
(1971) 12 GAU CK 0001
In the Gauhati High Court

Konsam Tharongou Singh

APPELLANT

Vs

The Union Territory of Manipur

RESPONDENT

Date of Decision : 13-12-1971

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 409

Citation : (1972) CriLJ 802

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Judgement

R.S. Bindra, J.C.

1. This is an appeal by Tharongou Singh against the judgment dated 30th July 1969 of Shri P. N. Roy, Special Judge II. Manipur, by which he was found guilty u/s 409 I. P. C. and section 5 (2) of the Prevention of Corruption Act. 1947, hereinafter called the Act. For the first mentioned offence Tharongpu Singh was sentenced to three years" rigorous imprisonment and a fine of Rs. 200/-, or, in default, six months" rigorous imprisonment. , while under the second offence he was sentenced to three years" rigorous imprisonment. The substantive sentences of imprisonment on the two counts were directed to run concurrently. In the instant appeal Tharongou Singh challenges the validity of his conviction and sentence.

2. In November 1966 the appellant was posted at Haborang Sabal as Extension Officer, Agriculture. His office, housed in the Information Centre, and his residential quarter, a Government building, were located about 200 ft. from each other in the compound of the Development Block Office in that village. According to the case of the prosecution the appellant had been entrusted with 57.60 quintals of paddy by the Director of Agriculture, Manipur. and that paddy had been stocked in the northern room of the Information Centre. The Block Development Officer had provided the accused with a Godrei padlock for the purpose of locking the Information Centre. On 6-12-1966 the appellant reported to a few persons including Shri R. K. Sanahal Singh P. W. 3, the Head Cleck in

the Office of Block Development Officer, Imphal West, while they were all playing badminton in the compound of the B. D. O's Office in village Haorang Sabal that the Godrej lock which he had put on the northern room of the Information Centre had been replaced by a lock of Tiger make. Soon thereafter the accused unlocked the southern room of the Information Centre with the key on his person, and on entering the northern room, through a gap in a line of almirahs dividing the Information Centre into two rooms, said that 60 bags of paddy were missing. The appellant thereupon prepared a report about missing bags and made over the same to the Head Clerk Sanahal Singh, who, in turn, passed it on to the B. D. O. Shri Thambalsang Singh P. W. 1, The latter then made an enquiry into the matter and found a shortage of 26.51 quintals of paddy out of the quantity entrusted to the appellant. Jatiswar Singh P. W. 4, the Chowkidw of the B. D. O.'s office in the village, apprised the Head Clerk Sanahal Singh and others that it was the appellant who had removed the paddy from the northern room of the Information Centre and on loading the same in bullock carts had transported it firstly to his own quarter at Haorang Sabal and thereafter by a bus to his own village Charangpat, Sub-division Thoubal, which is quite far away from Haorang Sabal.

3. On the evening of 5-12-1966, runs the prosecution story, when B. D. O. Thambalsang Singh and the appellant returned to Haorang Sabal after tour, the B. D. O. found some bags of paddy lying in the quarter of the appellant. The appellant told him on enquiry that he had removed the paddy from the Information Centre to get it exchanged with new paddy from the farmers putting up in the area of the Block. The matter ended there on that evening.

4. On receipt of the report of the appellant sent to him on 6-12-1966 by the Head Clerk the B. D. O. reported the matter on 8-12-1966 both to the Officer in-charge of the Police Post. Lamsang, as also to the Director of Agriculture. A case of theft was registered by the Police and during the course of investigation it transpired that the appellant had secured the assistance of Sanarei Singh P.W. 5, the village Pradhan. for hiring two bullock carts for private purpose. The carts were owned by Shamu Singh P. W. 2 and Kokngang Singh who has since died. It was at 7-00 or 8-00 a.m. on a holiday that the paddy bags were taken out of the Information Centre and loaded in the carts with the help of Jatiswar Singh P. : W. 4. The appellant asked the cart-men to transport the paddy to his village but they refused to go that far. The accused then agreed that the paddy be carried to his quarter which is only about 200 ft. from the Information Centre.

5. The investigation in the case was primarily done by Shri Angouba Singh of the Police Station, Lamphel. Having felt convinced on the basis of the material collected by him that the accused had criminally misappropriated 26.51 quintals of paddy Shri Angouba Singh moved the Director of Agriculture for sanctioning the prosecution of the appellant. That sanction, according to the prosecution, was granted by the Director on 24th February 1968 per order Ext. P/16. It was thereafter that the appellant was prosecuted before the Special Judge Shri P.N.

Roy on the charges u/s 409 I. P. C. and Section 5 (2) of the Act.

6. The accused denied the charge. His defence was that he had exchanged on 12-11-1966 a part of the stocked paddy with one Kula Singh for an early variety and that subsequently the latter paddy was stolen from within the Information Centre.

7. The prosecution examined 8 witnesses to establish the charge and the accused entered the witness box u/s 342A Criminal P. C. in support of his defence version. The learned Special Judge held both the charges proved and so convicted the appellant and sentenced him in the manner and to the extent stated earlier.

8. Shri Manisana Singh, representing the appellant, challenged the validity of the trial on the grounds (1) that the Director of Agriculture, Manipur, who sanctioned the prosecution of the appellant, was not the appropriate authority under the Act to grant the sanction (2). that the Director had not examined for himself the necessary material before making the order dated 24-2-1968 sanctioning the prosecution and as such the sanction lacks validity, and (3) that there being variance between the charge for which sanction was given by the Director and the one on which the appellant was tried, the sanction, assuming that it was otherwise valid, could not lend validity, to the trial. The learned Government Advocate controverted the correctness of the stand adopted by Shri Manisana Singh, However, on examining the material on record in the light of the authorities cited at the bar by the parties" counsel I have reached the conclusion that the submission made by Shri Manisana Singh is well-founded and so must prevail.

9. Section 6 (1) of the Act enjoins that no Court shall take cognizance of an offence punishable, inter alia, under Sub-section (2) of Section 5 of the Act, alleged to have been committed by a public servant, except with the previous sanction of the authority mentioned therein Jaswant Singh Vs. The State of Punjab, Jaswant Singh v. State of Punjab, is an authority for the proposition that "The sanction under the Prevention of Corruption Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness". In support of this view reliance was placed on the decision in AIR 1945 16 (Federal Court) The Federal Court had to deal in that case with clause 16 of Drugs Control Order, 1943. and it observed that "The sanction is not intended to be and should not be an automatic formality and should not so be regarded either by police or officials". Another proposition enunciated by the Supreme Court in the aforementioned case of Jaswant Singh was that the object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden, and that it should be clear from the form of the sanction that the sanctioning authority considered the evidence before, it and after a consideration of all the circumstances of the case sanctioned the prosecution. The, Supreme Court cited

with approval the rule laid by Privy Council in the case of AIR 1948 82 (Privy Council) In this Privy Council case the provisions of clause 23 of the Cotton Cloth and Yarn (Control) Order 1943. which almost correspond with Section 6 of the Act, had to be interpreted. Their Lordships of the Privy Council expressed themselves as under:

A sanction which simply names the persons to be prosecuted and specifies the provision of the Order which he is alleged to have contravened is not a sufficient compliance with Clause 23. In order to comply with the provisions of Clause 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential since Clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient. Where facts are not referred to on the face of the sanction nor is it proved by extraneous evidence that they were placed before the sanctioning authority, the sanction is invalid, and the trial Court would not be a Court of Competent jurisdiction.

10. The Government Advocate cited Madan Mohan Singh Vs. State of Uttar Pradesh, Madan Mohan v. State of Uttar Pradesh and AIR 1964 SC 259. Biswabhusan Naik v. State of Orissa, to support the contention that the sanction for prosecution granted by the Director of Agriculture on 24th February 1968 meets the requirements of law. In the first mentioned, case the Supreme Court held/that the burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which . the proposed prosecution was to be based, and added that these facts may appear, on the face of the sanction or may be proved by extraneous evidence. It was stated further that where the facts constituting the offence do not appear on the face of the letter sanctioning prosecution, it is incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority, and where this is not done the sanction must be held to be defective, and an invalid sanction cannot confer jurisdiction upon the Court to try the case.

In the second case of Biswabhusan the Supreme Court held that it is not necessary for the sanction under the Act to be in any particular form, or in

writing or for it to set out the facts in respect of which it is given, but the desirability of setting out facts in the order sanctioning the prosecution is obvious because when the facts are not set out in the sanction proof has to be given at least that sanction was given in respect of the facts constituting the offence charged. The Supreme Court went on to observe that an omission to set out the facts in the sanction is not fatal so long as the facts can be, and are, proved in some other way. I may state with respect that I have not found any discordance between the principles enunciated by the Supreme Court in the two authorities cited by the Government Advocate and those set out in the preceding paragraph of this judgment from out of the three authorities relied upon by Shri Manisana Singh. I may appositely add that the Privy Council decision in the case of AIR 1948 82 (Privy Council) was cited with approval by the Supreme Court in all the three judgments relied upon by Shri Manisana Singh and the Government Advocate.

11. The question for decision in the present case therefore is whether the sanction granted by the Director of Agriculture satisfies the requirements of law as reproduced above. The order Ext. P/16, dated 24th February, 1968, of the Director of Agriculture sanctioning the prosecution reads as under:

Whereas a case was registered with the Police vide F. I. R. Case No. 463 (12) 66 of Lamphelpat Police Station regarding the theft of paddy from the Development Block Imphal West I.

2. Whereas, the Police authorities investigating the said case have come to the conclusion that a prima facie case comes up against Shri. Konsam Tharongou Singh, Extension Officer then attached to the office of Development Block, Imphal West I.

3. And whereas the Police authorities propose launching prosecution of the said Shri Konsam Tharongou Singh and have made a written request to accord sanction to his prosecution.

4. I therefore, hereby accord sanction to the prosecution of the said Shri Konsam Tharongou Singh.

A copy of this order was sent each to the Superintendent of Police, Manipur, and the Officer-in-charge of Police Station, Lamphelpat. In the endorsement forwarding the copy to the latter it is stated that it is "with reference to his Memo No. 353/Lamphel P.S./68. dt. 24-1-1968." That memorandum too has been placed on the record by the Prosecution and it is marked Ext. P/15. It is in the form of application addressed by the Officer-in-charge of the Police Station to the Director of Agriculture, requesting for sanctioning the prosecution of Tharongou Singh. I feel tempted to reproduce this application in full. It is in the following terms:

I have the honour to report that during the course of the investigation of F. I. R. Case No. 463 (12) 66 of Lamphel P. S. u/s 380 I. P. C. no theft of the paddy is

established but the E. O. criminally misappropriated it and converted to his own use as such a prima facie evidence u/s 409 I. P. C. read with Section 5 Prevention of Corruption Act is made out against Shri Konsam Tharongou Singh, E. O., Agriculture, attached to Imphal West Development Block-1. No trial could be commenced by taking cognizance against the accused without according sanction for Prosecution by the Head of Department or Appointing Authority by Court. So the case is lying pending for want of Prosecution Sanction.

So . I request that sanction for prosecution may kindly be accorded against him.

12. Since the facts bearing on the offence allegedly committed by Tharongou Singh were neither set out in Ext. P/15 nor in Ext. P/16 to the extent required by law, the Government Advocate move an application in this Court for permission to lead evidence to establish that the entire relevant data had been taken into consideration by the Director of Agriculture before he sanctioned the prosecution. That application was allowed and the prosecution examined two witnesses in this Court and placed on record the document marked Ext. A. W. 1/A. This document is copy of a letter addressed by the Officer-in-charge of Lamphelpat Police Station on 10-7-1967 to the Development Commissioner, Manipur. and this copy was forwarded to the Director of Agriculture, Manipur. The letter addressed to the Development Commissioner purports "to report the progress of the investigation in brief of the F. I. R. Case registered u/s 380 I. P. C. at the Police Station. Lamphel. It was stated in this letter that on 8-12-1966 B. D. O. Shri Thambalsang Singh had lodged a report in writing that it had been reported by Tharongou Singh (the present appellant) that about 60 bags of paddy had been stolen from the Information Centre by replacing the original Godrej make padlock. that the investigations had revealed that no theft had been committed as reported by Tharongou Singh, and that "Neither the E. O. Agriculture could prove the stolen nor he actually stored new paddy in place of old paddy shifted by him from the Centre to his quarter in the last 12-11-1968 and carried away the same on 20-11-1966 for his own consumption". It was stated further in the letter that since there was no case of theft of paddy and "the E. O. Agriculture criminally misappropriated 26.51 K. Gs. (Quintals?) of paddy and converted to his own consumption as such there is evidence u/s 409 I. P. C. against the E. O. Agriculture had been established at the present stage of investigation (sic)"

The Government Advocate urged at the bar that the document Ext. A W. 1/A and the one marked Ext. P/15 between themselves contain all the necessary material which the Director of Agriculture was legally expected to examine before sanctioning the prosecution, and that since he had given the sanction on 24-2-1968 per Ext. P/16 after weighing the material set out in the first mentioned two documents, the sanction does not suffer from any legal infirmity. Assuming without conceding that the documents Ext. A. W. 1/A and Ext. P/15 contain the necessary material, there is nothing on the present record to show that when the Director of Agriculture gave the sanction on 24th of February 1968 he had considered what is stated in Ext. A. W. 1/A or that that document had

even been placed before him on that day. Ext. P/16 ex-facie shows that the order sanctioning the prosecution was passed on receipt of the letter Ext. P/15 from Shri Angouba Singh. There is no recital in Ext. P/16 that the document Ext. A. W. 1/A had either been placed before the Director of Agriculture or he had examined its contents and taken them into consideration before making that order.

The two witnesses examined in this Court are Th. Ibempisak Devi and Shri Angouba Singh. The latter witness affirmed that it was he who had investigated the present case, and that during the course of investigation he had addressed one letter on 10-7-1967 to the Development Commissioner and had endorsed the copy (Ext. A. W. 1/A.) thereof to the Director of Agriculture, Manipur. Ibempisak Devi deposed that in July 1967 she was in charge of Establishment Section in the office of the Director of Agriculture, Manipur, that matters pertaining to disciplinary proceedings were dealt with by her, that the copy Ext. A. W. 1/A was received by her from the Officer-in-charge of the Lamphel Police Station, and that she had placed that document before the Director of Agriculture, Manipur, for his perusal when the latter placed his dated initial thereon. Neither Angouba Singh nor Ibempisak Devi affirmed that the document Ext. A. W. 1/A had been placed before the Director of Agriculture on 24th February, 1968, when the order sanctioning the prosecution was passed by the Director, or a day or so before that date. Therefore, there is nothing to prove that the Director of Agriculture had taken into consideration any material other than that set out by Angouba Singh in Ext. P/15 before sanctioning the prosecution of the appellant. Undeniably, the document Ext. P/15 does not contain the facts and circumstances of the offence charged against the appellant. Therefore, it is difficult to agree with the learned Government Advocate that the sanction given by the Director for the prosecution of the accused satisfies the test laid by the Supreme Court,

13. I feel satisfied in the background of the material on record that the Director had made the order dated 24th February 1966 in a casual manner and without realising what his legal obligations in the matter were. In para 3 of his order it is stated that "the Police authorities propose launching prosecution of the said Tharongou Singh and have made a written request to accord sanction to his prosecution", and in the next paragraph it is stated "I. therefore, hereby accord sanction to the prosecution of the said Shri Konsam Tharongou Singh". Evidently, the sanction was given because the Police requested the Director to do so. One cannot spell out from the order Ext. P/16 that the Director looked into any material before passing that order. Indeed, it is manifest from the language used in Ext. P/16 that sanction had been given as the Police wanted to prosecute Tharongou Singh. In other words, the Director believed that grant of sanction by him is a mere formality and that he could safely rely on the opinion of the Police that it was a fit case for prosecution. Certainly that attitude does not come up to the requirements and demands of law. Consequently, the order dated 24th February 1968 of the Director does not constitute valid sanction in terms of Section 6 (1) of the Act as interpreted by the Supreme Court.

14. The learned Government Advocate very fairly conceded that if the sanction is declared wanting in legal validity then the Special Judge, Manipur, lacked jurisdiction to try the appellant. Since I have held the sanction to be not valid in law, it follows that the trial of the accused u/s 5 (2) of the Act was without jurisdiction and so his conviction on that charge and the sentence imposed on him have to be quashed. I order accordingly.

15. This takes me to the consideration of the question what is the consequence of the finding just recorded on the conviction of the accused u/s 409 I. P. C. Section 7 (3) of the Criminal Law (Amendment) Act, 1952, hereinafter called the Act of 1952, provides that "When trying any case. Special Judge may also try any offence other than an offence specified in Section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial". It was submitted by Shri Manisana Singh that the accused can be tried by the Special Judge for an offence other than the one specified in Section 6 of the Act of 1952 along with one of the offences specified therein only if the trial of the latter offence is valid in all respects, and that if there was no valid sanction for the trial of that offence then the trial of the other offence shall also be invalidated. In support of this view Ramautar Mahton Vs. The State, Ramautar Mahton v. The State and AIR 1966 Raj 191 . Shriram v. The State. In the Patna case it was held that if the proceeding before the Special Judge in a case relating to an offence u/s 5 (2) of the Act is no trial at all because of lack of valid sanction u/s 6 of the Act. the Special Judge has no jurisdiction under S. 7 (3) of the Act of 1952 to try the offence u/s 409 I. P. C, also. An identical view was taken by the Rajasthan High Court in the case cited above. The learned Government Advocate conceded the proposition of law propounded by Shri Manisana Singh. I think the view taken by the Patna and Rajasthan High Courts is sound in law. The ratio behind that view is the trial by the Special Judge for an offence mentioned in Section 6 of the Act of 1952 lacks validity then the trial of an offence other than the one described in Section 6 must stand invalidated because normally such a case is tried by the Sessions Judge only on commitment made to him by a competent Magistrate. Without commitment the Sessions Judge has no jurisdiction to try a case other than the one mentioned in Section 6 of the Act of 1952 unless recourse can validity be taken to S. 7 (3) of the Act of 1952. It follows that the trial of the appellant Tharongou Singh u/s 409 I, P. C. has also to be quashed after his trial u/s 5 (2) of the Act has been found wanting in legal validity.

16. In the result, on allowing the appeal I set aside the conviction and sentence of the accused on both counts. However, I make it clear that this order does not amount to acquittal of the accused on either count. I have only quashed the whole of the trial for the technical reasons stated above. It shall be open to the State to direct prosecution of the accused after taking fresh sanction. of the competent authority.