Kalicharan Mahapatra

v.

State Of Orissa

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. M.M. PUNCHHI HON'BLE MR. JUSTICE K.T. THOMAS

Criminal Appeal No. 770 Of 1998 (Arising Out Of Slp (Crl.) No. 3397 Of 1994) | 04-08-1998

K.T. Thomas, J.

Leave granted.

1. Appellant was an IPS Officer reached upto the level of Superintendent of Police in the State Police Service, Orissa. Based on some sleuth informations raid was conducted in the residence of the appellant on 12.5.1990 and a good amount of cash and jewellery were recovered. A case was registered against him under section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act"). On 31.12.1990 appellant retired from service but the investigation into the case continued. On 30.9.1992 the Vigilance Department submitted a charge-sheet against the appellant for the offence under Section 13(2) read with Section 13(1)(e) of the Act.

2. The case was since transferred to the Court of Special Judge, Bhubaneswar which was established under the provisions of Orissa Special Courts Act, 1990. Appellant made a multi-pronged move against the prosecution. At the first instance he challenged the very constitution of Special Court and then he raised a preliminary objection that he is not liable to be tried under the Act since he was no more a public servant. His challenge against the constitution of the Special Court did not succeed in spite of that contention having been taken up to this Court in SLP (C) No. 13776/93 which was dismissed by this Court. But he persisted with his preliminary objection which was overruled by the Special Court. He then moved the High Court under Section 482 of the Code of Criminal Procedure (for short `the Code') to have the prosecution proceedings

quashed on that ground but the High Court dismissed the petition as per the impugned order.

3. The main contention of the appellant was that the legislature did not include a retired public servant within the purview of the Act and that there is no mention in the Act about a person who ceased to be a public servant. He invited our attention to Section 197 of the Code which envisages sanction for prosecution of public servants and pointed out that the sanction is now applicable to former public servants also by virtue of the specific words in the Section "any person who is or was .... a public servant". According to the counsel since such words have not been employed in any of the provisions of the Act it could be inferred with reasonable precision that no prosecution can be launched or continued against a person who, though was a public servant at the time of commission of the offence, ceased to be so subsequently.

4. "Public servant" is defined in Section 2(c) of the Act. It does not include a person who ceased to be a public servant. Chapter III of the Act which contains provisions for offences and penalties does not point to any person who became a non-public servant, according to the counsel.

5. Among the provisions subsumed in the Chapter, Sections 8, 9, 12 and 15 deal with offences committed by persons who need not be public servants, though all such offences are intertwined with acts of public servants. The remaining provisions in the Chapter deal with offences committed by public servants. Section 7 of the Act contemplates offence committed by a person who expects to be public servant.

6. There is no indication anywhere in the above provisions that an offence committed by a public servant under the Act would vanish off from penal liability at the moment he demits his office as public servant. His being a public servant is necessary when he commits the offence in order to make him liable under the Act. He cannot commit any such offence after he demits his office. If the interpretation now sought to be placed by the appellant is accepted it would lead to the absurd position that any public servant could commit the offences under the Act soon before retiring or demitting his office and thus avert any prosecution for it or that when a public servant is prosecuted for an offence

under the Act he can secure an escape by protracting the trial till the date of superannuation.

7. Learned counsel for the appellant invited our attention to Section 19(1) of the Act which reads thus :

"19. Previous sanction necessary for prosecution. - (1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 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, of that 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, of that Government;

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

8. It was contended that if the case does not fall under sub-clause (a) or sub-clause (b) it should necessarily fall under sub-clause (c) and otherwise no prosecution can lie for any offence under this Act. A person who ceased to be public servant cannot be removed from any office, and hence it is contended that he cannot be prosecuted for any offence under the Act.

9. Section 19(1) of the Act is in pari materia with Section 6(1) of the preceding enactment i.e. Prevention of Corruption Act, 1947 (the Old Act). When a similar contention was raised before a three Judge Bench of this Court regarding Section 6 of the Old Act in S.A. Venkataraman v. The State, 1958 SCR 1040, that contention was repelled. It was held thus:

"The words in Section 6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed. It was suggested that cl. (c) in Section 6(1) refers to persons other than those mentioned in cls. (a) and (b). The words `is employed' are absent in this clause which would, therefore, apply to a person who had ceased to be a public servant though he was so at the time of the commission of the offence. Clause (c) cannot be construed in this way. The expressions `in the case of a person' and `in the case of any other person' must refer to a public servant having regard to the first paragraph of the sub-section. Clauses (a) and (b), therefore, would cover the case of a public servant who is employed in connection with the affairs of the Union or a State Government and cl. (c) would cover the case of any other public servant whom a competent authority could remove from his office. The more important words in cl. (c) are `of the authority competent to remove him from his office'."

The same view was adopted by another three Judge Bench in C.R. Bansi v. State of Maharashtra, 1971(3) SCR 236. This was followed in State of West Bengal etc. v. Manmal Bhutoria and others, 1977(3) SCR 758. The Constitution Bench in K. Veeraswami v. Union of India and others, 1991(3) SCC 655 upheld the view that no sanction is required to prosecute a public servant after retirement.

10. Learned counsel, however, contended that the legal position must be treated as changed under the Prevention of Corruption Act of 1988 since Parliament has in the meanwhile changed the wording in Section 197 of the Code. The provision provided a check against launching prosecution proceedings against a public servant on the accusation of having committed an offence while acting or purporting to act in the discharge of his official duty. For such prosecution sanction of the Government is made a condition precedent under Section 197 of the Code of Criminal Procedure, 1898 (the old `Code'). But such a sanction was not then necessary when a retired public servant was prosecuted. However, in the corresponding provision of the present Code (Section 197) the necessity for

previous sanction is made applicable to former public servants also by using the words "when any person who is or was a public servant". The contention here is that the earlier decisions of the Court were rendered at a time when sanction for prosecution was not contemplated in Section 197 of the Code as for a public servant who has retired from service. Hence, according to him those decisions are of no help to sustain the same view now.

11. In R. Balakrishna Pillai v. State of Kerala and another, 1996(1) SCC 478 learned Chief Justice Ahmadi has referred to the Law Commission's Report which suggested an amendment to Section 197 of the Code. The observation of the Law Commission in paragraph 15.123 of its Report reads thus :

"It appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harboring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant."

Their Lordships after referring to the above Report have observed : "It was in pursuance of this observation that the expression `was' came to be employed after the expression `is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted."

12. It must be remembered that in spite of bringing such a significant change to Section 197 of the Code in 1973, the Parliament was circumspect enough not to change the wording in Section 19 of the Act which deals with sanction. The reason is obvious. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the P.C. Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the

distinction and hence the wording in the corresponding provision in the former P.C. Act was materially imported in the new P.C. Act, 1988 without any change in spite of the change made in section 197 of the Code.

13. The result of the above discussion is thus : A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time the court can take cognizance of offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant, is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution.

14. The Special Court and the High Court have, therefore, rightly repelled the preliminary objections of the appellant. Accordingly we dismiss this appeal.

15. Appeal dismissed.