SUPREME COURT OF INDIA

State Through CBI

Vs.

Raj Kumar Jain

(M Mukherjee and D Wadhwa JJ.)

04.08.1998

ORDER

On May, 11, 1988, the Central Bureaus of Investigation (CBI), the appellant before us, registered a case against the respondent, who was then a junior Engineer in the New Delhi Municipal corporation, under Section 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act, 1947 ('Act" for short) on the allegation that he was in possession of assets disproportionate to his known sources of income. In the investigation that followed, C.B.I. found that the allegations made against the respondent could not be substantiated and, accordingly, it submitted its report under Section 173(2) Cr.P.C. before the Special Judge, Delhi praying for closure of the case.

The Special Judge declined to accept the report on the ground that after the investigation was complete, the C.B.I. was required to place the materials collected during investigation before the sanctioning authority and it was for that authority to grant or refuse sanction. According to the Special Judge, it was only with the opinion of the sanctioning authority that the C.B.I. could submit its report under Section 173(2) Cr. P.C. With the above observations the Special Judge issued the following directions:

" It is directed that further investigation should be conducted and in the first instance, the prosecution/Investigating officer must approach the concerned sanctioning authority before coming to the Court to find out if the said authority would grant permission to prosecute the accused or not."

Aggrieved by the above directions C.B.I. moved the High Court by filing a revision petition which was dismissed with a fining that the directions issued by the Special judge were proper and legal. Hence this appeal. Section 6(1) of the Act, which is relevant for our present purpose, reads as under: -

(1) " No Court shall take cognizance of an offence punishable under Section 161 (or Section 164) or Section 165 of the Indian penal Code or under sub-section (2) [or sub-section (3A)] of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction,

-(a) in the case of a person who is employed in connection with the affairs of the [Union] and is not removable from his office save by or with the sanction of the Central Government ;

(b) in the case of a person who is employed in connection with the affairs of [a State] and is not removable from his office save by or with the sanction of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

From a plain reading of the above Section it is evidently clear that a Court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above Section the legislature thought of providing a reasonable protection to public servants in the discharge of the official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. Viewed in that context, the C.B.I. was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the C.B.I had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him then only the question of obtaining sanction of the authority under Section 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the chargesheet. It must, therefore, be said that both the special Judge and the High court were patently wrong in the observing that the C.B.I. was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) Cr. P.C. for discharge of the respondent. As regards the direction for further investigation, it is, of course, true that the Special Judge has power to so direct if he finds, on consideration of the police report, that the opinion formed by the Investigating officer seeking discharge of the respondent is not based on full and complete investigation, as observed by this Court in Abhinandan Jha vs. Dinesh Mishra [A.I.R. 1968 SC 117]. Unfortunately, however, in issuing the above direction the Special Judge has not given any reason whatsoever which prompted him to direct further investigation nor does it appear tat he has gone through the police report and its accompaniments.

After recording the above finding the usual order which we are required to make is to remand the matter to the special Judge with a direction to look into the report under Section 173(2) Cr. P.C. and the documents referred to therein to decide whether further investigation should be ordered or not. But considering the facts, that since the case was registered more than 10 years have elapsed and that such a direction would further delay the matter we have for ourselves looked into those documents and found that a thorough investigation has been made and the opinion expressed by the C.B.I. that no prima facie case was made out against the respondent is just and proper. On the conclusions as above, we allow this appeal and set aside the impugned orders of the Special Judge and that of the High Court.