SUPREME COURT OF INDIA

C.K.Jaffer Sharief

Vs.

State Through CBI

(P.Sathasivam and Ranjan Gogoi JJ.)

09.11.2012

JUDGMENT

RANJAN GOGOI, J

1. Leave granted.

2. The judgment and order of High Court of Delhi dated 11.4.2012 affirming the order of the learned trial court rejecting the application filed by the appellant for discharge in the criminal prosecution initiated against him has been challenged in the present appeal.

3. The above order of the High Court challenged in the present proceeding came to be passed in the following facts:

> An FIR dated 03.06.1998 was filed by the Superintendent of Police, CBI/ACU.XX/New Delhi alleging commission of the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') by the appellant during his tenure as the Union Railway Minister from 21.06.1991 to 13.10.1995. Commission of the offence under the aforesaid provision of the Act was alleged on the basis that the appellant had dishonestly made the Managing Directors of RITES (Rail India Technical Economics Services Ltd.) and IRCON (Indian Railway Construction Co. Ltd.) to approve the journeys of S/Shri B.N. Nagesh, the then Additional PS to Railway Minister, S.M. Mastan and Murlidharan, Stenographers in the railway cell and one Shri Samaullah (domestic help of the appellant) to London in connection with the medical treatment of the appellant. It was alleged in the FIR that the two Public Sector Undertakings

did not have any pending business in London at the relevant point of time and the journeys undertaken by the aforesaid four persons were solely at the behest of the appellant who had compelled the services of the concerned employees to be placed in the two undertakings in question. Pecuniary loss to the Public Sector Undertakings was, therefore, caused by the wrongful acts of the appellant.

4. On the basis of the aforesaid FIR, Case no. RC.2(A)/98-ACU.IX was registered and investigated upon. Final report of such investigation was submitted in the court of learned Special Judge, Patiala House, New Delhi on 22.10.2005. In the said final report it was, inter-alia, stated that there was "ample documentary and oral evidence to prove the facts and circumstances of the case, as stated above, which constitute offences punishable under Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988". Sanction for prosecution, under Section 19 of the Act was however refused by the competent authority. Accordingly, in the final report it was mentioned that the proceedings against the accused appellant be dropped.

5. The learned trial court by its order dated 25.08.2006 declined to accept the closure report filed by the investigating agency and observed that there appears to be prima facie evidence with regard to commission of offence under Section 13(2) read with 13 (1)(d) of the Act and, possibly, the entire material collected in the course of investigation had not been placed before the sanctioning authority.

6. Pursuant to the order of the learned trial court the matter was once again looked into by the investigating agency who submitted another report dated 01.08.2007 stating that all materials collected during investigation had been placed before the authority competent to grant sanction including such clarifications as were sought from time to time.

7. On receipt of the aforesaid report dated 01.08.2007, the learned trial court by its order dated 26.07.2008 took cognizance of the offence punishable under Section 13 (2) read with Section 13(1)(d) of the Act.

8. Thereafter, the accused appeared before the learned trial court and filed an application seeking discharge which being refused by the order of the trial court dated 27.01.2010, the appellant moved the High Court of Delhi under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure for setting aside the order dated 27.01.2010 passed by the learned Special Judge, CBI,

Rohini, New Delhi and for quashing of the criminal proceeding pending before the said court. The aforesaid application having been dismissed by the impugned judgment and order dated 11.04.2012 of the High Court of Delhi the present appeal has been filed.

9. We have heard Shri P.P. Rao, learned senior counsel for the appellant and Shri Mohan Jain, learned ASG for the State.

10. Shri Rao, learned senior counsel for the appellant has submitted that he would not assail the impugned order of the High Court on the ground of absence of requisite sanction either under the provisions of the Act or under the provisions of the Cr.P.C. Shri Rao has submitted that the aforesaid issue need not be gone into in the present appeal in as much as the allegations made in the FIR and facts appearing from the reports of the investigating agency, ex facie, do not make out the commission of any offence by accused-appellant under Section 13(1)(d) of the Act so as to warrant the continuance of the prosecution against him. Drawing the attention of the court to the consideration of the statements of the witnesses, examined in the course of investigation, by the High Court, particularly, Shri B.N. Nagesh (PW 33), Shri Murlidharan (PW 34) and Shri S.M. Mastan it is contended that from the statements of the aforesaid persons it is crystal clear that while in London the persons accompanying the appellant had performed various official duties. It is submitted that the accused-appellant, while undergoing medical treatment in London, did not cease to be the Railway Minister and during the period of his treatment the appellant had attended to the work and duties connected with the Ministry as well as the RITES and IRCON of which bodies, as the Railway Minister, the appellant was the Head. The persons who accompanied the appellant to London thereby causing alleged pecuniary loss to the Public Sector Undertakings had actually assisted the Minister in due discharge of his duties while abroad. The said fact having appeared from the statements of the persons recorded by the investigating authority under Section 161 Cr.P.C., according to Shri Rao, ex facie, the ingredients necessary to constitute the offence under Section 13(1)(d) are not present. It is therefore contended that the High Court has grossly erred in not quashing the criminal proceeding against the appellant and in permitting the same to continue.

11. Opposing the contentions advanced on behalf of the accused- appellant, Shri Jain, learned ASG has urged that the sole issue agitated by the accused-appellant before the learned trial court was with regard to the inherent lack of jurisdiction to continue with the prosecution in the absence of sanction either under the provisions

of the Act or under the provisions of the Cr.P.C. Before the High Court the validity of the order dated 27.1.2010 of the learned trial court refusing to discharge the accused was the only issue raised. It is, therefore not open to the appellant to widen the ambit of the challenge to the validity of the impugned criminal proceeding as a whole. In this regard the learned ASG has placed before us the application filed by the accused-appellant for discharge; the trial court's order dated 27.01.2010 as well as the relevant part of the order dated 11.04.2012 of the High Court. Shri Jain has further submitted that in the present case the requirement of obtaining sanction under Section 197 Cr.P.C. does not arise in view of the specific allegations in the FIR which pertain to commission of the offence under section 13(2) read with section 13(1)(d) of the Act. Admittedly, the accused-appellant having ceased to be a Minister as well as a Member of Parliament w.e.f. 10.11.2000 no question of obtaining sanction under Section 19 can arise in the present case, it is argued. Shri Jain has also submitted that in any case, the materials brought on record, at this stage, cannot conclusively prove that the offence as alleged has not been committed by the accused- appellant. The matter has to be determined in the course of the trial which may be permitted to commence and be brought to its logical conclusion.

12. At the very outset we wish to make it clear that we do not agree with the contention advanced by the learned ASG to the effect that the only issue raised by the appellant before the High Court was with regard to the absence of sanction for the impugned prosecution. While the above may have the complexion of the proceeding before the learned trial court, in the application filed by the accused-appellant before the High Court the validity of the continuance of the criminal proceeding as a whole was called into question, inter-alia, on the ground that ex-facie the ingredients of the offence under Section 13 (1)(d) are not made out on the allegations levelled. We have already noticed that before the High Court two reliefs had been prayed for by the appellant, namely, interference with the order of the learned trial court dated 27.01.2010 as well as for quashing of the criminal proceeding. In view of the aforesaid position demonstrated by the relevant records we do not find any reason to confine the scope of the present appeal to the issue of sanction and test the legal validity of the order of the learned trial court dated 27.1.2010 and the impugned order of the High Court dated 11.04.2012 only on that basis. Rather we are of the view that the accused-appellant having raised issues concerning the validity of the proceeding as a whole on the ground that, ex facie no offence is disclosed, it is open for the appellant to raise the said question in the present appeal.

13. Section 13(1)(d) of the Act may now be extracted below :

> "Section 13: Criminal misconduct by a public servant –
>
> (1) a public servant is said to commit the offence of criminal misconduct,-
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> (a)……
>
> (b)……
>
> (c) ..…
>
> (d) if he,-
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (iii) while holding office as a public servant, obtains for any persons any valuable thing or pecuniary advantage without any public interest. Or
>
> (e)……."

14. A bare reading of the aforesaid provision of the Act would go to show that the offence contemplated therein is committed if a public servant obtains for himself or any other person any valuable thing or pecuniary advantage by corrupt or illegal means; by abusing his position as public servant or without any public interest. The aforesaid provision of the Act, i.e, Section 13(1)(d) are some what similar to the offence under Section 5(1)(d) of the Prevention of Corruption Act, 1947.

15. Adverting to the facts of the present case it has already been noticed that the only allegation against the appellant is that he had prevailed upon RITES and IRCON to take the four employees in question on "deputation" for the sole purpose of sending them to London in connection with the medical treatment of the appellant. It is also alleged that neither RITES nor IRCON had any pending business in London and that none of the four persons had not performed any duty pertaining to RITES or IRCON while they were in London; yet the to and fro air

fare of all the four persons was paid by the above two Public Sector Undertakings. On the said basis it has been alleged that the accused appellant had abused his office and caused pecuniary loss to the two Public Sector Undertakings by arranging the visits of the four persons in question to London without any public interest. This, in essence, is the case against the accused-appellant.

16. A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to the present case is to be found in the work "Criminal Law" by K.D. Gaur. The relevant passage from the above work may be extracted below:

> "Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that their can be no crime without a guilty mind. To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively."

17. It has already been noticed that the appellant besides working as the Minister of Railways was the Head of the two Public Sector Undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the Rules or Norms applicable were violated or the decision taken shows an

extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in M. Narayanan Nambiar vs. State of Kerala[1] while considering the provisions of section 5 of Act of 1947. If the totality of the materials on record indicate the above position, we do not find any reason to allow the prosecution to continue against the appellant. Such continuance, in our view, would be an abuse of the process of court and therefore it will be the plain duty of the court to interdict the same.

18. For the aforesaid reasons we allow this appeal, set aside the judgment and order dated 11.04.2012 of the High Court and the order dated 27.01.2010 of the learned trial court and quash the proceedings registered against the accused-appellant.

[1] (1963) Supp. (2) SCR 724