

Rakesh Kumar Jain

Vs

State through CBI, New Delhi

Criminal Appeal No. 555 of 1999

(Mr. K.T. Thomas and Mr. R.P. Sethi, JJ.)

08.08.2000

JUDGMENT

R.P. Sethi, J.:— The criminal complaint under Section 5(4) read with Sections 5(2) & (3) of the Official Secrets Act, 1923 (hereinafter called "the Act") was filed against the petitioner in the Court of Chief Metropolitan Magistrate, Delhi by the Union of India through Deputy Superintendent of Police, Central Bureau of Investigation, SPE, Anti Corruption Unit, New Delhi. The petitioner filed an application under Section 245 of the Code of Criminal Procedure in the Trial Court for being discharged on the grounds that the order of the prosecution had not been passed by an appropriate authority and that the cognizance could not have been taken as according to him the complaint was barred by limitation. The Magistrate rejected the application by his order dated 17.3.1995 and the revision filed in the High Court was dismissed vide the order impugned in this appeal. Relying on the provisions of Section 13(3) of the Act, the Trial Magistrate as well as the High Court held that Section 13(3) of the Act provided the taking of previous consent or sanction of the appropriate Government and the time required for obtaining such consent or sanction was to be excluded in terms of Section 470 (3) of the Code of Criminal Procedure. It may be noticed at this stage that limitation in the instant case is stated to have started from 24th April, 1985 and the complaint was filed in the Court on 19th May, 1988 apparently beyond 25 days of the period of limitation prescribed. The plea of the complainant was that period of 79 days required for obtaining the sanction order should be excluded in computing the period of limitation. Pointed reference was made to the order of sanction dated 21st April, 1988, copy of which has been placed on the paperbook of this appeal. Accepting the plea of the complainant, the complaint filed against the petitioner was held to be within time.

Mr. Vijay Bahuguna, Senior Advocate appearing for the petitioner submitted that as no sanction or consent was provided to be taken from the Government under Section 13(3) of the Act, the complaint admittedly filed after the period of limitation was required to be dismissed and the accused discharged in terms of Section 245 of the Code of Criminal Procedure. He did not urge and other point. In support of his contention has has relied upon the judgment of this Court in Electrical Manufacturing Co. Ltd. vs. D.D. Bhargava [1968 (1) SCR 394]. Shri Kirit N. Rawal, learned Additional Solicitor General, defending the impugned judgment has submitted that the judgment relied upon is distinguishable as the mandate of Section 13(3) is clear and unambiguous providing the obtaining of sanction before filing the complaint. He drew our attention towards the averments made in the petition and the order of sanction to urge that even if no sanction was required, the complaint be deemed to have been filed within time as the complainant and the other officials bonafidely believed that such a sanction was necessary before the filing of the complaint.

In order to appreciate the rival submissions of the learned counsel appearing in the case, a cursory

look at some of the provisions of the Act is necessary. The Act has been enacted to consolidate the law relating to official secrets. Section 5(2) provides that if any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketech, plan, model, article, note, document or information is communicated in contravention of the Act, he shall be guilty of an offence under the section for which punishment as provided under sub-section (4). Section 6 deals with and provides punishment for unauthorised use of uniforms, falsification of reports, forgery, personation and false documents. Section 11 authorises a Presidency Magistrate, Magistrate of first class or Sub-divisional Magistrate to issue such warrants under the circumstances as specified therein. Section 13 provides that no court other than that of the Magistrate of First Class specifically empowered in that behalf, shall try any offence under the Act. Sub-section (3) of Section 13, reads:

"No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from the Appropriate Government or some officer empowered by the Appropriate Government in this behalf".

Sub-section (3) provides that cognizance of offence under the Act can be taken only upon complaint which is (a) filed by order of appropriate government; or (b) filed under authority from the appropriate government; or (c) by some officer empowered by the appropriate government. No consent or sanction of the Government or any authority, as contemplated by Explanation to Sub-section (3) of Section 470 Cr.P.C., is required for filing the complaint under the Act. 'Consent' or 'sanction' envisaged under Section 470 Cr.P.C. cannot be equated with the 'order' or 'authority' for the purposes of filing the complaint as envisaged by Sub-section (3) of Section 13 of the Act. Specific provisions have been made in various statutes requiring previous consent or sanction for the purposes of launching of prosecution against the accused under those enactments. Explanation to Sub-section (3) of Section 470 Cr. P.C. obviously refers to such consents and sanctions and not the order or authority as required under the Act. Consent or sanction as are referred to in the Prevention of Corruption Act, Prevention of Food Adulteration Act, various Foodgrains Control Orders, and other similar enactments envisage the application of mind before the grant of such consent or sanction which is a quasi-judicial function, whereas the passing of order, individual or general, or conferment of authority individually or generally, or empowering a person for the purpose of filing a complaint is only an administrative action facilitating in identifying the complainant before the court for the purposes of filing and prosecuting the case under the Act. The Legislature, in its wisdom, thought it appropriate to exclude only such period which is required for obtaining the previous consent or sanction of the Government for institution of any prosecution of an offence and not obtaining of orders or authority or naming a person for the purpose of filing the complaint.

This Court in Electrical Manufacturing Co.Ltd.'s case (supra) while dealing with Section 6 of the Import and Export (Control) Act, 1947 which provided that no Court shall take cognizance of any offence punishable under the Act except upon complaint in writing made by an officer authorised in that behalf by the Central Government, by general or special order, held that the principles applicable to cases requiring sanction have no application to filing of complaints under the Act. Section 6 of that Act only insisted that complaint was to be made in writing and must have been filed by an officer authorised in that behalf. In that case the Court relied upon the observations made in S.A. Venkataraman vs. The State [1958 SCR 1037] wherein it was held:

"In construing the provisions of a statute it is essential for a court, in the first instance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the

case of any ambiguity that a court is entitled to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration other matters and the circumstances which led to the enactment of the statute".

Though Sub-Section (3) of Section 13 of the Act is not *pari materia* to Section 6 of the Import and Export (Control) Act, 1947, yet we find that the insistence of the order or authority is intended to ascertain the filing of the complaint under the Act without requiring consent or sanction to prosecute.

Learned Additional Solicitor General wanted to impress upon us that Sub-section (3) was in two parts - one dealing with the passing of the order which necessarily meant consent or sanction and the second dealing with the person authorised to file the complaint. On critical examination of the plain words of the sub-section and the object underlying it, we do not agree that the aforesaid sub-section has two parts, as argued. We conceive no doubt that sub-section (3) of Section 13 envisages only the filing of the complaint, by order of or under authority from the appropriate government or by an officer empowered by such Government. If the intention of the Legislature was to have the section in two parts, one dealing with the grant of consent or sanction by way of order and the other part dealing with the authority of the person to file the complaint, in that case after the words "made by order of", there should not have been a "comma" and the word "or". In that event for the word "or" the Legislature must have used the word "and" and omitted the comma.

The High Court was not justified in reading between the lines to hold:

"... that the requirement in Section 13(3) of the Official Secrets Act amounts to taking of previous consent or sanction of the appropriate Government. One should not go by the actual words used. What should be seen is the intention of the legislature. The purpose of providing for previous consent, sanction or authorisation from the appropriate government or other authority before launching prosecution is for the protection of the alleged offender so that irresponsible prosecution is not launched".

We, therefore, agree with the submissions made by Mr. Bahuguna that no sanction or consent is provided to be taken from the Government under Section 13(3) of the Act and the period spent in obtaining the orders for filing the complaint cannot be excluded under Explanation to Sub-section (3) of Section 470 Cr.P.C.

The mere fact that the complaint was filed 25 days after the expiry of the period of limitation, did not entitle the accused to seek his discharge under Section 245 Cr.P.C. because the complainant has, under law, a right to seek for extension of time under Section 473 Cr.P.C. The complainant could satisfy the Magistrate on the facts and circumstances of the case that the delay was explainable which was occasioned on account of their bonafide belief to obtain the sanction for the purpose of filing the complaint. After noticing the averments made in the complaint and perusing the record particularly order of the Government of India dated 21st April, 1988, authorising Sh. K.N. Tiwari, Deputy Superintendent of Police, Central Bureau of Investigation, New Delhi to lodge and complaint, it can be safely held that the complainant was entitled to extension of period of limitation under Section 473 Cr.P.C. No useful purpose would be served by again directing the complainant to approach the Trial Magistrate for the purposes of seeking extension of period of limitation. The complainant is held to have explained the delay in filing the complaint which required extension. The complaint is, therefore, held to be within time and the petitioner is not entitled to be discharged on this ground.

During the arguments it was pointed out that as various complaints filed after obtaining sanction from the Central Government and the courts having given the exclusion of the period in terms of Explanation to sub-section (3) of Section 470 Cr. P.C., this judgment of ours may amount to upsetting all such orders and after the pending on-going proceedings under the Act. The accused in those cases, in such event, may be lured to raise similar pleas as have been raised in this case for the purposes of quashing the proceeding on the basis of this judgment. Though the apprehension appears to be misconceived, yet we make it clear that the present judgment would not, in any way, affect the continuing proceedings in any court wherein the complaints, under the Act, have been filed after obtaining sanction and the courts have given remission of the period in terms of Explanation to Sub-Section (3) of Section 470 Cr. P.C. All such extensions shall be deemed to be valid even under Section 473 Cr.P.C.

There is no merit in this appeal which is dismissed with the direction to the Trial Magistrate to deal with the case in accordance with law and expedite the disposal of the complaint.