

(2010) 08 CHH CK 0034
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1225 of 1993

Ishwar Aadhar Yadav

APPELLANT

Vs

State of Madhya Pradesh now Chhattisgarh

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
General Clauses Act, 1897 — Section 6
Penal Code, 1860 (IPC) — Section 161, 164, 165
Prevention of Corruption Act, 1947 — Section 5, 5(2), 6(1), 6(2)
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 13(1), 13(2)

Citation : (2010) 08 CHH CK 0034

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.P. Sharma, J.

Criminal Appeal u/s 378 of Code of Criminal Procedure

1. Challenge in this appeal is to the order of discharge dated 15.1.93 passed by the Special Judge, Raipur, in Special Criminal Case No. 139/91, whereby learned Special Judge has acquitted the Respondent of the charge of the then applicable u/s 161 of the Indian Penal Code and Section 5(i)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 on the ground that after repealing of the Prevention of Prevention Act, 1947 (hereinafter referred to as "the Act, 1947"), sanctioning authority has accorded sanction under the provisions of the Act, 1947 on 5.2.1991 for which he was not competent to accord sanction and any such sanction is not sine qua non for taking cognizance of the offence and was no legal sanction.

2. Order is impugned on the ground that sanctioning authority was competent to accord sanction and only on the ground of misquoting of the provisions, especially in the light of Section 30(2) of the Prevention of Corruption Act, 1988

(hereinafter referred to as "the Act, 1988") would not initiated the proceedings but by discharging the Respondent, the Court below has committed illegality.

3. As per case of the prosecution, on 10.7.87 the Respondent demanded and accepted illegal gratification other than legal remuneration by misusing his post for himself or for others. Trap party constituted. Offence was investigated. After completion of investigation, documents of the prosecution were placed before the sanctioning authority who was competent to accord sanction and sanctioning authority after applying the mind accorded sanction on 5.2.1991 under the provisions of Section 6(1)(b)(c) of the Prevention of Corruption Act, 1947 was not legal.

4. After hearing the parties on the legality of according sanction and rider created under the law for taking cognizance of the offence without valid sanction, vide impugned order the Court below has arrived at a finding that sanction accorded under the provisions of the Act, 1947 on 5.2.1991 which was not in force and was repealed by Section 30(1) of the Prevention of the Corruption Act, 1988, was not legal.

5. Learned Counsel for the Appellant/State vehemently argued that on 5.2.1991 (Act No. 2 of 1947) was not in force and was repealed by Section 13(1) of the Act, 1988. Act No. 49 of 1988 which came into force from 9.9.1988, but the provisions of Section 6(1) of the Repeal Act relating to the prosecution for sanction and Section 19 of the Act No. 49 of 1988 are one and the same, therefore, in terms of Sub-section (2) of Section 13 of the Act, 1988, any sanction accorded under the provisions of old Act was valid sanction. Even otherwise provisions of both the Acts relating to according of sanction are not inconsistent, therefore, only mentioning or quoting of old provisions will not vitiate the prosecution or sanction accorded for prosecution of the Respondent. After due notice to the Respondent, he has not made his appearance.

6. On the date of the offence viz., 10.7.1987, the Act, 1947 was in force. Sanction for prosecution u/s 6(1) of the Act, 1947 is sine qua non for taking cognizance for the offence punishable under the provisions of the Repeal Act, 1947. Section 6(1) and (2) of the Act, 1947 read as under:

6.(1) No Court shall take cognizance of an offence punishable u/s 161 or Section 164, Section 165 of the Indian Penal Code, 1860 (Act XLV of 1860) or under Sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office, save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office, save by or with the sanction of the State Government, of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under Sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by the Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed....

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7. On 5.2.1991 Prevention of Corruption Act, 1947 was not in force and was repealed by Section 30(1) of the Act, 1988 (Act No. 49 of 1988) which came into force on 9.9.1988. Sanction for prosecution under the provisions of the Act, 1988 is also sine qua non for taking cognizance in accordance with Section 19 of the Act, 1988 which reads as under:

19. Previous sanction necessary for prosecution.-

(1) 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,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under Sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under Sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under Sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.- For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

8. The provisions contained in Sub-section (2) of Section 30 is enabling provisions relating to new and old act which provides the provisions to regulate and continue the investigation, proceeding and trial initiated under the old act. Section 30(1) & (2) of the Act, 1988 reads as under:

30. Repeal and saving.- (1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

9. As per admitted position, offence committed on 10.7.1985, on that day the Respondent was public servant. As per the case of the prosecution, he demanded and accepted illegal gratification other than legal remuneration on 10.7.1985.

10. After considering the material collected on behalf of the prosecution, sanction for prosecution in terms of Section 6(1)(b)(c) of the Act, 1947 was accorded on 5.2.91 by the competent authority. On the date of commission of the offence, Prevention of Corruption Act, 1947 (Act No. 2 of 1947) was in force which was repealed by the Prevention of Corruption Act, 1988 (Act No. 49 of 1988) which came into force from 9th September, 1988.

11. In the present case, sanction has been accorded u/s 6(1)(b) (c) of the Act, 1947 which was not in force on the date of according sanction i.e. 5.2.1991. The

Prevention of Corruption Act, 1947 has been repealed by the new Prevention of Corruption Act, 1988. While repealing the Prevention of Corruption Act, 1947 (Act No. 2 of 1947), legislature has made special provision for action taken or purported to have been done or taken in the old Act not inconsistent with the provisions of the new Act.

12. While dealing with the question of maintainability of the case and trial under the old Act after coming into force of the new Act, the Apex Court in the matter of Nar Bahadur Bhandari etc. v. State of Sikkim and Ors. held that in accordance with Section 13(1) of the Prevention of Corruption Act, 1988, the Court is competent to try the offence punishable under the old Act. Para 9 of the said judgment reads as under:

9. The contentions urged on behalf of the Petitioners are based on a wrong understanding of provisions of the Act of 1988. No doubt, Section 3 of the said Act refers only to offences punishable under the act and the Special Courts constituted u/s 3 will have jurisdiction to try the offences punishable under the Act but Section 3 cannot be read in isolation. It should be read along with other provisions of the Act to understand the scope thereof. Section 30(1) of the Act of 1988 repeals the Acts of 1947 and 1952. That does not mean that any offence which was committed under the Act of 1947 would cease to be triable after the repeal of the said Act. Normally Section 6 of the General Clauses Act would come into play and enable the continuation of the proceedings including investigation as if the repealing Act had not been passed. As per the provisions of Section 6 of the General Clauses Act the position will be as if the Act of 1947 continues to be in force for the purpose of trying the offence within the meaning of the said Act. Section 6 of the General Clauses Act however makes it clear that the said position will not obtain if a different intention appears in the repealing Act. In the present case, the Act of 1988 is the repealing Act. Sub-section (2) of Section 30 reads as follows:

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

The said Sub-section while on the one hand ensures that the application of Section 6 of the General Clauses Act is not prejudiced, on the other it expresses a different intention as contemplated by the said Section 6, The last part of the above Sub-section introduces a legal fiction whereby anything done or action taken under or in pursuance of the Act of 1947 shall be deemed to have been done or taken under or in pursuance of corresponding provisions of the Act of 1988. That is, the fiction is to the effect that the Act of 1988 had come into force when such thing was done or action was taken.

13. In the light of legal proposition and in terms of Section 30(2) of the Act, 1988, sanctioning authority was competent to accord sanction relating to the offence punishable under the old Act in accordance with the provisions of old Act. While according sanction, the sanctioning authority has not committed any illegality. While discharging the Respondent from the aforesaid charges, the Special Judge has not considered the provisions of Section 30(2) of the Act, 1988 and thereby committed illegality in discharging the Respondent. The order impugned is not sustainable under the law and is liable to be set aside.

14. Consequently, the appeal is allowed. The order impugned is hereby set aside. The case is remitted back to the court of the Special Judge, Raipur for further trial of the case in accordance with law.