SUPREME COURT OF INDIA

Chandan Kumar Basu

Vs.

State of Bihar

Crl.A.No.1359 of 2014

(Sudhansu Jyoti Mukhopadhaya and Ranjan Gogoi JJ.)

07.07.2014

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.

2. The appellant, at the relevant point of time, was a member of the Indian Administrative Service and serving on deputation as the Administrator-cum-Managing Director of the Bihar State Housing Cooperative Federation Ltd. The aforesaid Federation is a society registered under the Bihar Cooperative Societies Act, 1935. On the basis of the various complaints made against the appellant, FIR Nos. 837/2002 dated 16.12.2002, 859/2002 and 860/2002 both dated 24.12.2002, 19/2003 dated 07.01.2003 and 41/2003 dated 18.01.2003 under Sections 409/420/467/468/ 471/34/120-B of the Indian Penal Code (hereinafter for short ˜IPC) were registered at Police Station Gardani Bagh (Shastri Nagar), Patna. On completion of investigation in all the cases, chargesheets were submitted before the competent court on the basis of which the learned Chief Judicial Magistrate, Patna took cognizance of the offences alleged against the appellant. Aggrieved, the appellant filed revision applications before the learned Sessions Judge, Patna challenging the orders passed by the learned Trial Court, primarily, on the ground that the said orders were without jurisdiction and incompetent in law inasmuch as sanction for prosecution of the appellant under Section 197 of the Code of Criminal Procedure (hereinafter for short ˜the Code) was

not obtained or granted prior to the date of taking of cognizance. The revision applications filed by the appellant were dismissed by the learned Additional Sessions Judge, Fast Track Court No.2, Patna by orders of different dates. The said orders of the learned Additional Sessions Judge were challenged before the High Court of Patna in Crl. Misc. No. 3187/2011, 3190/2011, 3191/2011 and 3192/2011. The High Court by the common impugned order dated 27.11.2012 negatived the challenge made by the appellant leading to the present appeals. There is yet another proceeding instituted by the appellant before the High Court i.e. Crl. Misc. No. 41263/2010 in respect of P.S. Case No. 859/2002 which has been dismissed by the High Court by its order dated 18.07.2012 on the ground that the order taking cognizance by the learned Trial Court had not been specifically challenged before it and it is only the order of the learned Sessions Judge that has been assailed by the appellant. The aforesaid order dated 18.7.2012 of the High Court has also been challenged by the appellant in the present group of appeals.

3. We have heard Mr. Santosh Mishra, learned counsel for the appellant and Mr. Abhinav Mukerji, learned counsel for the State.

4. As the arguments advanced on behalf of the rival parties are a reiteration of the arguments advanced before the High Court the detailed and specific contentions need not be taken note of and it will suffice to say that while the appellant contends that grant of sanction under Section 197 of the Code is a sine qua non for his prosecution for the offences alleged, according to the State of Bihar the appellant is not a public servant within the meaning of Section 21 of the IPC and in any case none of the offences alleged can be attributed to acts that arise out of or have any proximity with the discharge of official duties by the appellant so as to require sanction for his prosecution.

5. Section 197(1) of the Code will be required to be noticed at this stage and is therefore extracted below.

> 197. Prosecution of Judges and public servants.- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government 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, no Court shall take cognizance of such offence

except with the previous sanction “

(a) in case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government :

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression State Government occurring therein, the expression Central Government: were substituted].

6. A reading of the provisions of Section 197(1) of the Code reveals that there are three mandatory requirements under Section 197(1) of the Code, namely,

(a) that the accused is a public servant

(b) that the public servant can be removed from the post by or with the sanction either of the Central or the State Government, as the case may be (c) the act(s) giving rise to the alleged offence had been committed by the public servant in the actual or purported discharge of his official duties.

7. Insofar as the first requirement is concerned, the position of officers belonging to the Indian Administrative Service serving on deputation in a cooperative society was decided in S.S. Dhanoa vs. MCD[1]. Dealing with clause 12 of Section 21 of the IPC, this Court had held that the word ˜corporation appearing in clause 12(b) of Section 21 IPC meant corporations established by a statute and would have no application to a cooperative society. In the present case, the materials on record, i.e., the incorporation of the Bihar State Housing Cooperative Federation under the provisions of the Bihar Cooperative Societies Act, 1935 would seem to indicate that the said cooperative federation is a cooperative society. The above, however, is a prima facie view on the materials available on record at this stage. It has been argued on behalf of the

appellant that at the relevant point of time the federation was under supersession and it was being exclusively controlled by the State. The above contention i.e. the extent of State control over the management of the Federation will be required to be established by means of relevant evidence before the legal effect thereof on the status of the appellant as a public servant can be decided. Possibly it is on account of the said fact that the High Court in the impugned order had granted the liberty to the appellant to raise all other points as and when they arise and had also required the Trial Court to decide all such issues, including the requirement of sanction, in the light of such subsequent facts that may come on record.

8. Insofar as the second requirement for the applicability of Section 197(1) of the Code is concerned, namely, whether the post held by the appellant at the relevant time was one from which he could not be removed except by or with the sanction of the State Government, no evidence, whatsoever, has been led on the said question. The correct position in law with regard to the applicability of the second requirement under Section 197(1) can, therefore, be answered only at a subsequent stage i.e. after evidence on the issue, if any, is forthcoming.

9. The above discussion will now require the Court to consider the question as to whether the acts giving rise to the alleged offences had been committed by the accused in the actual or purported discharge of his official duties. In a series of pronouncements commencing with Satwant Singh vs. State of Punjab[2]; Harihar Prasad vs. State of Bihar[3] and Prakash Singh Badal & Anr. vs. State of Punjab & Ors.[4] it has been consistently held that it can be no part of the duty of a public servant or acting in the discharge of his official duties to commit any of the offences covered by Section 406, 409, 420 etc. and the official status of the public servant can, at best, only provide an opportunity for commission of the offences. Therefore, no sanction for prosecution of the public servant for such offences would be required under Section 197 of the Code. Notwithstanding the above, the High Court had granted liberty to the appellant to raise the issue of sanction, if so required, depending on the evidence that may come on record in the course of the trial. Despite the view taken by this Court in the series of pronouncements referred to above, the opportunity that has been provided by the High Court to the benefit of the appellant need not be foreclosed by us inasmuch as in Matajog Dobey vs. H.C. Bhari[5], P.K. Pradhan vs. State of Sikkim[6] and Prakash Singh Badal (supra) this Court had consistently held that the question of sanction under Section 197 of the Code can be raised at any time

after cognizance had been taken and may have to be determined at different stages of the proceeding/trial. The observations of this Court in this regard may be usefully extracted below.

Matajog Dobey vs. H.C. Bhari (para 21)

The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.

P.K. Pradhan vs. State of Sikkim (para 15)

It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

Prakash Singh Badal & Anr. vs. State of Punjab & Ors. [Para 27]

The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. ...

10. In view of the discussions we will have no occasion to cause any interference with the orders passed by the High Court in the proceedings instituted before it by the appellant which have been impugned in the appeals under consideration. Consequently, we dismiss all the appeals and maintain the orders passed by the High Court in all the cases before it.

[1] (1981) 3 SCC 431
[2] AIR 1960 SC 266
[3] (1972) 3 SCC 89
[4] (2007) 1 SCC 1
[5] AIR 1956 SC 44
[6] (2001) 6 SCC 704