

SUPREME COURT OF INDIA

State of Punjab

Vs.

Labh Singh

CrI.A.No.2168 of 2010

(Dipak Misra and Uday Umesh Lalit, JJ.,)

17.12.2017

JUDGMENT

Uday Umesh Lalit, J.,

1. This appeal by special leave challenges the judgment and order dated 17.01.2006 passed by the High Court of Punjab and Haryana in Criminal Revision No.1743 of 2005 whereby it set aside the order of the Special Judge, Patiala dated 07.06.2005 framing charges against one Sikandar Singh and the present respondent.

2. FIR No.57 was lodged with Police Station, Vigilance Bureau, Patiala Range, Patiala on 13.08.1997. It was alleged that semi-Government letter dated 04.03.1994 had stated that pursuant to certain raids conducted at the site for checking the earth work done on Bhakra main line, it was found that as regards four projects cross sections/estimates were not prepared before doing any work and that it appeared that the estimates were actually prepared by the concerned Government servants after completion of work thereby violating provisions of PWD code and causing loss to the tune of Rs.3,69,603 to the exchequer. Pursuant to said FIR crime was registered and investigation was undertaken by the Vigilance Bureau.

3. When request was made for grant of sanction to prosecute the Government servants in question, it was refused by the department on 13.09.2000. Yet another attempt was made in the year 2003 requesting sanction to prosecute but such request was again rejected by the department on 24.09.2003. Despite such refusal for issuance of sanction, challan under section 173 of Criminal Procedure Code was filed on 09.11.2004 in the court of Additional Sessions Judge/Special Judge, Patiala. The allegations in the challan dated 09.11.2004 were to the following effect:

“During the checking of the aforesaid works, it was found that regarding the work done on the above mentioned 4 works, cross sections/estimates etc. have not been prepared, which is mandatory before doing any work. From this, it appears that after completing the work, this was done to prepare cross sections estimates according to

their own wish by the suspected officers. Checking memo was prepared at the spot, upon which signatures of concerned J.E and Sub Divisional Engineer were obtained, who admitted that before doing the aforesaid works, they did not prepare any cross section or estimates. From this, it is clearly established that the suspected officer did not get prepared the cross sections and estimates for embezzling the government treasury at a large scale. In the aforesaid works, for starting/finishing the repair works without preparing estimates, the following officers are responsible.”

The challan so presented had arrayed two public servants namely Shri Sikandar Singh, SDO and Shri Labh Singh, Junior Engineer in addition to five private individuals. Shri Sikandar Singh and Shri Labh Singh had retired on 13.12.1999 and 30.04.2000 respectively, i.e., even before the request for issuance of sanction was rejected on the first occasion. The aspect regarding their retirement and refusal to grant sanction was dealt with in the challan in following terms:

“In view of the refusal of granting sanction for prosecution by the department, it is impossible to present challan against the employees who are in service, but the employees who have retired, challan can be presented against them in the court.”

4. The Special Judge framed charges on 07.06.2005 against all seven accused for the offences under sections 218/409/465/467/120B IPC and under section 13(1)(C) read with section 13(1)(2) of the Prevention of Corruption Act, 1988 (TOC’ Act, for short). Out of six charges framed, one pertained to the offence under section 13(1)(C) read with section 13(1)(2) of the POC Act while other five related to offences under the Indian Penal Code.

5. The public servants namely Sikandar Singh and Labh Singh challenged the aforesaid order dated 07.06.2005 by filing Criminal Revision No.1743 of 2005 in the High Court of Punjab and Haryana. The High Court took the view that the department had refused sanction to prosecute public servants and yet a challan was presented on the premise that no sanction was required after retirement of those public servants. The High Court observed;

“These petitioners and others have been charged for offence under the Prevention of Corruption Act and also for offences under the Indian Penal Code. Section 197 Cr.P.C. bars cognizance by the Court of an offence by a public servant even after retirement. Even otherwise, it is discriminatory for the petitioners when other co-accused who are still in service, cannot be prosecuted for want of sanction and present petitioners are being prosecuted only because they have retired.”

The High Court allowed the petition and set aside the order dated 07.06.2005 passed by the Special Judge, Patiala.

6. This appeal by State of Punjab takes exception to the order of the High Court. During the pendency of this appeal the first respondent Sikandar Singh expired and his name was deleted from the array of parties vide order dated 20.09.2010 passed by this Court, leaving Labh Singh as the only respondent before the Court. The stand taken in the petition of appeal

on behalf of the appellant is as under:

“It is humbly submitted that order passed by Hon’ble High Court is erroneous in law as u/s 197 Cr.P.C. respondents can be convicted and no previous sanction is required as the respondents are no longer in service and have been retired in the years 1999/2000. Secondly, there was no discrimination as the other persons were in service and since respondents have been retired no previous sanction is required. It was also submitted that other persons will also be prosecuted as and when they are retired.”

Appearing for the State Mr. Sanchar Anand, learned advocate submitted that sanction to prosecute was not required at all. Ms. Jaspreet Gogia, learned advocate appearing for the respondent supported the view taken by the High Court.

7. In the present case the public servants in question had retired on 13.12.1999 and 30.04.2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13.09.2000 and later on 24.09.2003. The public servants having retired from service there was no occasion to consider grant of sanction under section 19 of the POC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the POC Act is not required if the public servant had already retired on the date of cognizance by the court. In *S.A. Venkataraman v. State* while¹ construing section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with section 19(1) of the POC Act, this court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in *S. A. Venkataraman* (supra) was adopted by this court in *C.R. Bansi v. State of Maharashtra*² and in *Kalicharan Mahapatra v. State of Orissa*³ and by the Constitution Bench of this court in *K. Veeraswamy v. Union of India*⁴. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the POC Act was concerned.

8. However as regards charges for the offences punishable under the IPC concerned the High Court was absolutely right in setting aside the order of the Special Judge. Unlike section 19 of the POC Act, the protection under section 197 of Cr.P.C. is available to the concerned public servant even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13.09.2000 and secondly on 24.09.2003, the court could not have taken cognizance insofar as the offences punishable under the Indian Penal Code are concerned. As laid down by this Court in *State of Himachal Pradesh v. Nishant Sareen*⁵, the recourse in such cases is either to challenge the order of the Sanctioning Authority or to approach it again if there is any fresh material.

9. In the circumstances, in our view the order under appeal passed by the High Court is correct insofar as charges under IPC are concerned but must be set aside as regards charge under POC Act is concerned.

10. Before we part, we must record that we do not approve the stand taken by the appellant in the petition. The prosecution cannot keep waiting till a public servant retires and then

choose to file charge-sheet against him after his retirement, thereby setting at naught the protection available to him under Section 19 of the POC Act. The appeal thus stands allowed partly. No order as to costs.

¹(1958) SCR 1040

²(1970) 3 SCC 0537

³(1998) 6 SCC 0411

⁴(1977) 3 SCC 0440

⁵(2010) 14 SCC 0527