NAGPUR HIGH COURT

M. Gopalkrishna Naidu

Vs

State of M.P

Misc. Petn. No. 1704 of 1951

(angalmurti and Mudholkar, JJ.)

19.10.1951

JUDGMENT

Mangalmurti J.

1.This is an application under Article 226 of the Constitution.

2. The relevant facts are briefly these. The applicant was appointed on the 1st January 1924 as an Overseer in the Upper Subordinate Engineer-Ing service of the Central Provinces and Berar, P. W. D. The Anti-Corruption Department received a complaint from one Salve, who had taken a contract for the construction of some work in the Takli Police Lines, that the applicant, who supervised the work, was in the habit of receiving bribes from contractors. He further complained, that he was paying the applicant Rs. 150 p. m. and that during the particular month the applicant was demanding Rs. 300 out of which he had paid Rs. 100. The police then, with the help of Salve laid a trap and it is said that the applicant was caught in the act of receiving the balance of Rs. 200 on the night of the 12th December 1947. On the 17th December 1947, the Executive Engineer passed an order to the effect that the applicant be relieved from his charge forthwith and placed under suspension with effect from the date of relief. The reason for taking this step was that a charge of corruption was pending against the applicant. It may be mentioned that on that very day the Chief Engineer P. W. D. granted sanction under Section 6(c) of the Prevention of Corruption Act to the applicant's prosecution in respect of anti-corruption crime No. 111/161 Indian Penal Code. The applicant was relieved on the afternoon of the 17th December 1947 and arrested on the next day and then released on bail. A challan was put up against him on the 5th February 1948. Eventually, the applicant was tried and convicted and sentenced of the offence under Section 161 Indian Penal Code. He preferred an appeal against this conviction and sentence before the Court of Session and the Additional Sessions Judge who presided over it set aside the conviction and sentence passed against the applicant on the ground that the sanction accorded for the prosecution of the applicant was defective. This was on the 14th May 1951.

3. The applicant made this application to this Court on the 3rd August 1951. The complaint of

the applicant is that despite the fact that the conviction and sentence passed upon him had been set aside he continued to be under suspension which, according to him, was erroneous. He therefore wants to be reinstated in service at once and also wants to be paid arrears of his salary from the date of the suspension till the date of reinstatement.

4. Shri T. P. Naik, Additional Government Pleader, who appears for the State, has however brought to our notice the fact that on the 26th July 1951 the Government of Madhya Pradesh have accorded a fresh sanction for the prosecution of the applicant. He has filed a copy of the sanction and we would reproduce it because, according to the applicant's learned counsel, it does not disclose the facts upon which the sanction is based :

> "Dated Nagpur, the 26th July 1951.
>
> No. 1871-1852/XVII-B. In exercise of the powers conferred by Section 6 of the Prevention of Corruption Act, 1947 (II (2) of 1947), the State Government are pleased to accord their previous sanction to the prosecution of Shri M. G. K Naidu, Overseer, Public Works Department, Nagpur, tor an offence punishable under Section 161 of the Indian Penal Code (XLV (45) of 1860) alleged to have been committed by him accepting illegal gratification other than legal remuneration amounting to Rs. 200 (two hundred) only on the 12th December 1947 from one Ramchandra Salwe, Contractor, Nagpur." According to Shri Naik, as the prosecution of the applicant has been sanctioned his suspension continues and therefore he has no right to be reinstated. Shri Mani, however, contends that this sanction besides being defective is repugnant to the provisions of Clause (2) of Article 20 of the Constitution and is therefore void. According to him, the original order of suspension was itself bad and that, therefore, ha had a right to challenge it even though prosecution is intended to be launched by the State.

5. Clause (2) of article 20 runs thus :

> "No person shall be prosecuted and punished for the same offence more than once."

The learned counsel for the applicant wants that the word 'and' in Clause (2) should be read as 'or' because, in his opinion, if it were read as 'and' the protection afforded by that provision would fall short of the one afforded by Section 403 of the Code of Criminal Procedure. In support of his contention he relies upon an observation at page 107 of Basu in his Commentary on the Constitution of India. At that page Basu has indicated the results which would follow if either of the two possible views is taken. It would appear that he favors the view that 'and' should be read as 'or', but even if he were in favor of that view, we are afraid we cannot accept it. The provisions of the Constitution and particularly those contained in Part III were enacted after great deliberation and we must take it that every word was used purposefully and after bearing in mind fully the meaning attached thereto. We agree that by construing the article literally the protection given by the Constitution will not be as extensive as that given by Section 403 of the Code of Criminal Procedure to a person who has been tried for an offence but, even so, we do not see why we should depart from the literal meaning. The inference resulting from such an inference would be that the protection given by the Constitution, that is the minimum guaranteed under the Constitution, is less than what the ordinary law has guaranteed. An ordinary law can be altered by an appropriate legislation but not so the Constitution - except in the manner laid down in the

Constitution itself. It seems that the framers of the Constitution thought it fit to guarantee something less than what the ordinary law has provided for perhaps because they felt that what the ordinary law provided for went too far and that the power of Legislature to diminish the protection should not be unduly circumscribed.

6. The next point taken by the learned counsel for the applicant is that the effect of the decision of the Additional Sessions Judge in fact was that the applicant was acquitted and therefore he could not be prosecuted for the same offence a second time. It seems to us that where a conviction and sentence passed on a person after a trial are set aside on the ground of want of proper sanction then it cannot be said that there was a proper trial at all and so the result of the decision cannot operate as a bar to a fresh trial after receipt of a fresh sanction. In this connection we may refer to the decision in '*P. Banerjee v. Bepin Behari*[1]', In that case a person was charged for the contravention of the Provisions of Section 6, sub clause (1) of the Bengal Pood Adulteration Act, 1919. Even though the law provided that no prosecution for any offence under this Act could be launched without the order or consent of the local authority within whose jurisdiction the offence is committed, no such order or consent was obtained. The accused was therefore acquitted. A second prosecution was launched against the applicant in respect of the same offence, but after securing due sanction of the local authority. It was contended that the second prosecution was barred by Section 403 of the Code of Criminal Procedure. But that contention was negatived upon the view that it is only when an accused has been tried and acquitted of an offence that the immunity arises, and that where a trial is a nullity it cannot be said that the person who had undergone it was in fact tried.

7. In a more recent case the Federal Court had to consider this question. That was in '*Hori Ram Singh v. Emperor*[2]', In that case the Sessions Judge set aside in appeal the conviction and sentence passed upon Hori Ram Singh on the ground that the sanction of the Governor which was necessary for the prosecution of Hori Ram Singh was wanting. He held that the proceedings were void and acquitted Hori Ram Singh. Their Lordships of the Federal Court observed :

> "The acquittal of the accused was obviously wrong, as that would have prevented further proceeding even after the necessary consent of the Governor had been obtained. If the prosecution is defective for want of proper consent, the proceedings would be void and the complaint would , be dismissed."

Thus, upon this view which is binding on us, the applicant cannot claim protection under Section 403 of the Code of Criminal procedure or under Article 20(2) of the Constitution.

8. It is then contended that the order of the Additional Sessions Judge quashing the proceedings is bad, and that after he reversed the finding and sentence passed on the applicant the only order which could be passed was one under Clause (b) of Section 423(1) of the Code of Criminal Procedure, either of acquittal or of discharge or of retrial. Alternatively, the learned counsel wants us to interpret the order to be an order of acquittal. We are not sitting in judgment over the order of the Additional Sessions Judge and we see no round for interpreting the order quashing the proceedings as an order of acquittal. We also cannot accept the contention of the learned counsel that no other course than one of the three indicated by him was open to the appellate Court after reversing the finding and sentence passed on a person. Where, as here, the

proceedings were 'ab initio' void, and indeed could not even be commenced, no question of acquittal or discharge arises and certainly it was not open to the appellate Court to order a retrial. The appellate Court could resort to the power conferred by Clause (d) to sub-sections (1) of Section 423 and make a consequential order upon its view that the trial was wholly void. This is what the appellate Court did and in our judgment the quashing of the proceedings ordered by it does not amount to an acquittal.

9. The next argument is that the suspension of the applicant is bad. It is based on the following grounds. In the first place it is said that suspension is really a punishment and as such it could not be ordered without giving an opportunity to the applicant to show cause against it. Then, it is said, that under Appendix XXV, Part E, to the Fundamental Rules, the Chief Engineer had no power to order suspension of the applicant before the commencement of criminal proceedings against him and that such proceedings actually commenced long after the passing of the order. We are unable to accept these contentions. No doubt one of the punishments described in the Civil Service Regulations is suspension of a Government servant but such suspension must be distinguished from the one ordered because of the pendency of criminal proceedings against a Government servant. There is no provision in any rule requiring a notice to be given to the applicant before suspension pending such proceedings. We cannot also agree that suspension cannot be ordered till the criminal proceedings begin. The actual words of paragraph 2 of Appendix XXV, Part E are :

> "A servant of Government against whom a criminal charge or a proceeding for arrest for debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e. g. while released on bail), if the charge made or proceeding taken 'against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude. In regard to his pay and allowances, the provisions of Rule 1 shall apply."

It is clear from this that what is required is that there should be an accusation of a criminal offence against the person and not that criminal proceedings should actually commence in the sense that a challan is filed. Thus, in our view, the suspension was perfectly legitimate.

10. It is then said that the suspension of the applicant could not enure after his appeal was allowed by the Additional Sessions Judge and the conviction and sentence set aside. We cannot agree with this contention either because, as, we have already pointed out, the decision of the appeal cannot be interpreted as acquittal. The only result of the decision was that the trial which was held after the sanction was given was found to be null and void. The suspension of the applicant did not depend upon the sanction or upon the fact that there was a trial. It was based upon the fact that there was an accusation of a criminal offence. That accusation still persists and, indeed, it is clear from the fact that a fresh sanction was accorded by the Government that the Government intend to commence criminal proceedings against the applicant.

11. Finally, it is said that the sanction now given and relied on is of little use because it does not contain such details as were contemplated in the decision of their Lordships of the Privy Council *In Gokulchand Dwarkadas v. The King*[3]*',* In that case the sanction given under Clause 23 of the

Cotton Cloth and Yarn (Control) Order 1943, was in these words :

> "Sanction to Prosecute.
> (signed) H. N. G. Cotton Cloth and Yarn (Control) Order, 1943. Contravention of the Provisions Prosecutions for :
> Government of Bombay.
> Finance Department (supply)
> Resolution No. 518.
> Bombay Castle, 5th January 1945.
> Endorsement from the District Magistrate, Sholapur,
> No. XIX/4500, dated the. 8th November 1944. 'Resolution': Government is pleased to accord sanction under Clause 23, Cotton Cloth and Yarn (Control) Order, 1943, to the prosecution of Mr. Gokulchand Dwarkadas Morarka for breach of the provisions of Clause 18(2) of the said Order.
> By Order of the Governor of Bombay.
> (Signed)
> Deputy Secretary to Government, Bombay.
> To,
> The District Magistrate, Sholapur,"

There is no reference in this sanction to the facts upon which the offence is alleged to have been committed by the applicant or to the time when that offence was committed. In the present case, as would appear from the verbatim quotation of the order of the Government given above, we know the nature of the offence committed, the facts alleged against him and also the date on which it was so committed. There is thus sufficient material from which it can be inferred that the authority which granted sanction did not act mechanically but considered all relevant matters and only then accorded its sanction. In the Privy Council case the sanction was held to be void on the ground that it did not disclose a 'prima facie' case against the person said to be prosecuted but that is not the case here. In the circumstances this point also fails.

12. For the reasons given above, we hold that the application must fail. Accordingly we dismiss it. We, however, make no order as to costs because though the sanction was given by the Government at the end of July 1951 it was not till yesterday that the
applicant was apprised of the fact of sanction. He has been kept hanging for a pretty long time and even now there is a delay in launching a prosecution. He was therefore fully justified in making an application to this Court. It is hoped that his trial will not be unduly delayed because it is now over 4 years that he has been under suspension and being a Government servant, has got to depend solely on the suspension allowance which is only 1/4th of his salary. He cannot pursue any other vocation as long as he continues to be in Government service and add to his allowance. We trust that this aspect of the matter does not escape the notice of the authorities.
Application dismissed.

Cases Referred.

[1]30 Cal WN 382
[2]AIR 1939 FC 43 at p. 50
[3] AIR 1948 PC 82