosecute the accused was given by the Chief Minister.
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> Looking to the above discussion I hold that the accused, an officer of the Rajasthan Administrative Service was and is removable from service by the Governor of the State of Rajasthan and not by the Chief Minister. The necessary consequence of this will be that according to Section 6 of the Prevention of Corruption Act the Governor of the State of Rajasthan alone can sanction the prosecution of the accused for offences mentioned in the section."

The special Judge accordingly arrived at the following conclusion :

> "I have held above that Governor of Rajasthan alone is competent to remove from

service the officer of the Rajasthan Administrative Service. In other words, I hold that the accused was and is removable from service by the Governor and he alone could sanction the prosecution of the accused for offence under Section 161, I.P.C. and under Section 5(2) Prevention of Corruption Act. The Chief Minister had no authority to sanction the prosecution of the accused for the said offences and the sanction given in this case must be invalid. That being so, the cognizance was taken by the court wrongly and the proceedings taken must be and are held to be void as having been taken without jurisdiction."

8. Revision petition was filed by the State against the above order of the Special Judge. A Division Bench of the High Court, Dave and Chhangani, JJ., accepted the revision petition as per judgment, dated October 5, 1962. The learned Judges referred to the Rules of Business and Articles 166 of the Constitution and summed up their conclusion as under :

The final conclusion then to be reached in the light of the foregoing discussion is that the Chief Minister was competent to finally dispose of cases relating to sanction for prosecution of the respondent accused and it was not necessary that the papers should have been placed to the Governor before issue of the final orders and that the Chief Minister constituted the Government in this matter and the sanction accorded by him in the name and the authority of the Governor is valid Government sanction and that being the real position, we cannot concur in the view taken by the Special Judge.

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To conclude, we must hold that the Special Judge was not justified in treating the order of the Government sanctioning the prosecution of the respondent as defective on the ground of an commission to put up the papers before the Governor before the final issue of the orders by the Chief Minister and the order of discharge passed by him on this finding is erroneous and cannot be maintained. We would, therefore, accept the revision, set aside the order of the Special Judge, Balotra, and send the case for further proceedings in accordance with law."

9. After the above order of the High Court when the case taken up by the Special Judge, he recorded the evidence of Umraomal (P.W. 29) on July 19, 1963. Umraomal in the course of the evidence stated that sanction P. 34 bore the signature of Shri R. D. Thapar, Special Secretary in the Appointments (A-III) Department.

10. At the time of arguments before the Special Judge question was agitated about the want of proper sanction for the prosecution of the respondent. Argument was advanced that there was no evidence to show that the papers had been put up to the Chief Minister and he had given the sanction after applying his mind. The Special Judge rejected this contention after observing that at the time he passed order, dated September 3, 1961, the admitted position of the parties was that paper had been put up to the Chief Minister and he had given the sanction for the prosecution after applying his mind. The Special Judge also referred to the observations in the Judgment of the High Court and held that no exception could be taken in respect of sanction P. 34 to prosecute the respondent. The sanction, it was held, was valid.

11. The accused-respondent then went up in appeal before the High Court. It was argued in the High Court on behalf of the accused-respondent in appeal that it had never been admitted by him that the

sanction for his prosecution had been given by the Chief Minister after applying his mind to the facts and circumstances of the case. It was further urged that there was nothing to prove that the sanction for the prosecution of the accused-respondent had been accorded by the Chief Minister after applying his mind to the facts and circumstances of the case. This contention found favour with the learned Judges of the High Court, Tyagi and Lodha, JJ. Prayer was made before the High Court during the course of arguments by the Deputy Government Advocate that he might be allowed to the adduce additional evidence to prove that the relevant paper had been put up to the Chief Minister and that the Chief Minister had accorded sanction for the prosecution of the respondent after applying his mind. The High Court turned down this prayer. In the result the respondent's appeal was accepted by the High Court as per judgment, dated March 27, 1968. His conviction was set aside and the proceedings taken against him at the trial were quashed, as mentioned earlier, on the ground of being null and void in the absence of proof of valid sanction.

12. In appeal before us the learned Advocate-General for the State of Rajasthan has assailed the correctness of the judgment of the High Court. It is urged that in view of the earlier Division Bench judgment, dated October 5, 1962, it was not open to the High Court to quash the proceedings against the respondent for want of proof of valid sanction. In any case, according to the Advocate-General there was enough material to show that valid sanction for the prosecution of the accused-respondent had been accorded. The above stand has been controverted by Mr. Asoka Sen on behalf of the respondent, and he has canvassed for the correctness of the impugned judgment of the High Court.

13. In our opinion, there is considerable force in both the contentions advanced on behalf of the appellant. So far as the first question about the effect of the earlier Division Bench judgment, dated October 5, 1962, is concerned, we find that the Special Judge held the sanction under Section 6 of the Prevention of Corruption Act to be invalid as he was of the view that the sanction should have been accorded by the Governor. The order, dated November 3, 1961, of which extracts have been reproduced earlier shows that it was the accepted position before him that the sanction to prosecute the accused had been given by Chief Minister. As the Special Judge thought that the Chief Minister had no authority to sanction the prosecution and that the sanction could only be accorded by the Governor, he held the proceedings taken in the case to be void and without jurisdiction. When the matter was taken up in revision before the High Court, the learned Judges at the outset observed that the factual question as to whether the facts and circumstances on which the respondent was sought to be prosecuted had been placed before the Chief Minister and whether he had applied his mind before being satisfied to the need of sanction had not been agitated before and determined by the Special Judge. The High Court all the same accepted the position that sanction had, in fact, been accorded by the Chief Minister. In the opinion of the High Court, the Chief Minister was competent to accord sanction for the prosecution of the respondent and it was not necessary that the paper should have been placed before the Governor. The High Court accordingly set aside the order of the Special Judge. After the case had been remanded by the High Court, the accused agitated the question that there was no evidence to show that the papers had been put up to the Chief Minister and he had given the sanction after applying his mind. The Special Judge rejected these contentions and observed that the admitted position of the parties had been that the papers had been put up to the Chief Minister who had accorded his sanction after applying his mind. The Special Judge also relied upon the observations of the High Court in support of his conclusion that no exception could be taken in respect of the impugned sanction. Although the above observations of the Special Judge were assailed in appeal before the High Court and the High Court set aside the judgment of the Special Judge in this respect, we are of the opinion that the question as to whether sanction for the prosecution agitated in view of the earlier Division Bench decision, dated October 5, 1962, of the

High Court. The Special Judge, as observed earlier, had mentioned in his order, dated November 3, 1961, that the sanction to prosecute the accused had been given by the Chief Minister. This observation about the factual position in the order of the Special Judge does not appear to have been challenged in revision in the High Court and it apparently seems to have been accorded that the sanction for the prosecution had been accorded by the Chief Minister. It was in those circumstances that the High Court repeatedly referred to the sanction accorded by the Chief Minister. The judgment, dated October 5, 1962 of the Division Bench of High Court, in our opinion, was binding upon the High Court when it disposed of the appeal filed by the accused-respondent as per judgment, dated March 27, 1968 and it was, in our opinion, not permissible to go into the question as to whether the sanction had been accorded by the Chief Minister. The question as to what is the binding effect of a decision in subsequent proceedings of the same original matter was considered by this Court in the case Bhagat Ram v. State of Rajasthan, ((1972) 2 SCC 466 : 1972 SCC (Cri) 751) and it was held that the principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. Reliance in this context was placed upon the observations of the Judicial Committee in the case of Samba Sivam v. Public Prosecutor, Federation of Malaya. (1950 AC 458) In Bhagat Ram's case (supra) a single Judge of the High Court to whom a limited question had been referred because of a difference of opinion between two Judges of the Division Bench, not only decided the question referred to him, he also interfered with the acquittal of the accused regarding certain offences in respect of which an order for acquittal had already been made earlier by the Division Bench. It was held that it was not within the competence of the single Judge to reopen the matter and pass the above order of conviction in the face of the earlier order of the Division Bench for acquittal. Although Bhagat Ram's case (supra) related to acquittal, the principle laid down in that case, in our opinion, holds good in a case like the present wherein the question is about the binding effect of the earlier Division Bench judgment regarding the validity of the sanction for the prosecution of the accused-respondent.

14. Reference has been made on behalf of the appellant to the case of State of Andhra Pradesh v. Kokkiliagada Merrayya and Another. ((1969) 2 SCR 1004 : (1969) 1 SCC 161) In that case proceedings were instituted under Section 177 of the Code of Criminal Procedure against four person in respect of four incidents. One of the incidents was alleged to have taken place on June 22, 1964. Eleven persons, including the two respondents, were stated to have indulged in certain acts of violence, as a result of which a case had been registered against them under Sections 148, 323 and 325, Indian Penal Code. The Magistrate holding the inquiry took the view that the evidence led in support of the incident of June 22, 1964, was not reliable. Subsequently the respondents were convicted for the offences under Sections 323 and 324, Indian Penal Code in respect of the incident of June 22, 1964. The High Court set aside the conviction of the respondents by invoking the principle of "issue estoppel". On appeal this Court held that the High Court was in error in holding that the respondents could not be tried and convicted for offences under Sections 324 and 323, Indian Penal Code because of the earlier proceedings under Section 107 of the Code of Criminal Procedure. Dealing with the question of issue estoppel, this Court observed :

> "The rule of issue estoppel cannot, in our judgment, be extended so as to prevent evidence which was given in the previous proceeding and which was held not sufficient to sustain the other for being used in support of a charge of an offence which the State seeks to make out. The rule of issue estoppel prevents relitigation of the issue which has been determined in a criminal trial between the State and the accused. If in respect of an offence arising out of a transaction a trial has been taken

> place and the accused has been acquitted, another trial in respect of the offence alleged to arise out of that transaction or of a related transaction which requires the Court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial is prohibited by the rule of issue estoppel. In the present case, there was no trial and no acquittal.
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> There is no question in the present case also of a previous trial and acquittal. This fact would not, however, detract from the binding force of the earlier decision of the High Court. All that we are concerned with is as to whether the judgment of the High Court in revision is binding in the subsequent proceedings in the case. So far as this question is concerned, we have no doubt in our minds that the judgment of High Court in revision is binding in the subsequent proceedings in the case.

15. The case of Connelly v. Director of Public Prosecutions (1964 AC 1254) to which also reference was made in the course of arguments dealt with Section 4 of the Criminal Appeal Act, 1907 under the English criminal law. Dealing with Connelly's case (supra) this Court observed in the Merrayya's case (supra) :

> "Our Criminal jurisprudence is largely founded upon the basic rules of English Law though the procedure is somewhat different. Trials by jury have been practically abolished and the cases are being tried by Judges. Several charges arising out of the same transaction can be tried under the Code of Criminal Procedure together at one trial, and specific issues are always raised and determined by the courts. Under the English system of administration of criminal law, trials for serious offences are held with the aid of the jury and it is frequently impossible to determine with certitude the specific issue on which the verdict of the jury is founded. In criminal trials under the Code of Criminal Procedure, there is no uncertainty in the determination of issues decided. Difficulties envisaged in Connelly's case (supra) in the application of the rule of issue estoppel do not therefore arise under our system."

In view of what has been stated above, no help be derived by the respondent from Connelly's case (supra).

16. Apart from the binding effect of the judgment, dated October 5, 1962, of the High Court, we are of the opinion that there is positive evidence on the record of this case that the sanction for the prosecution of the accused-respondent had been accorded by the Chief Minister. Although no question in this respect was put to umraomal (P.W. 29) in examination-in-chief, the witness stated in reply to a question put to him in cross-examination that the Chief Minister had signed the sanction. The witness no doubt added that he was not present at the time the Chief Minister had signed the sanction but his statement about the signing of the sanction by the Chief Minister does not appear to have been challenged by putting any further question to the witness. The witness was working as office Superintendent, Appointments Department at the relevant time and as such, would be presumably familiar with the signature of the Chief Minister in the ordinary course of business. The learned Judges of the High Court while holding that there was no material to prove that the sanction had been accorded by the Chief Minister made no reference to the statement of Umraomal that the Chief Minister had signed the sanction. In our opinion, the judgment of the High Court in this respect is vitiated by its omission to take into account a material piece of evidence.

17. The fact that the Chief Minister was competent to accord sanction for the prosecution of the

respondent in accordance with the rules of Business has not been disputed before us but it has been urged that the prosecution has failed to prove that the Chief Minister accorded his sanction after applying his mind to the fact of this case. So far as this aspect of the matter is concerned, we find that the position of law is that the burden of proof that the requisite sanction had been obtained rests upon the prosecution. Such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based. These facts might appear on the face of the sanction or it might be proved by independent evidence that sanction was accorded for prosecution after those fact had been placed before the sanctioning authority.

18. The question of sanction was dealt with by the judicial Committee in the case of Gokulchand Dwarkadas Morarka v. The King. (75 IA 30 : AIR 1948 PC 82) That case related to a sanction under Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943 which provided that no prosecution for the contravention of any of the provision of the Order would be instituted without the previous sanction of the provincial Government. The judicial Committee in this context observed :

> "In their Lordships' view, to comply with the provisions of Clause 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since Clause 23 does not require the sanction to be in any particular form, nor even to be writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority."

The principle laid down above holds good for the purpose of sanction under Section 6 of the Prevention of Corruption Act, (see Madan Mohan Singh v. State of Uttar Pradesh. (AIR 1954 SC 637 : 1954 Cri LJ 1656) Let us now apply the principle laid down above to the facts of the present case. It is no doubt true that no independent evidence was led by the prosecution to prove that relevant facts had been placed before the Chief Minister before he accorded sanction but that fact, in our opinion, introduces no fatal infirmity in the case. Sanction P. 34 has been reproduced earlier in this judgment and it is manifest from its perusal that the facts constituting the offence have been referred to on the face of the sanction. As such, it was not necessary to lead separate evidence to show that the relevant facts were placed before the Chief Minister. The evidence of Umraomal shows that the formal sanction P. 34 filed in the court bears the signature of Shri R. D. Thapar, Special Secretary to the Government. The fact that the Chief Minister signed the sanction for the prosecution on the file and not the formal sanction produced in the court makes no material difference. It is, in our opinion, proved on the record that the sanction for the prosecution of the accused had been accorded by the competent authority after it had duly applied its mind to the facts of the case.

19. We, therefore, accept the appeal, set aside the judgment of the High Court and remand the case to it for disposal of the appeal on merits. We are sure that as the matter is very old, the High Court would take early steps to dispose of the appeal.

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