State of West Bengal

Vs

Manmal Bhutoria and Others

Civil Appeal No. 1134 of 1973

P. K. Seshan

Vs

State of Assam and Another

Criminal Appeal No. 319 of 1974

K. D. Mazumdar

Vs

The State (Represented By Central Bureau of Investigation, Government of India)

Criminal Appeal No. 358 of 1976

(P. K. Goswami, Syed M. Fazal Ali JJ)

05.05.1977

JUDGMENT

GOSWAMI, J.

1. In these appeals a common question of law arises for consideration. We will therefore refer to the facts as appearing in Civil Appeal 1134 of 1973 to decide the issue and our decision will govern these appeals.

2. We are informed that the sole appellant in Criminal Appeal 319 of 1974 died. The said appeal, therefore, abates and is dismissed.

3. Civil Appeal 1134 of 1973 is directed against the judgment of the Division Bench of the Calcutta High Court whereby the earlier judgment of the single Judge was reversed. The facts so far as material may be briefly stated :

> 3A. On or about May 27, 1967, a case was lodged by the Deputy Superintendent of Police, Central Bureau of Investigation, Sub-Division, Calcutta, against R. C. Bhattacharjee who was an ex-Major of the Indian Army and Manmal Bhutoria (hereinafter, the respondent) who was a businessman. It was alleged that R. C. Bhattacharjee in collusion and conspiracy with the respondent had accepted certain tenders from a fictitious nominee of the said respondent for supply of certain stores to the military authorities at a price exceeding the price quoted by the other tenderers

> and thereby caused substantial loss to the Military Authority and to the Government of India. It was further alleged that the said Bhattacharjee along with the respondent had committed offences of conspiracy of criminal misconduct by a public servant in dishonestly abusing his position as a public servant for obtaining undue pecuniary advantage which amounted to an offence under Section 5(3) of the Prevention of Corruption Act, 1947.

4. Accused Bhattacharjee was invalidated from the Military service with effect from February 14, 1966, as permanently unfit for any form of military service.

5. A case under the Prevention of Corruption Act, 1947 (hereinafter, briefly the Act) can be tried only by a special court constituted under the provisions of the West Bengal Criminal Law Amendment (Special Court) Act, 1949 (West Bengal Act XXI of 1949) (briefly the Bengal Act). By a notification in the Calcutta Gazette dated June 15, 1967, the State Government allotted the said case to the Fourth Additional Special Court in Calcutta under sub-section (2) of Section 4 of the Bengal Act. When the Special Court fixed the case for trial on November 23, 24 and 25, 1967, the respondent moved the High Court of Calcutta under Article 226 of the Constitution on November 7, 1967, inter alia, contending that -

> (1) at the point of time when the case was distributed to the Special Court the co-accused, ex-Major Bhattacharjee, had ceased to be a public servant and as such the Bengal Act had no application and the said Court had no jurisdiction to entertain the case;
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> (2) a public officer having ceased to be such an officer at the date of allotment of the case the order of allotment by the State Government was without jurisdiction and void; and
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> (3) the Special Court had no jurisdiction to try cases in which two private persons were involved and the allotment of the case to the Special Court was thus illegal.

6. A point regarding absence of sanction was also taken up but was not pressed before us in view of the decision of this Court in S. A. Venkataraman v. State (1958 SCR 1040 : AIR 1958 SC 107 : 1958 Cri LJ 254 : (1958) 2 Lab LJ 1)

7. The single Judge of the High Court dismissed the writ application but the Division Bench by two concurring judgments set aside the said judgment and order of the single Judge. That is how this matter has come before us on certificate under Article 133(1) (c) of the Constitution.

8. P. B. Mukherjee, J., held -

> -the only solution is to hold that these two Acts namely, the Special Courts Act and the Prevention of Corruption Act do not apply to a public servant who had ceased to be a public servant on the date the Court takes cognizance. This solution seems all the more proper because it seems to steer clear of Article 14 of the Constitution. . . .

The learned Judge further observed -

Therefore a person who has ceased to be in office, that is, who has ceased to be a public servant, does not come within the ambit of the expression 'public servant' and consequently is not governed

by the Prevention of Corruption Act and, as such, cannot commit an offence under Section 5(2) of the said Act.

The learned Judge again observed -

> It will appear that though Major Bhattacharjee has ceased to be a public servant, the State Government by distributing the present case to the Special Court violated the principle of equal protection clause by denying the advantages associated with the office of a public servant but imposing on him the disadvantages and/or disabilities associated with the office of a public servant. Hence the Act is not discriminatory but the action, allotment and distribution of this case to the Special Court of the State Government is discriminatory. Therefore it is to be struck down and the order of the distribution quashed.

The learned Judge also observed -

> -but a public servant who has ceased to be a public servant, can neither be prosecuted in respect of any scheduled offence nor of an offence under Section 5(2) of the Prevention of Corruption Act and as such, the trial of such a person cannot be in accordance with the provisions of those two status.
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> -so far as the appellant Manmal Bhutoria is concerned, he, never being 'a public servant' is clearly not triable by the Special Court under the Prevention of Corruption Act and West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and suffer all the handicaps of being presumed to be guilty.

9. B. C. Mitra, J. in his concurring judgment observed as follows :

> On a careful consideration of the various clauses under Section 21 of the Penal Code, I have no doubt that a person who was previously a public servant, but who has ceased to be such, does not come within the ambit of that section.

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Both Section 5(1) and Section 5(2) deal with public servants only. There is no provision in this Act whereby a person who was previously a public servant, but has ceased to be a public servant at the relevant time, can be charged with an offence under Section 5(1) (d) or Section 5(2) of the Prevention Act.

10. Before we proceed further we may immediately set out what this Court has held in Venkataraman's case (supra) since what was held therein has largely influenced the decision of the Division Bench. At page 1044 of the Report in the decision this Court observed as follows :

These provisions of the Act (namely Act 2 of 1947) indicates 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 Section 6 had not found a place in the Act it is clear that cognizance of an offence under Sections 161, 164 or Section 165 of the Indian Penal Code of under Section 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 of 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 ?

Again at page 1048/1049 this Court observed as follows :

> In our opinion, in giving effect to the ordinary meaning of the words used in Section 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 Section 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 Section 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.

11. A similar view was affirmed by this Court in C. R. Bansi v. State of Maharashtra (1971) 3 SCR 236 : (1970) 3 SCC 537 : 1971 SCC (Cri) 143). This Court held therein as follows :

> The policy underlying Section 6, and similar sections, is that there should not be unnecessary harassment of public servants. But if a person ceases to be a public servant the question of harassment does not arise. The fact that an appeal is pending does not make him a public servant. The appellant ceased to be a public servant when the order of dismissal was passed. There is no force in the contention of the learned Counsel and the trial cannot be held to be bad for lack of sanction under Section 6 of the Act.

12. Accepting the position that sanction under Section 6 of the Act is not necessary if the public servant ceased to be a public servant on the date the Court takes cognizance of the offence, the High Court arrived at the conclusion that there would be discrimination between one class of public servants and another similarly situated when those in office will be protected from harassment on account of the requirement of sanction for prosecution whereas the public servants after they ceased to be in office will be prosecuted and harassed in absence of the requirement of the sanction. It is in that view of the matter the High Court has held that the Special Court has not jurisdiction to try a public servant who has ceased to be a public servant on the date the Court was required to take cognizance of the offence, since, according to the High Court, "it cannot be said that in certain respects he is a public servant for the offences under the Prevention of Corruption Act and for certain other respects, he is not a public servant". It is in taking this view that P. B. Mukherjee, J. observed that "this solution seems all the more proper because it seems to steer clear of Article 14 of the Constitution". The High Court, however, did not strike down the Act or any provisions of the Act as unconstitutional. It has only held the order of allotment of the case to the Special Court as illegal as the case of a public servant who has ceased to be a public servant cannot be allotted to the Special Court since, according to the High Court, to hold otherwise would be violative of Article 14 of the Constitution.

13. It is in the background of such a conclusion that Mr. Niren De, Counsel for the respondent, submits that this appeal involves the determination of a question as to the constitutional validity, on

the basis of Article 14 of the Constitution, of the provisions of the Bengal Act, particularly the proviso to Section 4(1) of that Act. He further submits that a person who ceased to be a public servant cannot be treated differently from a person who is a public servant in office for the purpose of the Bengal Act. He, therefore, submits that in view of Article 144(A), as inserted by the 42nd Amendment, this appeal should be heard by a minimum number of seven Judges of this Court and we should, therefore, refer the same to a larger Bench. This submission is supported by Mr. Dhebar who is appearing in an identical matter in Criminal Appeal 358 of 1976 and he has submitted an application to urge additional grounds not he basis of Article 14 of the Constitution.

14. There is some misconception both in the judgment of the High Court as well as in the submission made by Counsel on this point. In view of the decision in Venkataraman's case (supra) there is no warrant for including in one category public servants in office and public servants who have ceased to be so. These two classes of public servants are not similarly situated as has been clearly pointed out in Bansi's case (supra). The plea of applicability of Article 14 on the basis of the judgment in Venkataraman's case (supra) is, therefore, wholly misconceived. It cannot be argued that the decision in Venkataraman's case (supra) is violative of Article 14 of the Constitution. That decision only says that Section 6 of the Act is not applicable to a public servant if at the time of taking cognizance by the Court he ceases to be so. Because a particular section is not applicable to a public servant after he has ceased to be in office, the question of the Act being violative of Article 14 of the Constitution will not arise. This Court has clearly placed a public servant, who has ceased to be in office, in a separate category and that classification has held the field all these years without demur. There is, therefore, no substance in the contention that this appeal should be referred to a larger Bench.

15. Under Section 4(1) of the Bengal Act, the scheduled offences which include an offence under Section 5(2) of the Act as also conspiracy to commit that offence shall be triable by Special Courts only. No other Court can, therefore, try those offences. The provisions of the Bengal Act are clearly different from those of the West Bengal v. Anwar Ali Sarkar (1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510). Proviso to Section 4(1) of the Bengal Act is in the following terms :

> Provided that where trying any case, a Special Court may also try any offence other than an offence specified in the Schedule, with which the accused may under the Code of Criminal Procedure, 1898, be charged at the same trial.

By this proviso the Special Court, when trying a scheduled offence finds that some other offence has also been committed and the trial of the same in one trial is permissible under the Code of Criminal Procedure, may try such a charge. It is difficult to imagine how such a proviso can at all attract Article 14 of the Constitution.

16. On merits it is submitted by Mr. De that the respondent is a complete outside and is not a public servant at all. The Bengal Act is not applicable to him. It is submitted that the Bengal Act provides for reference to the Special Court only offences mentioned in the Schedule, to that Act and all the offences mentioned in the Schedule according to him, are those which may be committed by a public servant. He draws our attention to the definition of public servant under Section 21 of the Indian Penal Code which definition is applicable under Section 2 of the Act. He submits that the public servant in view of the definition means a public servant in office and not one who has ceased to be in office.

17. It is true that Section 21, IPC enumerates various classes of public servants who are or who

happen to be in office. That is, however, not the true test in determining the present controversy. The crucial date for the purpose of attracting the provisions of the Act as well as those of the Bengal Act is whether the offence has been committed by a public servant within the definition of Section 21. The date for determining the offence is the date of the commission of the offence when the person arraigned must be a public servant. Section 6 of the Act provides that no Court shall take cognizance of an offence specified in that section alleged to have been committed by a public servant except with the previous sanction. The section itself makes a clear distinction between cognizance of an offence and alleged commission of an offence. Sanction refers to the date when after submission of a report or a complaint the Court takes cognizance of the offence. That date is necessarily subsequent to the date of commission of the offence and sometimes far remote from that date. Retirement, resignation, dismissal or removal of a public servant would not wipe out the offence which he had committed while in service. Under Section 6(1) of the Act, as in the case of Section 190(1), Cr. P. C., the Court takes cognizance of an offence and not an offender (see Raghubans Dubey v. State of Bihar (1967) 2 SCR 423, 428 : AIR 1967 SC 1167 Cri LJ 1081)). The crucial date, therefore, for taking cognizance in this case is the date when the case was received by the Special Court on being allotted by the State Government under Section 4(2) of the Bengal Act.

18. Mr. De submits that Section 10 of the Bengal Act provides that the provisions of the Prevention of Corruption Act shall apply to trials under the Bengal Act. He, therefore, submits that Section 6 of the Act must apply and since this Court has held that section does not apply and Section 6 is also not applicable in the case of the respondent, being not a public servant, the Special Court has no jurisdiction to try the offence. We are clearly of opinion that Section 10 of the Bengal Act will apply when the provisions of that section are clearly attracted. Section 6 is interpreted by this Court not to apply to a public servant who has ceased to be in office. That would not affect the interpretation of Section 10 of the Bengal Act. There is no merit in the submission that because of Section 10 the Special Court cannot be said to have jurisdiction to try the offence in this case.

19. Mr. De. further submits that since the respondent is not a public servant he is outside the provisions of the Bengal Act, as well as the Prevention of Corruption Act. This argument is entirely misconceived. Even under the Prevention of Corruption Act, an outsider can be prosecuted under Section 5(3) of the Act when a person habitually commits an offence punishable under Section 165A of the Indian Penal Code. Section 165A provides that "whoever, abets any offence punishable under Section 161 or Section 165, whether or not that offence is committed in consequence of the abatement, shall be punished. . . . ". This section is clearly applicable to an outsider who may abet a public servant. Item 8 of the Schedule to the Bengal Act mentions any conspiracy to commit or any attempt to commit or any abatement of any of the offences specified in items 1, 2, 3 and 7. It is, therefore, clear that under item 8 of the Schedule an outsider can be tried along with a public servant if the former abets or commits an offence of conspiracy to commit an offence under Section 5 of the Prevention of Corruption Act which is mentioned in item 7 to the Schedule. There is, therefore, no merit in the submission that the Special Court cannot try the offence under Section 5(2) of the Act read with Section 120B, IPC against the respondent.

20. All the submissions of Counsel for the respondent fail. The judgment and order of the Division Bench are set aside. The appeal is allowed but there will be no order as to costs.

21. In Criminal Appeal 358 of 1976 the appellant was charged under Section 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act. At the time of commission of the offence he was admittedly a public servant. He, however, ceased to be a public servant on October 30, 1974, when the chargesheet against him was put up before the Special Judge. The offences are triable only by

the Special Judge under the provisions of the Criminal Law Amendment Act 1952 (Act XLVI of 1952). For the reasons given above in connection with Civil Appeal 1134 of 1973, the trial before the Special Judge cannot be questioned as illegal. The appeal fails and is dismissed.

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