SUPREME COURT OF INDIA

B.S. Goraya

Vs

U.T. of Chandigarh

Appeal (Crl.) 1205 of 1999

(Arijit Pasayat and S. H. Kapadia, JJ)

23.07.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court dismissing the revision petition filed by the appellant. In the said revision challenge was to the order passed by learned Special Judge, Chandigarh deciding to frame charge against the appellant in terms of Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (in short the 'Act').

2. Background facts in a nutshell are as follows:

A charge sheet was filed against the appellant by the Central Bureau of Investigation Authorities (in short the 'CBI') Chandigarh. After completion of the investigation in the case it was registered on 6.8.1990, in terms of Section 13(1)(e) read with Section 13(2) of the Act. An application under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed for quashing the said FIR and the same was dismissed as withdrawn on 11.9.1996 . Liberty was however given to take all the available pleas as and when the same were available. An application under Section 227 of the Code was filed before the learned Special Judge Chandigarh for discharge stating that at the time of registration of the case he was serving as Colonel in the Army and was posted at

Chandimandir, he was placed under suspension and enquiry was initiated and ultimately he was dismissed from service with effect from 27.1.1993. No sanction, whatsoever was obtained against him. The order of dismissal was challenged by him and he was ultimately reinstated. In the application it was stated by the appellant that in terms of Section 19 of the Act, no Court can take cognizance of the offence punishable under Sections 7, 10, 11, 13, and 15 alleged to have been committed by a public servant except with the previous sanction of the competent authority and that so long as the appellant remained in service it was not possible to file any charge sheet against him without obtaining the requisite sanction. Several other pleas were also taken. Learned Special Judge held that the FIR was registered on 6.8.1998, while he was placed under suspension on 17.8.1990 and was dismissed from service on 27.1.1993. Charge sheet against him was filed on 29.3.1993 and, therefore, he was not in government service on the day the charge sheet was filed. Contention of the appellant was that since order of dismissal was set aside, he is deemed to be in service during the relevant period and the protection available under Section 19 of the Act was available to him. The plea did not find acceptance by the trial Court. Before the High Court also that plea was reiterated. But the High Court by the impugned judgment dismissed the same. The plea taken before the learned Special Judge and the High Court was reiterated in the appeal and it was submitted that since the order of dismissal was set aside for all practical purposes appellant continued to be in service and therefore the orders of the learned Special Judge and the High Court are not maintainable. Reliance was placed on State of U.P. v. Mohammad Nooh Â to buttress the plea. It was, therefore, submitted that if one is bidden to treat imaginary state of affairs as real, he will unless prohibited for doing so, also imagine the consequences and incidents, which if the putative state of affairs had in fact existed, must inevitably flow from or accompany it.

3. Mr. B. Dutta, learned Additional Solicitor General submitted that the decision in Mohammad Nooh's case (supra) on which emphasis is led by the appellant has no application to the facts of the present case.

4. In Kalicharan Mahapatra v. State of Orissa Â the effect of Section 19(3) of the Act was considered with the following words.

""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.

Among the provisions submitted 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 a public servant.

It must be remembered that in spite of bringing such a significant change to Section 197 of the Code in 1973, 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 offence

contemplated in the PC 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 PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

5. Section 19(3) of the Act reads as follows:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 :

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

6. In C.S.T. Uttar Pradesh v. Modi Sugar Mills Ltd. Â it was held that the deeming provision is operative for the purpose for which it has been created and cannot be extended beyond the legitimate field. The position was again reiterated in M/s. Braithwaite and Co.(India) Ltd. v. The Employees' State Insurance Corporation Â . It was observed that legal fiction is adopted in law for a limited and definite purpose only and there is no justification being extended beyond the purposes for which the legislature adopted.

7. In Bengal Immunity Co. Ltd. v. State of Bihar and others Â t was observed that explanation should be limited to the purposes the Constitution maker said and legal fiction has created for some definite purposes.

8. Again in The Commissioner of Income Tax, Bombay City, Bombay v. The Elphinstone Spinning and Weaving Mills Co. Ltd. Â it was held that the fiction cannot be carried further for what it is intended for. The view was re- iterated in K.S. Dharmadatan v. Central Government and Ors. Â where the factual situation is almost identical. The factual position was that the appellant in that case was being prosecuted for commission of offence punishable under Sections 120(B), 420, 471 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 5(1) of the Prevention of Corruption Act, 1947 (in short the 'Old Act'). At the time the charge sheet was filed and the cognizance was

taken by the Special Judge the appellant in that case had ceased to be a public officer. He filed an appeal before the President of India against the removal from service which was allowed by order dated 25.9.1972 and the order of removal from service was set aside. On his reinstatement appellant filed application before the Special Judge praying that all further proceedings be dropped inasmuch as the prosecution against him was initiated in the absence of proper and valid sanction. The Special Judge as well as the High Court rejected the prayer. Before this Court the point raised was that the appellant must be deemed to be in service with effect from the date from which the departmental proceedings were initiated against him and therefore he was a public servant at the time the cognizance was taken by the Special Judge as no sanction under Section 6 of the Old Act was obtained, the proceedings were void ab initio. This contention was not accepted by this Court with the observation that it is too well settled that the deeming fiction should be confined only for the purpose for which it is meant.

9. In Prakash Singh Badal and Another v. State of Punjab and Others Â it was observed at para 9 as follows:

"IPC provided for offences by or relating to public servants under Chapter IX including Sections 161 to 165A. The Old Act was enacted on 12.3.1947, with the object of making provisions for the prevention of bribery and corruption more effective. In 1952 a Committee headed by Dr. Bakshi Tek Chand was constituted. The said Committee examined the true intent and purpose of Section 6 of the Old Act. It was inter alia noted by the Committee as follows:

"Section 6 of the Act prescribes that no prosecution under Section 5(2) is to be instituted without the previous sanction of the authority competent to remove the accused officer from his office. The exact implications of this provision have on occasions given rise to a certain amount of difficulty. There have been cases where an offence has been disclosed after the officer concerned has ceased to hold office, e.g., by retirement. In such cases it is not entirely clear whether any sanction is at all necessary. Another aspect of the same problem is presented by the type of case which, we are told, is fairly common-where an officer is transferred from one jurisdiction to another or an officer who is lent to another Department, commits an offence while serving in his temporary office and then returns to his parent Department before the offence is brought to light. In a case of this nature doubts have arisen as to the identity of the authority from whom sanction for prosecution is to be sought. In our opinion there should be an unambiguous provision in the law under which the appropriate authority for according sanction is to be determined on the basis of competence to remove the accused public servant from office at the time when the offence is alleged to have been committed."

10. In view of the aforesaid analysis the order of the High Court does not suffer from any infirmity to warrant any interference.

11. The appeal is sans merit, deserves dismissal which we direct.