

(2019) 08 SC CK 0053

In the Supreme Court Of India

Case No : Criminal Appeal No. 503 Of 2010

Bharat Sanchar Nigam Limited And Others

APPELLANT

Vs

Pramod V. Sawant And Another

RESPONDENT

Date of Decision : 19-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 12
Code Of Criminal Procedure, 1973 — Section 197, 197(1)
Maharashtra Private Security Guards (Regulation Of Employment And Welfare) Act, 1981 — Section 3(3)
Indian Penal Code, 1860 — Section 21
Companies Act, 1956 — Section 617

Citation : AIR 2019 SC 3929 : (2019) 16 SCC 63 : (2019) 8 JT 390 : (2019) 11 Scale 14 : (2019) AllMR(Cri) 4833 : (2019) 3 ALT(Cri) 227 : (2019) 4 Crimes 375 : (2019) CriLJ 4702 : (2019) 4 RCR(Criminal) 124 : (2019) 3 RLW 2485

Hon'ble Judges : Navin Sinha, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : Pavan Kumar, Nishant Ramakantrao Katneshwarka, Pragya Baghel

Final Decision : Dismissed

Judgement

Navin Sinha, J

1. The appellants are aggrieved by the dismissal of their writ application, rejecting the challenge to their prosecution for lack of sanction under Section 197 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C.").

2. A criminal complaint case no.14/S/2003 was filed by respondent no.1 before the Additional Chief Metropolitan Magistrate under clauses 26(2)(3) and 39 read with clause 27 of the Private Security Guards (Regulation of Employment and Welfare) Scheme, 1981 read with Section 3(3) of Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (hereinafter called as "the Act"). The complaint stated that the appellant - Corporation was registered with the respondent - Security Guards Board. The Corporation was under obligation to engage security guards registered with respondent no.1 only. An

inspection revealed engagement of unregistered guards. The Magistrate issued process against the appellants in 2003. The appellants prayed for recall of the process, which was rejected on 06.04.2004. A criminal revision preferred against the rejection was allowed on 07.09.2004. The matter was remanded for reconsideration, which was again rejected by the Magistrate on 07.06.2005. The writ petition preferred by the appellants against the issuance of process was also rejected on 22.12.2006. The fresh revision against order dated 07.06.2005 assailed the prosecution on grounds of being barred by limitation, that the Act was not applicable to the appellants' establishment, and that the issuance of process was bad in absence of sanction under Section 197, Cr.P.C., appellants nos.2 to 4 being 'public servants'. The revision application was again dismissed on 05.09.2007 leading to the impugned order assailed in the present appeal. In the writ petition, the appellants gave up their challenge on grounds of limitation and inapplicability of the Act which has therefore attained finality. The challenge in the writ petition is confined to the question of sanction only.

3. The High Court relying on *Mohd. Hadi Raja vs. State of Bihar and another*, (1998) 5 SCC 91, held that the protection of sanction under Section 197, Cr.P.C. was not available to officers of Government companies or public undertakings even if it fell within the definition of 'State' under Article 12 of the Constitution.

4. Shri R.D. Agarwal, learned senior counsel appearing on behalf of the appellants, submitted that appellants nos.2 to 4 fell within the definition of 'public servant' as they were discharging public duty in pursuance of the policy of the Central Government. Appellants nos.2 to 4, belonged to the Central Civil Service - Class-I, having been appointed by Hon'ble the President of India to the Indian Telecommunication Service, were removable by orders of the President only. The fact that they may have been sent on deputation to the appellant Corporation is inconsequential mandating sanction under Section 197, Cr.P.C. before their prosecution. The High Court erred in distinguishing *Dr. Lakshmansingh Himatsingh Vaghela vs. Naresh Kumar Chandrashanker Jah and another*, (1990) 4 SCC 169, considering that the appellants nos.2 to 4 were removable by orders of the President of India only.

5. Learned counsel for the respondents acknowledged the original appointment of appellants nos.2 to 4 in Central Civil Services Class-1. It was however submitted that the appellant Corporation was established on 01.10.2000. The appellants nos.2 to 4 were sent on deputation initially. Option was given for absorption in the appellant Corporation. Appellants nos.3 and 4 opted for absorption and thus became employees of the appellant Corporation with effect from 01.10.2000 and ceased to be government employees in the Central Civil Services Class-1. Appellant no.2 appears to have retired from the appellant Corporation while on deputation, but his status is not clear.

6. The appeal raises a short and pure question of law for consideration with regard to the protection under Section 197, Cr.P.C. available to employees of public sector corporation claiming the status of a 'public servant'. The relevant

extract of Section 197, Cr.P.C., reads as follows:

"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 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 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."

The term 'public servant' has been defined in Section 21 of the Indian Penal Code, the relevant portion for the present case reads as follows:

"21. "Public servant".-The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely: -

xxxxxxx

Twelfth -Every person-

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)."

7. At the very outset, we are of the opinion that the question for grant of sanction for prosecution under Section 197, Cr.P.C. on the ground of being a 'public servant' is not available to appellants nos.3 and 4 on account of their ceasing to be employees of the Indian Telecommunication Service after their absorption in the appellant Corporation on 01.10.2000, prior to the complaint. The fact that their past service may count for purposes of pension in case of removal or dismissal by the Corporation or that administrative approval of the concerned ministry may be formally required before any punitive action will not confer on them the status of 'public servant' under the Cr.P.C.

8. The necessary facts with regard to status of appellant no.2 are not very clear from the pleadings. It appears that at the relevant point of time before superannuation he was on deputation to the Corporation. The allegations related to discharge of his duties in the appellant Corporation. We are therefore required to consider if sanction under Section 197, Cr.P.C. was a prerequisite with regard to him in a status as a 'public servant'. The question is no more res integra and

stands authoritatively settled that employees of public sector corporations are not entitled to the protection under Section 197 Cr.P.C. as 'public servant'.

9. In Mohd. Hadi Raja (supra), the court was considering the need for sanction for prosecuting officers of public sector undertakings or government companies falling within the definition of 'State' under Article 12 of the Constitution and who were removable from office save by sanction of the Government. Holding that protection under Section 197, Cr.P.C. was not available to such persons, it was held as follows:

"27. Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government...."

10. In N.K. Sharma vs. Abhimanyu, (2005) 13 SCC 213, rejecting the challenge for requirement of sanction under Section 197, Cr.P.C., it was observed as follows:

"13. Admittedly the salary of the appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of a government company or a public undertaking would not require any sanction under Section 197 CrPC."

11. The question again fell for consideration in Chandan Kumar Basu vs. State of Bihar, (2014) 13 SCC 70, involving an officer of an Indian Administrative Service serving on deputation as Administrator-cum-Managing Director of Bihar State Housing Cooperative Federation Ltd. Elucidating the requirements to be fulfilled for the applicability of the protection under Section 197, Cr.P.C., it was observed as follows:

"8. 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."

12. We are of the opinion that sufficient evidence is not available on record at this stage with regard to the status of appellant no.2 in all aspects for us to unhesitatingly hold that the protection under Section 197 Cr.P.C shall be available to him. These are matters to be considered by the Magistrate on basis of the evidence that may be placed before him during the course of trial.

13. Mohd. Hadi Raja (supra) has been noticed more recently in Punjab State Warehousing Corporation vs. Bhushan Chander and another, (2016) 13 SCC 44,

holding that the High Court erred in providing the protection under Section 197, Cr.P.C. to an employee of the appellant Corporation which was fully governmentowned and financed by the State Government, and therefore, respondent fell within the definition of a 'public servant'. Setting aside the orders of the High Court, this Court observed as follows:

"23. In Mohd. Hadi Raja v. State of Bihar the question arose whether Section 197 CrPC was applicable for prosecuting officers of the public sector undertakings or the government companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the submissions and eventually held that the protection by way of sanction under Section 197 CrPC is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government.

24. The High Court has not accepted the submission of the Corporation in this regard. We are constrained to note that the decision in Mohd. Hadi Raja has been referred to in the grounds in this appeal. There is nothing on record to suggest that the said decision was cited before the High Court..."

14. Dr. Lakshmansingh Himatsingh Vaghela (supra), on which the appellants have placed reliance, is completely distinguishable on its own facts. The appellant was employed in the Municipal Corporation as a Laboratory Officer. He was only entrusted with discharge of duties as a public analyst. His remuneration was not paid by the Government, but by the Corporation. The observations in Paragraph 5 have to be understood in that context:

"5. Section 197, CrPC clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the government to their prosecution be necessary. While a public servant holding an office of the kind mentioned in the section is as such public servant appointed to another office, his official acts in connection with the latter office will also relate to the former office. The words "removable from office" occurring in Section 197 signify removal from the office he is holding. The authority mentioned in the section is the authority under which the officer is serving and competent to terminate his services. If the accused is under the service and pay of the local authority, the appointment to an office for exercising functions under a particular statute will not alter his status as an employee of the local authority."

15. It is therefore, held that the question of sanction under Section 197, Cr.P.C. with regard to appellants nos.3 and 4 treating them to be 'public servant' simply does not arise because of their absorption in the Corporation. With regard to appellant no.2, considering his status as on deputation to the appellant Corporation at the relevant point of time and in absence of necessary evidence with regard to his status in the appellant Corporation throughout the litigation being ambiguous, we leave that question open for consideration in the trial after

necessary evidence is available.

16. The trial has turned out to be stillborn since 2003, with the appellants filing one application after another. We are of the considered opinion that the trial needs to be expedited and concluded at an early date. It is ordered accordingly. The Magistrate shall endeavour to conclude the trial within a period of one year. The parties are directed to cooperate for its early disposal.

17. The appeal is dismissed.