

State Through C. B. I.

Vs

D. P. Dogra and Others

State Through C. B. I

Vs

K. K. Anand

Criminal Appeals Nos. 422-424 of 1983

(Ranganath Misra, A. N. Sen JJ)

25.09.1985

JUDGMENT

RANGANATH MISRA, J. -

1. The first set of three appeals are by special leave and are directed against the common judgment of a Division Bench of the Jammu and Kashmir High Court in three separate criminal revisions. The respondents in those appeals were prosecuted for the offences punishable under Section 120-B, 420, 468 and 471 of the Ranbir Penal Code and Section 5(2) of the Jammu and Kashmir Prevention of Corruption Act in the Court of the Special Judge, Jammu. It was alleged that respondent Dogra was posted as Assistant Divisional Manager of the Oriental Fire and General Insurance Co., Jammu. While working in such capacity he laid a false claim of Rs. 1335 against M/s Jupiter Insurance Co., Jammu with whom a car belonging to the Oriental Fire and General Insurance Co. had been insured. Dogra was using the said car in his official capacity and falsely maintained that it had met with an accident though as a fact no accident took place. The respondent Kohli, a surveyor, had been deputed to assess the damage and on account of criminal conspiracy amongst the accused persons, a false report was submitted. When suspicion arose, a fresh assessor was appointed and he reported that the vehicle had not met with any accident. The respondent Sharma was then the Regional Manager of Jupiter Insurance Co. at Ambala. It is alleged that when the second assessor made his report, Sharma prevailed upon him to change it and confirm the report of Kohli Sharma and Jugal Kishore, who were the members of the Claim Committee allowed the claim to the extent of Rs. 742 and this amount was paid to Dogra. On these allegations the four respondents were put on trial. The accused persons challenged the tenability of the prosecution on various charges by filing revision petitions before the High Court. As the High Court indicates, the challenge was mainly on two grounds : firstly, that the respondents were not "public servants" within the meaning of Section 21 of the Penal Code prevailing in the State of Jammu and Kashmir, and as such they could not be prosecuted under Section 5(2) of the Special Act; secondly, there was no evidence at all to connect the respondents with the offence charged and that there was no sanction for prosecution.

2. The High Court found that the respondents were not public servants and, as such, they could not be tried under section 5(2) of the Prevention of Corruption Act. Once the Special Act was not

attracted, the Special Judge had no jurisdiction to try the case. The High Court accordingly quashed the entire proceedings pending against the respondents before the Special Judge.

3. Anand, respondent in Criminal Appeal No. 64 of 1984, was an employee of Life Insurance Corporation and came to be charged for offences under Section 120-B, 420, 409, 468 and 471 of the Ranbir Penal Code and under Section 5(2) of the Prevention of Corruption Act. When charges were framed, objection was raised before the Special Judge on the ground that Anand was not a public servant and the Special Judge had no jurisdiction to entertain the case. When the Special Judge overruled the objection a criminal revision was filed before the Jammu and Kashmir High Court and following the decision of the Division Bench in three connected criminal revisions relating to Dogra and others, the decision which is the subject matter of the connected appeals, a Single Judge of the High Court quashed the charge.

4. We have heard arguments of both the sides in regard to the question as to whether the respondents were public servants. So far as the Life Insurance Corporation is concerned, there can be no second view that the employees of the Corporation come within the definition of the term "public servant" as given under section 21 of the RPC. So far as the other respondents are concerned, admittedly Jupiter Insurance Co. has been merged with the Oriental Fire and General Insurance Co. after nationalisation and the latter is now a part of the Corporation, namely, General Insurance Corporation of India. By such process the respondents Dogra and his associates are in the same position as Anand. Mr. Kapil Sibal, learned counsel appearing for Dogra and his associates has stated before us that the finding of the High Court on this score is not tenable and the respondents must be held to be public servants.

5. Mr. Sibal raised an additional contention which appears to have been canvassed before the High Court, but on which the High Court has not given its views. It has been the contention of Dogra and others that the claim made by them was not in their official capacity and the offence alleged does not relate to discharge of duty qua public servant. According to the learned counsel certain offences may be committed by persons who are admittedly public servants, but unless those offences relate to or are connected with duties as public servants, the Prevention of Corruption Act would not apply. This aspect of the matter may be examined by the High Court as it had been raised and has not been dealt with.

6. So far as Anand's matter is concerned, that question does not arise, and, therefore, we allow Criminal Appeal 64 of 1964 and hold that the special Judge has jurisdiction to try the case and that case must now proceed according to law. In the other three appeals while we conclude that the respondents are public servants and there is no merit in the plea for want of sanction, the tenability of the plea that the allegation of the prosecution did not give rise to an offence triable by a special Judge may be examined by the High Court. For the consideration of this limited aspect, the criminal revisions shall stand revived for fresh disposal. Since the criminal cases have been pending for quite a long time, we would request the High Court to dispose of the criminal revisions quickly and preferably within a period of three months from now.

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