SUPREME COURT OF INDIA

State of West Bengal

Vs.

Shyamadas Banerjee

Crl.A.No.1395 of 2008

(Altamas Kabir and Markandey Katju JJ.)

03.09.2008

JUDGMENT

Altamas Kabir,J.

1. Leave granted.

2. The short point for decision in this appeal is whether a Special Judge exercising jurisdiction under the provisions of the *West Bengal Criminal Law Amendment (Special Courts) Act, 1949*, (hereinafter referred to as "the Special Courts Act, 1949"), can take cognizance of an offence against a member of the State Legislative Assembly (hereinafter referred to as "M.L.A.") when he had ceased to be a M.L.A., though the offence was alleged to have been committed when he was a sitting M.L.A.

3. On the basis of certain newspapers reports one Nikhil Kishore Roy filed a Public Interest Litigation in the Calcutta High Court against the respondent No.1, Shri Shyamadas Banerjee, alleging that he had misused his official position as M.L.A. by submitting forged and fictitious medical bills and fees for prescription for Rs.1,65,530.30 on account of the treatment of his wife and his mother between 8.9.1998 to 10.11.1998. The said Writ Petition, being No.1311 of 1999, was disposed of by a Division Bench of the Calcutta High Court on 23.6.1999, holding that the writ petitioner could have lodged a First Information Report or filed a complaint petition before the concerned Magistrate. Thereafter, on the basis of the F.I.R. lodged by Shri Nikhil Kumar Roy investigation was started under Section 468, 471, 420 and 511 of the Indian Penal Code, (hereinafter referred to as "IPC"), by the Hare Street Police Station. The respondent No.1 surrendered before the Chief Metropolitan Magistrate, Calcutta, on 17.1.2000, and was released on bail. Charge-sheet was filed on 16.1.2003, on the basis whereof the Special Court assumed jurisdiction under the *Special Courts Act, 1949*, against the respondent No.1 treating him to be a "public servant" and framed charges against him under Section 420/468/471 and 511 IPC.

4. Aggrieved by the order of the Special Judge 4th Court, Calcutta, taking cognizance on the basis of the charge-sheet filed, the respondent No.1 moved the High Court in revision (CRR No.1931 of 2003) alleging that the cognizance taken was illegal since no sanction had been obtained by the investigating agency to file a charge-sheet against him. The High Court disposed of the revision petition granting liberty to the trial Judge to proceed with the matter while the respondent No.1 was given liberty to adjudicate the points which had been taken by him in the revision application before the learned trial Judge. Such application was made by the petitioner on 10.9.2003, but the same was rejected by the learned trial Judge which impelled the respondent No. 1 to once again move the High Court in revision)CRR No.2364 of 2003).

5. During the hearing of the revision application, at the very outset it was urged on behalf of the respondent No.1 that since he had ceased to be a M.L.A. when cognizance was taken by the learned Special Judge, such cognizance was bad and the proceedings taken on the basis thereof stood vitiated. It was contended that the Special Courts Act, 1949, enabled a Special Court to proceed against a M.L.A. defined as a "public servant" under the Prevention of Corruption Act, 1947 and not under the *Prevention of Corruption Act, 1988*. It was also contended that even if the respondent No.1 was a M.L.A. at the time of commission of the alleged offence, he ceased to be so when the charge-sheet was filed and the cognizance was taken thereupon. It was further contended that there was no specific statutory provision which provides that even though a person ceases to be a public servant, he could still be deemed to be a public servant for the purpose of trial under the provisions of the *Special Courts Act, 1949*, in respect of offences alleged to have committed before he ceased to be a public servant. It was submitted that, in the absence of such a provision, the charges framed and cognizance taken by the Special Judge was bad in law and liable to be quashed.

6. After examining the aforesaid question in detail, the learned single Judge of the High Court was of the view that the respondent No.1 was neither a M.L.A. nor a public servant when cognizance was taken by the Special Judge. No sanction was, therefore, necessary for his prosecution, but at the same time the trial of the case could not be proceeded by the Special Judge. On the basis of the aforesaid conclusion, the High Court allowed the revision application and quashed the cognizance taken by the Special Court, but observed that the same would not prevent the prosecuting machinery from initiating further and/or fresh proceedings in accordance with law before the Court having jurisdiction to entertain the same.

7. It is against the said order of the High Court that the instant appeal has been filed by the State of West Bengal.

8. On behalf of the appellant it was submitted that in view of the provisions of Section 4 of the *Special Courts Act, 1949*, the High Court had erred in quashing the cognizance taken by the Special Court. It was contended that it was in

his capacity as M.L.A. that the respondent No.1 had submitted two claims for reimbursement of Rs.1,65,530.30 towards medical expenses said to have been incurred for treatment of his wife and mother at a particular nursing home. The claim included the price of medicines said to have been purchased from a particular shop. However, when the bills were scrutinized it was found that there was no existence of either the nursing home or the medicine shop at the addressed provided by the respondent no.1, who had abused his position as M.L.A. for wrongful gain and to cheat the Government exchequer.

9. One of the other points urged on behalf of the appellant is that the earlier writ petition filed by respondent No.1 for quashing of the FIR had been rejected on 10.12.1999, and, thereafter, on completion of the investigations charge-sheet was filed against the respondent No.1 before the Special Judge 4th Court, Calcutta, who, assumed jurisdiction under the provisions of the Special Courts Act, 1949, treating the respondent No.1 to be a public servant. It was urged that since the offence complained of was said to have been committed when the respondent No.1 was a sitting M.L.A., the charge-sheet had been rightly filed before the Special Judge on which cognizance was taken and charges were framed.

10. Mr. Altaf Ahmed, learned Senior Counsel appearing for the appellant, submitted that the question as to whether a M.L.A. is a public servant within the meaning of Section 21(12)(a) IPC was no longer res integra having been decided by a Constitution Bench of this Court in the case of *P.V.Narasimha Rao vs. State (C.B.I./S.P.E.)*[1] wherein in clear and unambiguous language it was held that Members of Parliament and M.L.A.s are public servants.

11. On the question of sanction for prosecution it was urged that if a public servant takes part in any activity, which is not part of his professional duties, no sanction for prosecution, as contemplated in Section 197 Cr.P.C., would be necessary to prosecute such a public servant before the Special Judge. In this regard, reference was made to another Constitution Bench decision of this Court in *Satwant Singh vs. The State of Punjab*[2].

12. It was contended that in the facts of the case the order of the High Court could not be sustained and was liable to be set aside.

13. The stand of the respondent No.1, on the other hand, was that since the prosecution had been launched under the Special Courts Act, 1949, having regard to Section 10 thereof, the provisions of the *Prevention of Corruption Act, 1947* (hereinafter referred to as "the 1947 Act") would be applicable in the instant case and the respondent No.1 would have to answer the description of "public servant" as defined under the said Act and consequently under Section 21 IPC for such prosecution. According to the respondent No.1, it would, therefore, have to be decided for the purpose of maintaining the

prosecution whether an accused who was a public servant on the date of commission of the offence would also have to be a public servant when cognizance of the offence was taken by the court.

14. Mr. Pradip Ghosh, learned Senior Counsel who appeared for the respondent No.1, submitted that the High Court had arrived at the right conclusion though on a reasoning which was faulty. Reference was made to the provisions of Section 21 IPC and in particular clause

> "(a) of the 12th description thereof, in support of the stand taken by the respondent No.1 that on the date when cognizance was taken by the Special Court he had ceased to be a public servant and that the Special Judge could not, therefore, have assumed jurisdiction in the matter."

15. Mr. Ghosh submitted that the aforesaid question had been answered by the Constitution Bench in *R.S.Nayak vs. A.R. Antulay*[3] in which in no uncertain terms it had been held that a M.L.A. is not a public servant within the meaning of Section 21 IPC and that no sanction was necessary to prosecute a M.L.A. for any offence alleged to have been committed by him while he was a sitting M.L.A. when he ceased to be a M.L.A. Consequently, the Special Court had no jurisdiction to either entertain the charge- sheet filed on the basis of the FIR lodged by Shri Nikhil Kumar Roy or to take cognizance on the basis thereof.

16. Regarding the decision in P.V.Narasimha Rao's case (supra), the stand taken on behalf of the respondent No.1 was that in the said case the Constitution Bench was considering a prosecution under the *Prevention of Corruption Act, 1988*, wherein a "public servant" has been differently defined as against the definition in the 1947 Act.

17. Mr. Ghosh submitted that the instant case was one of inherent lack of jurisdiction since the Special Judge under the 1949 Act had no jurisdiction over the respondent No.1 who ceased to be a public servant when his term as a M.L.A. came to an end. Mr. Ghosh submitted that, having regard to the decision in A.R.Antulay's case (supra) the respondent No.1 was never a public servant within the meaning of Section 21 IPC.

18. From the case made out on behalf of the respective parties, there is no dispute that the respondent No.1 was elected as M.L.A. on 16.5.1996 and he ceased to be so on 20.7.2000. There is also no dispute that the FIR was lodged against the respondent No.1 on 28.6.1999 when he was a sitting M.L.A., and that charge-sheet was filed on the basis thereof on 16.1.2003 and charges were framed on 29.7.2003. In other words, while the alleged offence was said to have been committed when the respondent No.1 was a sitting M.L.A., charges were framed and cognizance was taken long after he had ceased to be a M.L.A. Accordingly, the main question which falls for decision in this case is whether on the respondent No.1 ceasing to be a M.L.A. the Special Judge under the Special Courts Act, 1949, could have assumed jurisdiction in the matter.

19. As to whether a Member of Parliament or a Member of a Legislative Assembly are public servants or not within the meaning of Section 21 IPC, has fallen for the decision of the two Constitution Benches of this Court. While in A.R. Antulay's case (supra) it has been categorically held that a M.L.A. is not a public servant within the meaning of Section 21 IPC, in P.V. Narasimha Rao's case (supra) the said view was distinguished and the majority view was that a Member of Parliament and the State Legislatures are public servants for the purpose of the Prevention of Corruption Act, 1988.

20. Even if we proceed on the basis of the view expressed by the Constitution Bench in P.V.Narasimha Rao's case, we are still faced with the question whether the same could be applied in regard to assumption of jurisdiction by the Special Court under the *Special Courts Act, 1949*, wherein reference has been made to public servant as defined in the *Prevention of Corruption Act, 1947*, and by extension Section 21 IPC. In the said context it is necessary to refer to the provisions of Section 4 of the Special Courts Act, 1949, which reads as follows:

> "4. Offences to be tried by Special Courts.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law in force, the offences specified in the schedule shall be triable by Special Courts only:
>
> Provided that when trying a case, a Special Court may also try any offence other than the offence specified in the Schedule, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial: Provided further that every offence specified in the Schedule shall be tried by the Special Court constituted for the particular area within which the offence was committed and where there are more than one Special Court constituted for any particular area, by such one of them as may be specified by the State Government by notification in the Official Gazette."

21. The schedule referred to in Section 4 of the Act provides for offences triable by Special Judges. Paragraphs 2 and 3 of the said Schedule provides as follows:-

> "2. An offence punishable under Section 409 of the Indian Penal Code (Act XLV of 1860), if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government or by a person dealing with property belonging to a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), as an agent of such Government company in respect of property - with which he is entrusted, or over which he has dominion in his capacity of a public servant or in the way of his business as such agent.
>
> 3. An offence punishable under Section 417 or Section 420 of the Indian Penal Code, if committed by a public servant or by a person dealing

with property belonging to Government as an agent of Government or by a person dealing with property belonging to a Government company as defined in Section 617 of the Companies Act, 1956 as an agent of such Government company, while purporting to act as such public servant or agent."

22. Section 2 of the 1947 Act which defines public servants is also reproduced hereinbelow:

"2. Interpretation - For the purpose of this Act. `public servant' means a public servant as defined in Section 21 of the Indian Penal Code."

23. In other words, in order to fall within the scope of the 1947 Act an accused person will have to answer the definition of "public servant" as indicated in Section 21 IPC. The decision in P.V. Narasimha Rao's case (supra) was dealing with a public servant as defined in Section 2(c)(viii) of the 1988 Act, which reads as follows:

"2. Definitions - In this Act, unless the context otherwise requires -
(a) xxx
(b) xxx
(c) "public servant" means,-
(i) xxxxx
(ii) xxxxx
(iii) xxxxx
(iv) xxxxx
(v) xxxxx
(vi) xxxxx
(vii) xxxxx
(viii)any person who holds an office by virtue of which he is authorized or required to perform any public duty."

24. Since in the instant case we are concerned with the prosecution under the Special Courts Act, 1949, we will have to confine ourselves to the definition of "public servant" within the scope of the 1947 Act which includes the definition of "public servant" within the meaning of Section 21 IPC. The said provision having been considered by the Constitution Bench in A.R. Antulay's case, we are not expressing any opinion on that score. However, the other question which still remains to be answered is whether the provisions of the *Special Courts Act, 1949*, would continue to apply to the respondent No.2 when he ceased to be a public servant once he had completed his term as M.L.A., even if the decision in P.V.Narasimha Rao's case that Members of Parliament or State Legislative Assembly are public servants for the purpose of the Prevention of Corruption Act, 1988, is applied to the facts of this case.

25. The aforesaid question has also been answered by the Constitution Bench in A.R. Antulay's case (supra) while considering the provisions of Section 6 of the 1947 Act which deals with grant of sanction for prosecution of public servants. Faced with a similar situation where prosecution had been launched against Shri A.R. Antulay when he was Chief Minister of Maharashtra, but had ceased to hold the said post though he continued to be a sitting M.L.A. of the State Legislative Assembly when cognizance was taken, the Constitution Bench, inter alia, held that the object of providing for previous sanction for prosecution of public servants was to save the public servant from harassment of frivolous or unsubstantiated allegations. It was observed that the policy under Section 6 is that there should not be unnecessary harassment of a public servant. It was also held that the accused must be a public servant when he is alleged to have committed the offence which could be committed by public servants. While holding further that a trial without a valid sanction, where one is necessary under Section 6, is a trial without jurisdiction, it was also held that a valid sanction is required when the Court is called upon to take cognizance of the offence. If, therefore, when the offence is alleged to have been committed, the accused was a public servant, but by the time the Court takes cognizance of the offence alleged to have been committed by him he had ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. As a necessary corollary, if the accused ceases to be a public servant when the Court takes cognizance of the offence, Section 6 is not attracted. In other words, the accused loses his protective cover under Section 6 of the 1947 Act or Section 197 Cr.P.C., and he is open to prosecution without sanction having to be obtained, which also necessarily means that the Special Judge under the Special Courts Act, 1949, would cease to have jurisdiction over the accused.

26. The issue which was decided in P.V. Narasimha Rao's case (supra) which has been relied upon on behalf of the appellant, deals with a situation contemplated under the Prevention of Corruption Act, 1988, while in the instant case we are concerned with a prosecution under the Special Courts Act, 1949, which specifically refers to the provisions of Section 21 IPC. That is the distinguishing feature of the two decisions and since we are considering a case involving the provisions of the 1947 Act, we are of the view that the decision in A.R. Antulay's case is more apposite to the facts of the instant case.

27. Since the respondent No.1 ceased to be a Member of the State Legislature at a point of time when cognizance was taken by the Special Judge 4th Court, Calcutta, such cognizance and the proceedings taken on the basis thereof must be held to have been vitiated.

28. We, accordingly, dismiss the appeal and confirm the decision of the High Court.

[1]*(1998) 4 SCC 626*
[2]*AIR 1960 SC 266*
[3]*(1984) 2 SCC 193*