
(2008) 05 AHC CK 0201
In the Allahabad High Court

Anoop Sarin

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190
Evidence Act, 1872 — Section 118
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 15, 19

Citation : (2008) 05 AHC CK 0201

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.K. Mittal, J.—This writ petition has been filed for setting aside the order dated 27.1.2007 passed by Special Judicial Magistrate (C.B.I) Ghaziabad in Special Case No. 1250 of 2003 (C.B.I. v. Anoop Sarin) under Sections 420, 120-B, 467, 468, 471 I.P.C. whereby the learned Magistrate allowed the application filed by public prosecutor of C.B.I. for summoning Vijay Jyoti and S.K. Ojha as witnesses in the case, and the order dated 10.3.2008 passed by Addl. Sessions Judge/ Special Judge (C.B.I.), Prevention of Corruption Act, Ghaziabad in criminal Revision No. 119 of 2007 (Anoop Sarin v. C.B.I., Dehradun) whereby the learned Judge dismissed the revision.

2. I have heard Sri Ravindra Nam Rai, learned Counsel for the petitioner and G.S. Hajela, learned Counsel for the opposite party and perused the material on record.

3. The brief facts are that an F.I.R. was registered against the petitioner and three others on 7.3.1994 and it was alleged that Anoop Kumar Sarin. Partner and proprietor of M/s Hope Graph Ltd. and M/s Fransa Corporation Pvt. Ltd had caused wrongful loss to State Bank of India, Main Branch Navyug Market, Ghaziabad. After investigation charge-sheet was submitted against Anoop Kumar

Sarin and he was sent for trial. In the charge-sheet the names of S.K. Ojha and Vijay Jyoti were also mentioned as accused. They were not sent for trial because their department had not accorded sanction u/s 19 of the Prevention of Corruption Act, 1988, to prosecute them.

4. During the trial the learned public prosecutor on behalf of the C.B.I. moved an application to examine Vijay Jyoti and S.K. Ojha as witnesses in the case. It may be mentioned that the list of witnesses annexed with the charge sheet also shows that Vijay Jyoti and S.K. Ojha are the witnesses and their names find mention at serial Nos. 21 and 22 of this list.

5. This application was opposed by the accused on the ground that these two persons were also found to be involved in the commission of crime and therefore, they could not be examined as witnesses, as they were the co-accused. The learned Magistrate held that since sanction was not given by their department, they have not been implicated as accused and therefore, they could be examined in the matter as witnesses. Feeling aggrieved by the order passed by the learned Magistrate, a revision was preferred but the plea as taken by the petitioner did not find favour with the revisional Judge and revision was also dismissed. Hence this writ petition.

6. Learned Counsel for the petitioner has contended that these two persons sought to be examined as witnesses are accused along with the petitioner as charge sheet was also submitted against them and they being the co-accused, they could not be examined by the prosecution as witness. The learned Counsel for the petitioner also cited the case of Soma Chakravarty v. State through C.B.I. 2007 Criminal Law Journal 3257 and contended that on the principle of "doctrine of parity" these two persons are also accused and could not be examined. Against this the learned Counsel for Central Bureau of Investigation has contended that although the names of these two persons have been mentioned in the charge sheet but they were not sent for trial as no sanction was accorded by their department to prosecute them and therefore, they stand on different footing and cannot be treated as accused for the purpose of this case and doctrine of parity is not applicable.

7. In the case of Soma Chakravarty (Supra) an accused was not charged because he was not found guilty in the departmental proceedings as the same ended in his favour. It was observed by Hon"ble Apex Court while considering "the doctrine of parity" that the question whether an accused before the court stands on similar footing despite, he having not been departmentally proceeded against or had not been completely exonerated, also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the department proceeding also faced same charges including the charge of being a party to the larger conspiracy.

8. But this doctrine is not applicable in the facts of the present case. The F.I.R. was lodged under Sections 120B/420, 467, 468, 471 I.P.C and 13(2) read with Section 13(1)(d) of P.C. Act, 1988 also against the accused persons. Section 19 of the Act provides that 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 of the Central Government or the State Government or any other authority competent to remove such person from his office as the case may be. Therefore, unless sanction is accorded the court cannot take cognizance against such public servant and cannot proceed against him unless the cognizance is taken, although he is named as accused in the F.I.R.

9. In the case of *Dilawar Singh v. Parvinder Singh alias Iqbal Singh and Anr.* (2006) 1 SCC 727 while considering the provision of Section 19 of Prevention of Corruption Act, 1988, the Hon'ble Apex Court held that this Section creates a complete bar on the power of the Court to take cognizance of an offence punishable u/s 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in Clauses (a) to (c) of this sub section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable u/s 7, 10, 11, 13 and 15 alleged to have been committed by such public servant.

10. It has further been held that the principle that a court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence u/s 190 Cr.P.C. The Prevention of Corruption Act is a special statute and as the preamble shows this Act has been enacted to consolidate and amend the law relating to the Prevention of Corruption and for matters connected therewith. Here, the principle expressed in the maxim "*generalia specialibus non derogant*" would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. Under the provisions of the Corruption Act existence of a sanction is sine qua non for taking cognizance of the offence qua that person. Therefore "it follows that" unless there is sanction a person cannot be said to be an accused and cannot be proceeded with under Prevention of Corruption Act.

11. As far as, the present petitioner is concerned he not being a public servant, no sanction was required to proceed against him. In these circumstances those persons against whom sanction was not given and cognizance to proceed was not taken, cannot be treated to be accused and cannot be placed on same footing. Therefore, the contention of the learned Counsel for the petitioner that these two persons sought to be examined as witnesses are also accused in the case and cannot be examined as witness, cannot be accepted.

12. It is the discretion of the prosecution to examine a person as a witness in the case. Section 118 of the Evidence Act provides that all persons shall be competent to testify unless the Court considers that they are prevented from

understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

13. Therefore, the prosecution is entitled to examine these two persons as its witness and in the circumstance, the application filed by the prosecution to summon them has rightly been allowed and there is no reason to interfere in the impugned orders. Therefore, the writ petition is devoid of merits and is liable to be dismissed at the admission stage and is hereby dismissed.