SUPREME COURT OF INDIA

Shivendra Kumar

Versus

State of Maharashtra

(D.P. Mohapatra and R.P. Sethi, J.)

Criminal Appeal No. 106 of 1996.

28.09.2000

JUDGMENT

D.P. Mohapatra, J. - This appeal is directed against the judgment of the Bombay High Court, Nagpur Bench, in Criminal Appeal No. 426 of 1991 in which the judgment/order of conviction and sentence passed by the Special Judge at Nagpur in Spl. Case No. 6 of 1987 against the appellant was confirmed.

2. The short resume of facts necessary for determination of the points raised on behalf of the parties may be stated thus :

On 11.9.1985 Kanayyalal, father of the complainant Gopichand (PW-1) died due to burn injuries. The appellant Dr. Singhal who was then a lecturer in Forensic Medicine Department of the Medical College at Nagpur, conducted the autopsy. Dr. Mukhi (PW-4) a post-graduate student in the Department of Surgery, who was a close friend of Gopichand, was with him when the autopsy was performed. It was alleged that at the time of autopsy, the appellant expressed that he found certain injury marks (contusions) on the person of Kanayyalal and if he mentioned those in the report the case would be a medico-legal one. Dr. Mukhi, apprehending that such a report may land has friend Gopichand in difficulty, requested the appellant not to mention the other injuries noticed by him. Thereafter the appellant through Dr. Mukhi asked for a sum of Rs. 5,000/- to be paid to him by Gopichand for omitting the injuries (contusions) found on the person of Kanayyalal. After some negotiation, the amount was fixed at Rs. 1,500/-. Thereafter Gopichand reported the matter to the Anti-Corruption Bureau vide the complaint Exh.-22. Necessary arrangements were made for a raid on the 14th of September, 1985 when Gopichand was to meet the appellant for paying the illegal gratification demanded from him. On 14.9.1985 at about 7.00 p.m. Gopichand accompanied by Dr. Mukhi and Manohar (PW-3) reached the house of the appellant. On the demand made by the appellant Gopichand handed over fifteen currency notes of Rs. 100/- denomination each (amounting to Rs. 1,500/-), which had been chemically treated with Phenolphthalein powder. The appellant placed the notes in his left side shirt pocket (Bengali shirt). At that time on getting the signal from Gopichand the Inspector, Aziz (PW-5) and other members of the raiding party reached the spot, recovered the tainted currency notes from the appellant; fingers of the left hand of the appellant were found to be tainted with Phenolphthalein powder. The panchnama (Exh.31-ii) was drawn up.

3. The defence of the appellant was that at the relevant time, while he was engaged in conversion with Dr. Mukhi, Gopichand surreptitiously planted those notes in the left side pocket of his shirt (Bengali shirt) about which he had no knowledge. Further, according to the appellant, when he shook hands with Gopichand at the time of his arrival in his (appellant) house, his left hand had come in contact with Phenolphthlien powder.

4. The learned Special Judge accepting the prosecution version rejected the defence case and recorded the finding of guilt against the appellant and convicted him of the charge under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the `Act') and ordered him to suffer R.I. for six months on each count and further to pay a fine of Rs. 500/- on each count, in default R.I. for 10 days on each count. The substantive sentences awarded on different counts were ordered to run concurrently. On appeal by the accused (appellant herein) the High Court found no merit in the contention raised on behalf of the appellant and dismissed the appeal. Hence this appeal by special leave granted by this Court.

5. The main thrust of the contentions of Shri Ranjit Kumar, learned counsel for the appellant was that the order sanctioning prosecution of the appellant was not passed by the competent authority, therefore, the entire proceeding in the criminal case was vitiated. The trial Court and the High Court erred in rejecting the contention raised on behalf of the appellant in this regard. It is the submissions of the learned counsel that the judgments of the Courts below are liable to be set aside and the appellant should be acquitted of the charges framed against him.

6. Learned counsel appearing for the State of Maharashtra supported the judgment of the High Court and contended that the objection regarding validity of the Sanction Order has been discussed and rejected, as evident from the judgment of the High Court. According to the learned counsel no interference by this Court in the judgment under challenge is warranted.

7. In view of the contention raised on behalf of the appellant, the point that arises for determination relates to the validity of the other sanctioning prosecution against the appellant.

8. Section 6 of the Act, which is the provision regarding previous sanction of prosecution, reads as follows :

"6. *Previous sanction necessary for prosecution* -

(1) No Court shall take cognizance of an offence punishable under Section 161 (or Section 164) or Section 165 of the Indian Penal Code (45 of 1860), or under sub-section (2) [or sub-section (3A)] of Section 5 of the 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 offence save by or with the sanction of the Central Government, (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 fro his office save by or with the sanction of the State Government, (of the) State Government;

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

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such a sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

9. On a reading of the provision, it is clear that Section 6(1)(b) is applicable in the present case. The said provision require that previous sanction of the State Government was necessary for prosecution of the appellant. Shri Ranjit Kumar drew our attention to the evidence of the Secretary, Medical Education Department, in which he stated *inter alia* that he had passed the order of sanction after persual of the papers placed before him and on being satisfied that the criminal prosecution should be launched against the appellant. In cross-examination the witness stated that he is not the competent authority to remove the appellant. On the basis of the above statement of the witness it is contended that since the Sanction Order has been passed by an officer who is not competent to pass the order of removal of the appellant, it is not a valid order of sanction. The learned counsel for the appellant also raised the contention that the Secretary, Medical Education Department is not the competent authority to pass the order since under the rules of business framed under Article 166 of the Constitution, the matter is to be dealt with by the Law and Justice Department.

10. We have carefully considered both the contentions raised by Shri Ranjit Kumar. We find no merit in either of them.

11. On a personal of Section 6 of the Act, it is plain that previous sanction is mandatorily required for launching prosecution against a public servant who is alleged to have committed an offence punishable under Section 161 or 164 or 165 of the I.P.C. or under sub-section (2) or sub-section (3A) of Section 5 of the Act. Indeed the language of the Section is in the form of a prohibition against any Court taking cognizance of such offences except with previous sanction. The authority/authorities to grant such sanction are specified in clauses (a), (b) and (c) of sub-section (1). Under clause (a) it is laid down that 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 sanction of the Central Government, of the Central Government. Under clause (b), it is provided that 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 the State Government; and under clause (c) in the case of any other person, of the authority competent to remove him from his office. The difference in the language used in clauses (a) and (b) on the one hand and clause (c) on the other, cannot be lost sight of. While in the former, the Central Government or the State Government, as the case may be, is to grant the sanction, under clause (c) it is specifically provided that the authority competent to remove the delinquent public servant from office is one

who is competent to grant the sanction. As noted earlier, Section 6(1)(b) is applicable in the present case. The said provision does not specify any particular officer as the competent authority to grant sanction. It only states that the State Government, without whose sanction the delinquent officer cannot be removed from office/post, is the competent authority to pass the order of sanction. From the Sanction Order, which is available on the record, it is clear that the Secretary, Medical Education Department passed/signed the order of sanction of prosecution against the appellant on behalf of the Governor. It is not the case of the appellant that the Secretary had no authority to act on behalf of the State Government. It follows that the order of sanction in the present case was passed by the Secretary of the Medical Education Department with the authority of the Governor of the State Government. No material on record has been brought to our notice to show that the Governor had issued any order authorising an officer other than the Secretary of the Department to pass order of sanction in the case. If that was the case, then the appellant should have produced the order or at least raised the contention that an Officer other than the Secretary had been authorised for that purpose. No such material appears to have been produced. When the Secretary was being examined in support of the Sanction Order passed by him such question was also put to him. Reliance is placed on a sentence in his deposition that he is not the authority to remove the appellant. This statement, without further material, cannot form the basis of the contention that the Secretary, Medical Education Department was not competent to pass the order of sanction on behalf of the State Government. The Government functions through it officers. The Secretary is the Head of the Department and the Principal Officer representing the State Government in the concerned Department. Unless specific material is produced to show that some other officer was competent to deal with the matter of sanction of prosecution against the appellant it can be reasonably assumed that the Secretary of the Department is the competent authority to pass the order of sanction. The object of Section 6 or for that matter Section 197 of the Criminal Procedure Code, which is *pari materia* provision, is that there should be no unnecessary harassment of a public servant; the idea is to save the public servant from the harassment which may be caused to him if each and every aggrieved or disgruntled person is allowed to institute a criminal complaint against him. The protection is not intended to be an absolute and unqualified immunity against criminal prosecution. In a case where it is seen that a Sanction Order has been passed by an authority who is competent under the law to represent the State Government, the burden is heavy on the party who challenges the authority of such order to show that the authority competent to pass the order of sanction is somebody else and not the officer who has passed the Sanction Order in question.

12. From the discussion in the judgment of the High Court under challenge, it appears that this question was raised before the High Court. The challenge against the authority of the Sanction Order was on two counts; firstly - want of application of mind to the relevant papers and secondly - that Dr. Tripathi-PW-2, Secretary of the Medical Education Department being not the appointing authority, could not remove the appellant from service and, therefore, he was not competent to pass the order of sanction. The High Court, on a perusal of the deposition of the witness held that the order of sanction was passed after due application of mind to the materials placed before the authority (PW-2). On perusal of the Sanction Order the High Court held that the order was issued by PW-2 by the Order and in the name of the Governor of

Maharashtra and in the absence of any challenge in cross-examination that the witness was not competence to act on behalf of the Government in the matter of sanction, the High Court construed the Sanction Order to be one passed by or on behalf of the State Government and, therefore, valid in law. In our considered view, the finding of the High Court in the facts and circumstances of the case is justified. Therefore, the contention raised by learned counsel for the appellant against the validity of the Sanction Order on the ground of lack of competence of the authority who passed the same has to be rejected.

13. The other contention raised by Shri Ranjit Kumar, learned counsel for the appellant, is that the Medical Education Department was not the Department to deal with the order of sanction; the Department competent to deal with the matter was the Law and Justice Department. He drew our attention to certain provisions of the Rules of Business framed by the Governor of Maharashtra under Article 166 of the Constitution allocating the business of the Government to different Departments. We have perused the provisions of the Rules of business. We do not find anything therein from which it could be said that the Law and Justice Department was the Department competent to deal with the matter of sanction of prosecution against the appellant. To our query whether the Medical Education Department was not the controlling Department of the State Government so far as the appellant was concerned, Shri Ranjit Kumar fairly stated that the said Department was the controlling Department of lecturers of Medical College which post the appellant was holing at the relevant time. In that view of the matter, we do not find any substance in this contention of Shri Ranjit Kumar also.

The appeal, being devoid of merit, is dismissed.

Appeal dismissed.