Mohd. Iqbal Ahmed

Vs

State of Andhra Pradesh

Criminal Appeal No. 194 of 1973

(Syed M. Fazal Ali, A. D. Koshal JJ)

18.01.1979

JUDGMENT

FAZAL ALI, J. -

1. In this appeal by special leave the appellant has been convicted under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and sentenced to rigorous imprisonment for one year and a fine of Rs. 250 on each count.

2. The appellant had been convicted by Special Judge but on appeal by the State to the High Court the High Court reversed the judgment of acquittal and convicted the appellant as indicated above. According to the prosecution the appellant is said to have struck a bargain for taking a bribe of Rs. 125 which he received on July 15, 1968 in the presence of PWs 1 and 3. On receiving the signal the raiding party appeared on the scene and the hand of the accused was dipped in water containing phenopthalien solution which showed that he touched the notes. The defence of the appellant was that he never demanded any bribe and that the notes were thrust into his pocket. It is not necessary for us to dwell on the merits of the case because, in our opinion, the appeal must succeed on a short point of law, raised by Mr. A. N. Mulla, learned counsel for the appellant. It was argued that the sanction under Section 6 of the Prevention of Corruption Act produced in this case does not reveal the facts constituting the offence and, therefore, there is no evidence to show on what materials the sanctioning authority applied its mind and granted the sanction. The resolution of the Standing Committee granting the sanction is Ex. P-26 and is dated March 31, 1969 and runs as follows :

> As per note of the Commissioner, M.C.H., the Standing Committee unanimously accords sanction for prosecution of Shri Mohd. Iqbal Ahmad (in the scale of 110-180) Section Officer of Town Planning Section (under suspension) in a competent Court for the offence mentioned in the note of the Commissioner M.C.H., dated January 18, 1969 so as to enable the Commissioner to sign the prosecution order and send it to the Director, Anti-Corruption Bureau for taking further action at the earliest.

3. A perusal of the resolution of the Sanctioning Authority clearly shows that no facts on the basis of which the prosecution was to be sanctioned against the appellant are mentioned in the sanction nor does this document contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied. This document merely mentions that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation which appears to have been placed before the Committee. It is obvious, therefore, that this note, if any, must have come into existence either on March 31, 1969 or at any date prior to this. The prosecution could have proved the facts

constituting the offence which were placed before the Sanctioning Authority by producing the note at the trial. But no such thing has been done. What the prosecution did was merely to examine two witnesses PWs 2 and 7. PW 2 has produced the order implementing the Resolution of the Sanctioning Authority which is Ex. P10 and is dated April 21, 1969, that is to say after the sanction was given. This document no doubt contains the facts constituting the offence but that does not solve the legal issues that arise in this case. It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio. In the instant case no evidence has been led either primary or secondary to prove as to what were the contents of the note mentioned in Ex. P 16 which was placed before the Sanctioning authority. The evidence of PW 2 or PW 7 is wholly irrelevant because they were not in a position to say as to what were the contents of the note which formed the subject-matter of the sanction by the Standing Committee of the Corporation. The note referred to above was the only primary evidence for this purpose. Mr. Rao vehemently argued that although the resolution, Ex. P16 does not mention the facts, the Court should presume the facts on the basis of the evidence given by PW 2 and the order implementing sanction which mentions these facts. This argument is wholly untenable because what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent facts which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

4. It was next contended by Mr. Rao that in view of the presumption which is to be drawn under Section 4 of the Prevention of Corruption Act, even if no facts are mentioned in the Resolution of the Sanctioning Authority it must be presumed that the Sanctioning Authority was satisfied that the prosecution against the appellant should be launched on the basis of the presumption that the accused had received a bribe. With due respects to the learned counsel, this argument seems to be wholly misconceived. In the first place there is no question of the presumption being available to the Sanctioning Authority because at that stage the occasion for drawing a presumption never arises since there is no case in the Court. Secondly, the presumption does not arise automatically but only on proof of certain circumstances, that is to say, where it is proved by evidence in the Court that the money said to have been paid to the accused was actually recovered from his possession. It is only then that the Court may presume the amount received would be deemed to be an illegal gratification. So far as the question of sanction is concerned this arises before the proceedings come to the Court and the question of drawing the presumption, therefore, does not arise at this stage. Lastly, it was submitted by Mr. Rao that he should be given a chance to produce the materials before the Court to satisfy that the Sanctioning Authority had duly applied its mind to the facts constituting the offence. We are, however, unable to accede to this prayer which has been made at a very late stage. The prosecution had been afforded a full and complete opportunity at the trial stage to produce whatever material it liked and it had chosen to examine two witnesses, but for reasons best known to it, it did not produce the note which formed the subject-matter of the Resolution of the Sanctioning Authority Ex. P16. It is well settled that in a criminal case this Court or for that matter

any court should not ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution. The liberty of the subject was put in jeopardy and it cannot be allowed to put in jeopardy again at the instance of the prosecution which failed to avail of the opportunity afforded to it.

5. For these reasons, therefore, we are satisfied that the present prosecution was launched without any valid sanction and, therefore, the congnizance taken by the Special Judge was completely without jurisdiction. The appeal is accordingly allowed. The Judgment of the High Court is set aside and convictions and sentences passed on the appellant are quashed. The appellant will now be discharged from his bail bonds.

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