SUPREME COURT OF INDIA

Anil Kumar

Vs.

M.K. Aiyappa

Crl.A.Nos.1590-1591 of 2013

(K.S. Radhakrishnan and A.K. Sikri JJ.)

01.10.2013

JUDGMENT

K.S. RADHAKRISHNAN, J.

1. Leave granted.

2. We are in this case concerned with the question whether the Special Judge/Magistrate is justified in referring a private complaint made under Section 200 Cr.P.C. for investigation by the Deputy Superintendent of Police – Karnataka Lokayukta, in exercise of powers conferred under Section 156(3) Cr.P.C. without the production of a valid sanction order under Section 19 of the Prevention of Corruption Act, 1988.

3. The Appellants herein filed a private complaint under Section 200 of Cr.P.C. before the Additional City Civil and Special Judge for Prevention of Corruption on 9.10.2012. The complaint of the Appellants was that the first respondent with mala fide intention passed an order dated 30.6.2012 in connivance with other officers and restored valuable land in favour of a private person. On a complaint being raised, the first respondent vide order dated 6.10.2012 recalled the earlier order. Alleging that the offence which led to issuance of the order dated 30.6.2012 constituted ingredients contained under Section 406, 409, 420, 426, 463, 465, 468, 471, 474 read with Section 120-B IPC and Section 149 IPC and Section 8, 13(1)(c), 13(1)(d), 13(1)(e), 13(2) read with Section 12 of the Prevention of Corruption Act, a private complaint was preferred under Section 200 Cr.P.C. On receipt of the complaint, the Special Judge passed an order on 20.10.2012 which reads as follows :-

"On going through the complaint, documents and hearing the complainant, I am of the sincere view that the matter requires to be referred for investigation by the Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore Urban, under Section 156(3) of Cr.P.C. Accordingly, I answer point No.1 in the affirmative.

Point No.2 : In view of my finding on point No.1 and for the foregoing reasons, I proceed to pass the following :

ORDER

The complaint is referred to Deputy Superintendent of Police – 3 Karnataka Lokayukta, Bangalore Urban under Section 156(3) of Cr.PC for investigation and to report."

4. Aggrieved by the said order, the first respondent herein approached the High Court of Karnataka by filing Writ Petition Nos.13779-13780 of 2013. It was contended before the High Court that since the appellant is a pubic servant, a complaint brought against him without being accompanied by a valid sanction order could not have been entertained by the Special Court on the allegations of offences punishable under the Prevention of Corruption Act. It was submitted that even though the power to order investigation under Section 156(3) can be exercised by a Magistrate or the Special Judge at pre- cognizance stage, yet, the governmental sanction cannot be dispensed with. It was also contended that the requirement of a sanction is the pre-requisite even to present a private complaint in respect of a public servant concerning the alleged offence said to have been committed in discharge of his public duty.

5. The High Court, after hearing the parties, took the view that the Special Judge could not have taken notice of the private complaint unless the same was accompanied by a sanction order, irrespective of whether the Court was acting at a pre-cognizance stage or the post- cognizance stage, if the complaint pertains to a public servant who is alleged to have committed offences in discharge of his official duties. The High Court, therefore, quashed the order passed by the Special Judge, as well as the complaint filed against the appellant. Aggrieved by the same, as already stated, the complainants have come up with these appeals.

6. We have heard the senior counsel on either side. Shri Kailash Vasdev, learned senior counsel appearing for the appellants, submitted that if the interpretation of

the High Court is accepted, then the provisions of Section 19(3) of the PC Act would be rendered otiose. Learned senior counsel also submitted that, going through the above mentioned provision, the requirement of sanction under Section 19(1) is only procedural in nature and the same can be cured at a subsequent stage of the proceedings even after filing of the charge-sheet and hence the requirement of "previous sanction" is merely directory and not mandatory. Reliance was placed on the judgments of this Court in R. S. Nayak v. A.R. Antulay (1984) 2 SCR 495 and P. V. Narasimha Rao v. State (CBI/SPE) (1998) 4 SCC 626. Learned senior counsel further submitted that the High Court also committed an error in holding that the sanction was necessary even while the Court was exercising its jurisdiction under Section 156(3) Cr.P.C. Learned senior counsel submitted that the order directing investigation under Section 156(3) Cr.P.C. would not amount to taking cognizance of the offence. Reference was made to the judgments of this Court in Tula Ram and Others v. Kishore Singh (1977) 4 SCC 459 andSrinivas Gundluri and Others v. SEPCO Electric Power Construction Corporation and Others (2010) 8 SCC 206.

7. Shri Uday U. Lalit, learned senior counsel appearing for the respondents, on the other hand, submitted that the question raised in this case is no more res integra. Reference was made to the judgment of this Court in Subramanium Swamy v. Manmohan Singh and another (2012) 3 SCC 64. Learned senior counsel submitted that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duties. The purpose of obtaining sanction is to see that the public servant be not unnecessarily harassed on a complaint, failing which it would not be possible for a public servant to discharge his duties without fear and favour. Learned senior counsel also placed reliance on the judgment of this Court in Maksud Saiyed v. State of Gujarat and Others (2008) 5 SCC 668 and submitted that the requirement of application of mind by the Magistrate before exercising jurisdiction under Section 156(3) Cr.P.C. is of paramount importance. Learned senior counsel submitted that the requirement of sanction is a prerequisite even for presenting a private complaint under Section 200 Cr.P.C. and the High Court has rightly quashed the proceedings and the complaint made against the respondents.

8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3) Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and

held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

9. We will now examine whether the order directing investigation under Section 156(3) Cr.P.C. would amount to taking cognizance of the offence, since a contention was raised that the expression "cognizance" appearing in Section 19(1) of the PC Act will have to be construed as post-cognizance stage, not pre-cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of the PC Act. The expression "cognizance" which appears in Section 197 Cr.P.C. came up for consideration before a three-Judge Bench of this Court in State of Uttar Pradesh v. Paras Nath Singh (2009) 6 SCC 372, and this Court expressed the following view:

> "6. .....And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary

the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

xxx xxx xxx

xxx xxx xxx"

In State of West Bengal and Another v. Mohd. Khalid and Others (1995) 1 SCC 684, this Court has observed as follows:

"It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."

10. The meaning of the said expression was also considered by this Court in Subramanium Swamy case (supra). The judgments referred to herein above clearly indicate that the word "cognizance" has a wider connotation and not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

11. A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options. He may take cognizance of the offence under Section 190 Cr.P.C. or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to

take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) Cr.P.C.

12. We may now examine whether, in the above mentioned legal situation, the requirement of sanction is a pre-condition for ordering investigation under Section 156(3) Cr.P.C., even at a pre-cognizance stage. Section 2(c) of the PC Act deals with the definition of the expression "public servant" and provides under Clauses (viii) and (xii) as under:

> "(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty.
>
> (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority."
>
> The relevant provision for sanction is given in Section 19(1) of the PC Act, which reads as under:
>
> "19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 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 office save by or with the sanction of the Central Government, of that Government;
>
> b) in the case of a person who is employed in connection with the affairs of a State and is not removeable from his office save by or with the sanction of the State Government, of that Government;
>
> c) in the case of any other person, of the authority competent to remove him from his office."

Section 19(3) of the PC Act also has some relevance; the operative portion of the same is extracted hereunder:

"Section 19(3) – Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

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 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) xxx xxx xxx

c) xxx xxx xxx"

13. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramanium Swamy cases (supra).

14. Further, this Court in Criminal Appeal No. 257 of 2011 in the case of General Officer, Commanding v. CBI and opined as follows: "Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him….. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio."

15. We are of the view that the principles laid down by this Court in the above referred judgments squarely apply to the facts of the present case. We, therefore, find no error in the order passed by the High Court. The appeals lack merit and are accordingly dismissed.