
(2001) 03 DEL CK 0062
In the Delhi High Court
Case No : Criminal W. 738 of 1994

Lt. General (Retd.) Nirmal Puri	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Citation : (2001) 3 AD 749 : (2002) CriLJ 158 : (2001) 90 DLT 663 : (2001) 58 DRJ 812

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Mr. P.N. Lekhi and Mr. Aman Lekhi, for the Appellant; Mr. A.K. Dutt and Mr. D.K. Singh, for the Respondent

Judgement

S.K. Agarwal, J.—In this petitioner under Article 226 of the Constitution of India read with Section 482 Code of Criminal Procedure (for short Cr. P.C.) the petitioner has sought quashing of RC No. 88-SIU-I dated 1.1.1988 under Sections 3 and 5 of the Official Secrets Act, 1923 (for short OS Act) read with Section 120-B India Penal Code (for short IPC and the proceeding based thereon, alleging that no valid cognizance of the alleged offences could be taken without sanction u/s 197 Cr. PC

2. Prosecution allegations in brief are: that during 1982-83 the petitioner was posted as Director Armoured Corps in Army Headquarters. He voluntarily retired from service on 17.3.1985; Vinod Kumar Khanna, co-accused in the case was Chairman and Managing Director of M/s Concord International Pvt. Ltd., M/s Adomatrix (P) Ltd., M/s Prithvi Sound Products (P) Ltd. & others sister concerns of Concord Group of companies; he and his wife Nirmal Khanna were partner of M/s U N International, which was associated with M/s SAAL SCANIA of Sweden. They were very close to the petitioner; they had taken flat of the petitioner at Som Vihar on a monthly rent of Rs. 3000/- and Rs.1000/- towards furniture etc. Petitioner's wife, who was an under-graduate having no technical qualification, was appointed as a consultant with the company of the co-accused on a monthly

consultancy fee of Rs.4500/- while the petitioner was still in service; on 10.12.1984, petitioner hired first floor of A-21 Friends Colony, New Delhi from Dr. P K Sood, at a monthly rent of Rs.4500/-; which was agree to be paid by the company of the co-accused in lieu of consultancy fees of payable to the wife of the petitioner; Rs.40,500/- was paid by cheque between 1984 to August, 1985. Thereafter the petitioner vacated the said premises and moved to his flat at Som Vihar and simultaneously the consultancy of petitioner's wife also came to an end; Petitioner also worked as a consultant with the companies of the co-accused from Jan 1986 at a monthly consultancy fee of Rs.3000/- through his proprietorship concern M/s Puri Associates; petitioner and his wife received a total amount of Rs.1,30,500/- apart from the rent from the firms of the co-accused.

3. On 5.2.1987 Income Tax authorities conducted raid at the premises of the companies of the co-accused and seized various records including file marked 032 captioned as "Gen. Nimmi Puri" containing pages 1 to 76, through a Panchnama. It was found to contain hand-written note containing classified/secret information in relation to military affairs of Government. The same reads as under:

"a) A hand-written note, placed at pages 1-5 of the file containing secret classified information regarding communication equipment, Light Tanks, and Training Simulators. The information regarding communication equipment relates to VHF Radio sets for AFV's (Armoured Fighting Vehicles) and HF Radio sets for AFV's; and motions that present sets are obsolete and do not give requisite range and reliability; qualitative requirements and the make of Russian sets fitted in T-72 Tanks of Indian Army. The note also contains secret classified information about the Light Tanks and the make of tanks ideal for Indian Army. The note also disclosed that a presentation was made by Director, Armoured Corps to various Army authorities. This note also disclosed the visit of the Indian team to Sweden in late 1984 and their recommendations; offer of Swedish company relating to a number of additional items such as Night Vision Services, Fire Control System, the quantity required etc. The said hand-written note contains secret classified information about Training Simulators; that a contract had been signed in May 1985 to buy 60 Simfiro sets. It also contains information about the offer of Solatron about their "G" series Simulators; that they would be competing with SI-41 (SAAD SCAN A) and any other simulators that may come up etc.

b) A hand-written note, with an open envelop, marked "Personal/Confidential in the name of Mr. Vinod K. Khanna, placed at pages 73, 75 of file "0-32". This note contains secret classified information in respect of decision to introduce Light Tanks in the Army; the purpose for the said introduction, role to be played by the Light Tanks and the area of deployment, their requirement; short listing of French and Swedish Tanks for trials; effectiveness of such Light Tanks and its Cunning, with result of trials and subsequent developments with regard to the

acquiring of these Tanks as also a visit of a Team of officers led by Director, Armoured Corps to Sweden."

4. The petitioner in his statement recorded on 21.5.87 u/s 131 of the Income Tax Act, admitted that he might have jotted down the notes at the instance and for the use of the co-accused Vinod Kr. Khanna; the information contained in hand written notes of the petitioner, was secret/classified and pertained to Army Headquarters/Ministry of defense for the period 1980 to 1985; it was not made public or published by the Government and was not intended to be divulged to any unauthorised person/ authority. Thereafter above noted case was registered by the CBI and investigations were taken up. It was revealed during investigations that from 1984 to February, 1987 the petitioner and co-accused agreed to do or cause to be done illegal acts prejudicial to the safety and interest of the State and in pursuance of the criminal conspiracy between the petitioner and co-accused, aforesaid secret/classified information pertaining to Indian Army, Ministry of defense was obtained/collected by the petitioner, was passed on to the co-accused. The aforesaid information was calculated to be directly or indirectly useful or advantageous to the enemy and the disclosure of which was likely to affect the sovereignty and integrity of India and security of the State. After completion of investigations and after obtaining requisite sanction u/s 13(3) of the OS Act, the complaint for prosecution of petitioner the co-accused was filed in the court. Cognizance was taken. While the matter was pending trial, the present petition was filed challenging the order taking cognizance for want of sanction u/s 197 of Cr.PC.

5. I have heard learned counsel for the parties and have been taken through the record.

6. Learned counsel for the petitioner argued that on 1.4.88 above noted case was registered; after investigations on the basis of the complaint with Sections 3 and 5 of the OS Act read with 120-B IPC. Magistrate took cognizance of the case and committed the same for trial to the Sessions court. It is argued that the court could not take cognizance without prior sanction u/s 197 Cr.PC as the petitioner was public servant not removable from the office save with the sanction of the Central Govt. since the alleged offences were committed by the petitioner while acting or purporting to act in discharge of his official duties and that sanction order u/s 13 of the Act cannot dispense with the mandatory/statutory requirement of sanction u/s 197 Cr. PC. Reliance in this regard was placed on the Supreme Court decisions in State of Maharashtra vs. Dr. Budhikota Subbarao 1993 (3) SCC 330. Learned counsel for the State argued to the contrary. In order to appreciate the rival contentions reference to section 197 of Code of Criminal Procedure is necessary, which reads :-

"Prosecution of Judges and public servants.-(I) When any person who is or was a Judge or Magistrate or a public servant not removable from his officer 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."

(2) XXXX

(3) XXXX

(3A)XXXX

(3B)XXXX

(4) XXXX

7. Law regarding grant of sanction u/s 197 Cr.PC is well settled by several authoritative pronouncements. The Supreme Court in B. Saha and Others Vs. M.S. Kochar, after examining several earlier decision held that the words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of (SIC)row as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, no part of an official duty can be to commit an offence. It can never be so. In the wider sense, these words would take under their umbrella every act Constituting an offence committed in the course of the same transaction, in which the official duty is performed or purports to be performed. It was held:

The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for "it is no part of an official duty to commit an offence, and never can be". In the wider sense these words will take under their umbrella every act Constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty which is entitled to the protection of Section 197(1) an act Constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami J. in Baijnath Gupta and Others Vs. The State of Madhya Pradesh, "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the

Criminal Procedure Code will be attracted".

8. The question whether the offence was committed in the course of official duties or under colour of official duties, would depend on the facts of each case. In this case admittedly, during the relevant period petitioner was working as Lt. General in the Indian Army. He was posted in the Army Headquarters and had access to the secret/classified documents relating to military affairs of India in official discharge of his duties. As per the allegation petitioner prepared notes in his hand writing for the co-accused Vinod Kumar Khanna; petitioner's wife who was not holding any technical qualification was appointed as a consultant in the company of the co-accused; petitioner himself started working as a consultant with the company of the co-accused after seeking voluntary retirement; the handwritten notes in question were recovered from the premises of the co-accused by the Income Tax authorities during the raid; petitioner admitted in his statement that note was jotted down at the instance of and for the use of the co-accused. All these acts cannot be said to have been performed by the accused while acting or purporting to act in the discharge of his official duties. Ratio of Subbarao's case (supra) relied upon by the learned counsel for the petitioner in support of his arguments is not applicable to the facts of this case. In that case the documents were seized from the accused at the airport and from his residence. Those documents were such which he could have obtained or procured while acting as naval officer in discharge of his official duties. There was no allegation or material to show that the documents recovered from him were passed on to anybody else. In the backdrop of these facts it was held that sanction u/s 197 Cr.P.C. was necessary. However, in this case as noticed above facts are quite different. In my view under the facts and circumstances of the case, no sanction u/s 197 Cr.P.C for prosecution of the accused is necessary.

9. For the foregoing reasons petitioner is dismissed. The trial court is directed to expedite the trial.