

State of Rajasthan

Vs

Dr. A. K. Datta

Criminal Appeal No. 382 of 1974

(A. C. Gupta, O. Chinnappa Reddy JJ)

10.10.1980

JUDGMENT

GUPTA, J. –

1. The respondent was employed in 1961 as Officer-in-Charge Desert and Gangetic Plains, Zoological Survey of India at Jodhpur. A criminal case was registered against him on December 31, 1962 which was investigated by the Special Police Establishment, Jaipur. Ultimately a charge-sheet was filed against the respondent in the Court of the Special Judge for Rajasthan, Jaipur City. The Special Judge convicted him under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act and Section 471 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 100, in default to suffer rigorous imprisonment for further one month, on the first count and on the second to undergo rigorous imprisonment for six months and to pay a fine of Rs. 100, in default to suffer rigorous imprisonment for another one month. The sentences were directed to run concurrently. Sanction for prosecution of the respondent was granted on September 17, 1964 by the Ministry of Home Affairs, Government of India, signed by a Deputy Secretary "by order and in the name of the President".

2. In the appeal preferred by the respondent from the decision of the Special Judge, the Rajasthan High Court held that the Ministry of Home Affairs was not the competent authority to sanction prosecution of the respondent, allowed the appeal and set aside the order of conviction and the sentences passed on him. The appeal before us has been preferred by the State of Rajasthan questioning the correctness of the judgment of the High Court.

3. In exercise of the powers conferred by Article 77(3) of the Constitution of India the President made the Government of India (Allocation of Business) Rules, 1961 in supersession of all previous rules and orders on the subject. In the impugned judgment the High Court refers to notification No. SG 2494 dated August 3, 1965 which amended the Government of India (Allocation of Business) Rules, 1961 by introducing Entry 32-A under the heading, Ministry of Home Affairs, which reads :

According of sanction for the prosecution of any person for any offence investigated into by the Delhi Special Police Establishment where such sanction is required to be accorded by the Central Government.

Note. - Sanction for the prosecution of any person for any offence not investigated into by the Delhi Special Police Establishment, shall be accorded by the Administration Ministry, where such sanction is required to be accorded by the Central Government.

4. The High Court finds that prior to this amendment the competent authority to accord sanction for offences investigated by the Delhi Special Police Establishment was the Department of Personnel (Karmik Vibhag), Cabinet Secretariat, where such sanction was required to be given by the Central Government. Even after the amendment, as Entry 32-A would show, sanction for prosecution of any person for any offence not investigated by the Delhi Special Police Establishment was to be accorded by the Administrative Ministry concerned where such sanction was required to be accorded by the Central Government. As already stated the offences alleged to have been committed by the respondent were investigated by the Special Police Establishment, Jaipur. It is also not disputed that the Zoological Survey of India functioned under the Department of Science and Technology allocated to the Ministry of Education and Social Welfare. The High Court has held that in the absence of any sanction granted for the prosecution of the respondent either by the Ministry of Education or by the Department of Personnel (Karmik Vibhag) the Special Judge had to jurisdiction to take cognizance of the offences alleged against the respondent.

5. On behalf of the appellant, State of Rajasthan, an affidavit has been filed which it is submitted that "Entry 32-A only clarifies the pre-existing position and does not indicate that before August 3, 1965 the power to grant sanction for prosecution in a case investigated by Delhi Special Police Establishment was not with the Home Ministry" and, alternatively, it is claimed that on the facts of the present case it should be held that the Education Ministry has given its approval for the prosecution of the respondent. The basis of both the submissions is an offence memorandum dated October 6, 1948 to which reference was made also before the High Court. Before the High Court it was contended on the basis of this office memorandum, to quote from the impugned judgment.

that the procedure for issue of sanction by the government to prosecute government officials for corruption cases investigated into by Delhi Special Police Establishment was that the Inspector General of Police, Delhi Special Police Establishment used to forward the papers to the Home Ministry through the Ministry concerned, with his recommendations for obtaining sanction of the government to prosecute officers and that the ministry concerned used to forward the papers with its concurrence to the Ministry of Home Affairs, if it agreed, to launch a prosecution against a government official after careful scrutiny of the relevant papers and that after necessary consultation the Ministry of Home Affairs was competent to issue requisite sanction to prosecute the government official.

The High Court did not find the contention acceptable because the Government of India (Allocation of Business) Rules, 1961 superseded all previous rules and orders on the subject. In paragraph 6 of the affidavit filed in this Court on behalf of the appellant it is stated that the "High Court was not correct in holding that the above memorandum was repealed by the Government of India (Allocation of Business) Rules". From the affidavit it is not, however, clear how the memorandum remained in operation after the aforesaid Rules came into force in 1961. In the absence of any clear and convincing material to show that the basis of the impugned judgment is wrong we are not inclined to interfere with the decision of the High Court. The appeal is therefore dismissed.

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