
(2009) 08 JH CK 0076
In the Jharkhand High Court

Bindyachal Choubey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 120B, 420, 461, 471
Prevention of Corruption Act, 1988 — Section 11, 12, 13, 19, 7

Citation : (2010) CriLJ 1531

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—This writ application has been filed for quashing the order dated 9.9.2002 passed by the Joint Secretary, J.S.E.B., Ranchi, as contained in Letter No. 5177 (Annexure-5), whereby and whereunder sanction for prosecution for the offences under Sections 7/13(1)(e) has been accorded by the Joint Secretary, J.S.E.B., Ranchi in connection with Vigilance Case No. 13 of 1996 and also for quashing the order dated 5.6.2007 passed by the Special Judge, Ranchi in Special Case No. 21 of 1996, whereby prayer made on behalf of the petitioner for his discharge from the case, has been rejected.

2. The facts giving rise this application are that in the year 1988, while the petitioner was working as Junior Engineer, a building of power Sub-Station was constructed under the supervision of this petitioner and other engineers but within a very short span, condition of the building got deteriorated and when enquiry was made, it was found that sub-standard materials had been used whereby this petitioner and also other engineers in connivance with the contractor put the State exchequer to a great loss and, therefore, Dy. S.P., Vigilance Bureau, Patna lodged a case as Vigilance (Pat) Case No. 13 of 1996 under Sections 420/461/471/120B of the Indian Penal Code as well as under Sections 11/12/13(1)(d) of the Prevention of Corruption Act and also under Sections 11/12 of the Bihar Corrupt Practices and Eradication Rules, 1993.

3. After completion of the investigation, first charge-sheet was submitted against one Jageshwar Jha but the cognizance could not be taken for want of order of sanction and so far this petitioner and other accused persons are concerned, investigation was kept pending. However, in course of time, the supplementary charge-sheet was submitted against this petitioner and others without enclosing sanction for prosecution. Subsequently, when the Bihar State Electricity Board, Patna communicated to the court that accused-Jageshwar Jha and Balgovind Prasad Sinha have retired, cognizance of the offence was taken against Jageshwar Jha. Meanwhile, the Investigating Officer made request to the Bihar State Electricity Board, Patna to accord sanction u/s 19 of the Prevention of Corruption Act for prosecution of the petitioner in Special Case No. 21 of 1996 (arising out of Vigilance Case No. 13 of 1996), but the Bihar State Electricity Board (for short "the Board"), after having scrutinized all the materials placed before it, did not think it proper to grant sanction for prosecution against the petitioner. Accordingly, the decision of the Board was communicated to the Superintendent of Police Vigilance vide Letter No. 267 dated 20.3.1998 (Annexure-3). Notwithstanding, the fact that the Board had refused to grant sanction against the petitioner, D.I.G. Cabinet, Vigilance Department again made request to grant sanction but again the Board in its meeting dated 20.8.1998 decided not to grant sanction for prosecution against the petitioner, which decision was communicated to the Vigilance Department by the Board vide its letter dated 8.9.1998 (Annexure-4). However, those orders were never brought to the knowledge of the Special Judge. Subsequently, after bifurcation of the State of Bihar, when the Jharkhand State Electricity Board (for short "J.S.E.B.") came into being, the services of the petitioner, being posted within the territory of the State of Jharkhand, fell under the control of J.S.E.B. Thereafter in the year 2002, the Investigating Officer made request to the J.S.E.B. to grant sanction against the petitioner and the J.S.E.B., without considering the fact that earlier at two occasions B.S.E.B. had refused to accord sanction against the petitioner, granted sanction for prosecution, which was communicated under letter dated 9.9.2002 by the Joint Secretary, J.S.E.B. (Annexure-5). The Special Judge upon receiving the said letter took cognizance of the offence vide its order dated 10.10.2002 (Annexure-7) under Sections 420/461/471/120B of the Indian Penal Code and also under Sections 11/12/13(1)(d) of the Prevention of Corruption Act as well as under Sections 11/12 of the Bihar Corrupt Practices and Eradication rules, 1993. Thereupon, an application for discharge was filed on behalf of the petitioner before learned Special Judge taking plea that the order granting sanction for prosecution is bad on account of the fact that the Authority, who granted sanction, had not taken into consideration the fact that earlier at two occasions sanction for prosecution had been refused and as such, the order granting sanction can be said to have been passed by the Authority without application of mind and that too, there had been no fresh material for reconsideration of the matter relating to sanction. However, the court while rejecting the prayer for discharge did hold that there has been sufficient material to frame charge under Sections 420/461/471 read with Section 120B of the

Indian Penal Code and also under Sections 11/12 read with Section 13(1)(d) of the Prevention of Corruption Act .

4. Being aggrieved with the order granting sanction for prosecution and also with the order refusing to discharge the petitioner from the case, this writ application has been filed.

5. Mrs. Ritu Kumar, learned Counsel appearing for the petitioner submits that when the appropriate Authority upon consideration of all the materials had refused to accord sanction against the petitioner twice; firstly under order dated 20.3.1998 and secondly with a reasoned order dated 8.9.1998 (Annexure-4), the Authority of J.S.E.B., Ranchi in absence of any additional/fresh/new material has got no power at all to reconsider or review the earlier order refusing to grant sanction and as such, the impugned order dated 9.9.2002 under which sanction for prosecution was granted is quite illegal and consequently, the order, under which cognizance has been taken against the petitioner, and even the order, under which the court refused to discharge the petitioner from the case, become quite bad and hence these orders are fit to be set aside. Learned Counsel in support of her case referred to a decision in the case of Omkar Sharma and etc. Vs. State of H.P. and Others, .

6. As against this, Mr. A.K. Kashyap, learned senior counsel appearing for the Vigilance, vehemently submitted that on the day when the cognizance was taken, it was the J.S.E.B. who was the Competent Authority to remove the petitioner from services and as such, in terms of Clause C of Section 19 of the Prevention of Corruption Act, J.S.E.B. becomes the Competent Authority to grant sanction. In that view of the matter, order taking cognizance cannot be said to be bad.

7. Further it would be submitted that in terms of the provisions, as contained in Section 19 of the Prevention of Corruption Act, any error, omission or irregularity in the order of sanction is never considered to be a fatal unless it is resulted in failure of justice and this point can only be decided during trial and not at this stage and on this count also, the impugned orders do not warrant to be interfered with.

8. Lastly, it was submitted that so far offence under the Indian Penal Code is concerned, any overt act or covert act constituting offences u/s 420 or 471 of Indian Penal Code cannot be said to have been done in discharge of public duty and under these situations, sanction in terms of Section 197 of Cr.P.C. can not be a precondition for taking cognizance of the offence u/s 420 or 471 of Cr.P.C.

9. It was also submitted that so far prosecution u/s 461 of the Indian Penal Code is concerned, it is to be ascertained at the time of trial as to whether the act, committed by the petitioner, which attracts offence u/s 461 of the Indian Penal Code, is, at all, associated with discharge of duty of the petitioner and, therefore, under these situations, order taking cognizance or order refusing to discharge the petitioner from the offences relating to the Indian Penal Code does not

warrant to be interfered with.

10. Mr. R. Krishna, learned Counsel appearing for the J.S.E.B. submits that though the order granting sanction does not speak about the reasons for granting sanction but the Authority, after considering all the materials placed before it, granted sanction and hence it cannot be said to be illegal.

11. Having heard learned Counsel for the parties, the first and foremost question, which falls for consideration in the facts and circumstances is that the Authority of B.S.E.B. when had refused to grant sanction, any order granting sanction for prosecution without any fresh material by the Authority of J.S.E.B. would be legal?

12. It is well known that the purpose of granting sanction by the Competent Authority is neither a mere formality nor a ritual. It is in the nature of a safeguard provided to public servant of falsely being harassed, implicated and then prosecuted. It is also aimed at infusing confidence in the fair working of the public servants and also for keeping a check of unscrupulous elements to deter the working of public servants by roping them in vexatious cases. But at the same time, it is to be ensured that those who are found guilty prima facie of having committed some offences may be dealt with in accordance with law.

13. With a view to achieve this object, when the matter is taken up for the grant of sanction to prosecute a public servant with the appointing Authority, it is supposed to examine the whole material before it and then on due consideration dealt with the same to accord sanction, to prosecute or to decline to grant sanction.

14. In the instant case, as has been demonstrated, the Authority of B.S.E.B. had refused to grant sanction twice; firstly under order dated 20.3.1998 (Annexure-3) and secondly under order dated 8.9.1998 (Annexure-4) and from perusal of the order dated 8.9.1998 (Annexure-4), it does appear that the Authority did assign the reason for refusing to grant sanction, whereas under order dated 9.9.2002 granting sanction, no reason whatsoever has been assigned nor there is anything to show that any additional, fresh or new material had been placed before the Authority and under these situations, order granting sanction would be unsustainable in law and this proposition has been laid down in the case of Omkar Sharma and etc. Vs. State of H.P. and Others, .

15. So far the submission, advanced on behalf of the Vigilance that on the day when the cognizance was taken, it is only the J.S.E.B. who was the competent to remove the petitioner from the services and as such, he can only be the Sanctioning Authority, is concerned, it has got no leg to stand, as admittedly, earlier before bifurcation of the State of Bihar, it was the B.S.E.B., who was the Competent Authority to grant or not to grant sanction and, therefore, if J.S.E.B. by virtue of the enactment of the Bihar Reorganization Act, 2000 became the Competent Authority still it can not review the order of the earlier competent authority without having any fresh/additional/new material. Other submission,

advanced on behalf of the Vigilance regarding non-interference of the order of granting sanction even if it suffers from error, omission or irregularity unless it results into failure of justice is also not sustainable in view of the decision rendered in the case of *State of Karnataka v. Ameerjan* reported in (2007) 11 S.C.C. 273, wherein such plea raised on behalf of one of the parties was never found tenable on the premise that if the order of sanction is held to be wholly invalid on the ground such as that the order is a nullity having been suffering from the vice of total non-application of mind, it would not be relatable to error, omission or irregularity in the sanction, rather it would be wholly invalid.

16. Thus, for the reasons, discussed above, I do find that the order granting sanction in terms of Section 19 of the Prevention of Corruption Act, as contained in Letter No. 5177 (Annexure-5), for prosecution of the petitioner for the offences under Sections 11 and 12 read with Section 13(1)(d) of the Prevention of Corruption Act is quite unsustainable and hence that part of the order of the Special Judge under which he refused to discharge the petitioner from being prosecuted for the offences under the Prevention of Corruption Act is hereby set aside. Consequently, the petitioner is discharged so for offences under Sections 11 and 12 read with Section 13(1)(d) of the Prevention of Corruption Act is concerned.

17. Coming to the other aspect of the matter, it be stated that the petitioner has also been alleged to have committed offence under Sections 420/461/471 read with Section 120B of the Indian Penal Code and since the petitioner is a public servant, it was submitted on behalf of the petitioner that he cannot be prosecuted for those offences, as the Competent Authority had earlier refused to accord sanction for prosecution which subsequently without there being any fresh material was reviewed whereby sanction was accorded for prosecution.

18. I do not find any substance in the submission advanced in this respect. The protection given u/s 197 Cr.P.C. is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford with adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause. The said protection u/s 197 Cr.P.C. has certain limits and is available only when the alleged act done by the public servants is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The use of the expression "official duty" u/s 197 Cr.P.C. implies with the act or the omission must have been done by the public servant in the course of his service and that it should have been in discharge of his official duty. Section does not extend its protective cover to every act or omission done by a

public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of his official duty.

19. Keeping in view the purport as enshrined u/s 197 Cr.P.C., as discussed above, offence relating to misappropriation, cheating, forgery etc. can never be considered to be an act done in discharge of the public duty and, therefore, no sanction in terms of Section 197 Cr.P.C. is required to have for launching the prosecution.

20. In this respect, decision rendered in the case of State of H.P. Vs. M.P. Gupta, , State of Kerala Vs. V. Padmnabhan Nair, , Shreekantiah Ramayya Munipalli Vs. The State of Bombay, and Amrik Singh v. State of Pepsu AIR 1955 S.C. 30 may be referred to. Thus, sanction for prosecution can never be a condition precedent for launching the prosecution against the petitioner so far as the offences under Sections 420, 471 read with Section 120B of the Indian Penal Code are concerned. Under these situations, learned trial court has rightly proceeded with the case so far offence under Sections 420, 471 read with Section 120B of the Indian Penal Code is concerned.

21. Now the next question crops up as to whether the petitioner in absence of sanction be proceeded with trial for an offence under Sections 461 of the Indian Penal Code under which the court has even found the prima facie case against the petitioner. The nature of offence is as such that it cannot, at this stage, be ascertained as to whether the petitioner did act constituting offence u/s 461 of the Indian Penal Code, in discharge of his public duty, rather it would be determined when the parties would lead their evidences. Therefore, it would be open for the petitioner to raise question, which has been raised, hereinabove, if occasion so arises at an appropriate stage during trial.

22. This observation is being made on the premise that the concept of Section 197 Cr.P.C. in all cases does not get immediately attracted on institution of the case which proposition of law has been laid down by the Hon''ble Supreme Court in the case of K. Kalimuthu Vs. State by D.S.P., .

23. Thus, this application is allowed but in part.