
(1986) 12 SC CK 0013
In the Supreme Court Of India
Case No : Criminal Appeal No. 48 of 1983

Mohd. Mumtaz

APPELLANT

Vs

Smt. Nandini Satpathy and Others

RESPONDENT

Date of Decision : 20-12-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 321, 494
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (1987) 11 ACR 181 : (1987) 1 SCC 269

Hon'ble Judges : P. N. Bhagwati, C.J.; V. Khalid, J.; S. Natarajan, J.; G. L. Oza, J.; E. S. Venkataramiah, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

G.L. Oza, J.—The present appeal by special leave is directed against the judgment and order of the High Court of Orissa dated 14th May 1981 in Criminal Revision No. 22 of 1981 arising out of an order dated 20th December, 1980 of the Additional Special Judge, Bhubaneswar allowing an application filed by the Special Public Prosecutor praying for withdrawal from prosecution in Case No. 13 of 1979 against Respondent No. 1. By the impugned judgment the Hon'ble High Court dismissed the revision petition filed by the Appellant and confirmed the order passed by the learned Additional Special Judge permitting withdrawal of the case by the Special Public Prosecutor. The Vigilance Department of the State submitted a charge-sheet against Respondent No. 1 on the allegation that she had no assets prior to her election as a member of the Rajya Sabha in the year 1962. Subsequently she was re-elected and became a Union Deputy Minister from January 1966 to June 1970 and a Union State Minister from June 1970 to June 1972. She became the Chief Minister of Orissa from 15-6-72 to 28-2-73 and again from 6-3-74 to 26-12-76. Even before becoming the Chief Minister of Orissa she had no assets save and except a thatched roof house at Pithapur, Cuttack and a bank balance of Rs. 18,000/-. It was alleged that during her incumbency as Chief Minister, the bank balance increased as well as her other

assets swelled-up and it was alleged that in 1977 her net assets were to the tune of Rs. 7,54,735.85 p. which were disproportionate to her known sources of income.

2. In 1977 the Respondent No. 1 left the Congress Party and joined the Congress for Democracy. In the Parliamentary elections in 1977, the Congress was defeated and Janta Party came to power and also in the Assembly elections which followed, the Congress lost and the Janta Party came to power in the State. It appears that although the Congress for Democracy which Respondent No. 1 had joined, merged with the Janta Party, still many leaders of the Janta Party had a grudge against her as during her regime as Chief Minister when emergency was clamped, a number of leaders who were prominent in the Janta Party were put behind bars and ultimately for having assets disproportionate to her known sources of income, a prosecution was launched against her u/s 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act.

3. One of the allegations on the basis of which the charge-sheet was filed was that on 15-7-74, Respondent No. 1 passed an order in favour of M/s. Ferro Alloys Corporation. This order was passed by her in her official capacity and it is alleged that because of this order M/s. Ferro Alloys made a huge profit of about Rs. 4 crores and on 3-10-75 and 7-10-75 cheques in the aggregate sum of Rs. 48,000/- were given by M/s. Ferro Alloys Corporation to Dharitri a newspaper for an advertisement which was published in the newspapers. It was therefore alleged that Respondent No. 1 obtained Rs. 48,000/- from M/s. Ferro Alloys Corporation.

4. The second allegation against Respondent No. 1 was that on 14-6-76 the Prime Minister requested Respondent No. 1 to indicate the approximate value of her recently completed house at Bhubaneswar and no reply to this query is found on the record of the Prime Minister. The construction of the house started in September 1974 and ended on 29th February, 1976. The investment in the construction of the house is said to be Rs. 3,32,000/- and odd whereas according to Respondent No. 1 she had spent an amount of Rs. 2,68,000/- and the difference of Rs. 64,000/-, according to the allegation of the prosecution was the amount acquired by Respondent No. 1 by illegal and corrupt means as Chief Minister. It was alleged that the whole sum of Rs. 3,27,614/- is surreptitious and not disclosed in income tax return for the financial years 1974-75 and 1975-76. It is also alleged that Navjat Printers which is owned by Samajbadi Society received a sum of Rs. 3,94,540/- between 6-3-74 and 29-2-76 in respect of orders placed by UPCC. The allegation is that UPCC between 6-3-74 and 29-2-76, paid only Rs. 60,964/- and as regards the balance of Rs. 3,33,570/- it must have been acquired by Respondent No. 1 herself and paid to Navjat Printers.

5. It was alleged that Shri Natchiketa Satpathy, son of Respondent No. 1 purchased a flat at Kailash Apartments, New Delhi and for this purpose Respondent No. 1 paid Rs. 50,000/- to her son in three instalments. Similarly it

was alleged that on 15-3-75 Respondent No. 1 paid Rs. 15,000/- to her other son Tathagat Satpathy and managed to get invested a sum of Rs. 33,000/- in different names fictitiously in M/s. Rosambi Private Limited. An amount of Rs. 15,000/- is said to have been a payment by cheque.

6. It was alleged that in the house of her husband, cash was contained in two bags which was to the tune of Rs. 51,766/- One of the bags there had a visiting card of the First Secretary of the USSR Embassy. This cash was discovered after Respondent No. 1 ceased to be Chief Minister. The search was made on 8th July, 1977 when Respondent No. 1 had already ceased to be Chief Minister nearly nine months before that date. It was alleged that the cash must be deemed to have been of the ownership of Respondent No. 1 and that it must have been acquired by her during the period when she was the Chief Minister.

7. It appears that when charge-sheet was filed against Respondent No. 1, the Income Tax Department also issued notice for re-opening of her assessments and examined the whole matter afresh and during the period that this case has been pending here, final orders have been passed by the Income Tax Department which explain in detail all the items of assets: which according to the prosecution were disproportionate to the legitimate means of Respondent No. 1. This matter came up before us along with another case from Bihar, where we heard arguments at length on the question of withdrawal from the prosecution and its legal implications, but so far as the present case is concerned, in view of the facts as they emerge, we do not find it necessary to go into all these questions. The allegations can be broadly classified into three heads.

8. The first head relates to payments made to Dharitri and Navjat Printers or Samajwadi Society. These are clearly distinct institutions which could not be said to belong to Respondent No. 1. It is not disputed that Dharitri is a newspaper which receives advertisements and payment for advertisement made to Dharitri could not possibly be co-related to Respondent No. 1 or regarded as receipt of Respondent No. 1. There is nothing at all to show that the payment received by Dharitri for advertisement (which in fact was published in Dharitri) had anything to do with Respondent No. 1.

9. The second head of allegations relates to valuation of assets and the construction of the house and the third category to the monies received by the U.P.C.C. which are alleged to have been paid by Respondent No. 1. Lastly there are similar items of monies paid to the sons and found in the possession of her husband. So far as these allegations are concerned, it may be pointed out that it was on the basis of these allegations that the Income Tax Department re-opened the assessments after giving notice and conducted detailed enquiries and ultimately passed a final order accepting her returns as correct and rejecting the allegations that she had suppressed any income from undisclosed sources.

10. It is also significant that the application for withdrawal was made by the Special Public Prosecutor in 1980 when Respondent No. 1 had nothing to do with

the party in power, as after the elections held in 1980, Congress-I came back to power in Orissa and J.B. Patnaik became the Chief Minister. Respondent No. 1 contested the Assembly election as a candidate of Congress (Urs) Party and was elected, defeating her Congress-I opponent Shri Profulla Bhanja and she was a member of Congress (Urs) (Opposition) during that period. This is to our mind a strong circumstance which indicates that the application for withdrawal was made in furtherance of public justice and distinguishes the case of Respondent No. 1 from that of Dr. Jagannath Misra in the Bihar case which is being disposed of by another judgment today.

11. The Income Tax Officer examined in detail each one of the items of assets said to have been unaccounted and suppressed and the order passed by the Income Tax Officer which has been placed on record clearly explains all the items as also entries pertaining to the house construction and other assets and shows that there is nothing to indicate the Respondent No. 1 was possessed of assets disproportionate to his means. The application moved by the Special Public Prosecutor for withdrawal from the prosecution was therefore clearly bonafide and in furtherance of public justice and it was clearly a false and vexatious criminal prosecution which had been launched against Respondent No. 1 which was sought to be halted. The learned Special Judge also on these facts took the view that no useful purpose would be served by continuance of the prosecution and he accordingly permitted the withdrawal. The High Court too maintained the order of the learned Special Judge. We agree that in the light of the facts on record and the order passed by the Income Tax Officer which explains all the items of assets alleged to be unaccounted and suppressed, the charges against Respondent No. 1 appear to be groundless. It is true that ordinarily when the exercise of considering the material on record for the purpose of determining whether there is sufficient material to sustain the prosecution can be performed by the Court u/s 239 of the Code of Criminal Procedure 1973 the Court should not allow the prosecution to be withdrawn u/s 321 as held by us in the judgment in Dr. Jagannath Misra's case, which has been delivered today. But in the present case there is no point in setting aside the withdrawal and sending the case back to the learned Special Judge because after considering the entire material on record in detail we are of the view that there is no material at all on the basis of which it could be said that there is a prima facie case against Respondent No. 1 and the charges against Respondent No. 1 appear to be groundless and Respondent No. 1 would therefore in any event be entitled to be discharged u/s 239. We do not therefore think it necessary or expedient to interfere with the order made by the learned Special Judge and confirmed by the High Court.

12. The appeal will therefore stand dismissed.

V. Khalid, J.

13. I have just received (at 7.40 p.m. on 19th December, 1986) a draft judgment by Oza, J. in the above case. I agree with the conclusion that the appeal has to be dismissed, but not, with respect, with the reasoning contained in the

judgment. Since the case is listed for judgment on 20th December, 1986, I do not have time to write a detailed judgment.

14. The question to be decided in this appeal is the scope of Section 321 Code of Criminal Procedure, and I do not agree with the following observation of Oza, J. since there is no question of setting aside of the order passed by the learned Additional Special Judge, Bhubaneswar:

...But in the present case, there is no point in setting aside the withdrawal and sending the case back to the learned Special Judge because after considering the entire material on record in detail we are of the view that there is no material at all on the basis of which it could be said that there is a prima facie case against Respondent No. 1 and the charges against Respondent No. 1 appear to be groundless and Respondent No. 1 would, therefore, in any event be entitled to be discharged u/s 239....

A cursory glance at Section 321 will satisfy anyone that consent can be given for withdrawal from the prosecution of a case, not only when the charge is not framed, but even after the charge is framed and at any time before the judgment.

15. This appeal along with Criminal appeal No. 49 of 1983 were directed to be posted before a Constitution Bench to consider the scope of Section 321, Code of Criminal Procedure. That being so, I do not think it proper to abandon that pursuit and take refuge u/s 239 Code of Criminal Procedure .

16. In a separate judgment to be pronounced by me in Criminal Appeal No. 241 of 1983, I have outlined the scope of Section 321 Code of Criminal Procedure. What is to be decided in this case is whether the order passed by the Magistrate u/s 321, Criminal Procedure Code, is proper or not We are not called upon to consider the propriety of the charge framed and then examine the evidence and see whether the accused should be discharged or the charge framed should be upheld.

17. I adopt the reasons given by me in Criminal appeal No. 241 of 1983, relying upon the decisions reported in The State of Bihar Vs. Ram Naresh Pandey, and in Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others, and uphold the order of withdrawal passed by the Additional Special Judge, Bhubaneswar, and upheld by the High Court in revision, and dismiss the appeal.

E.S. Venkataramiah, J.

18. I agree that this appeal has to be dismissed. I am of the view that the decision in The State of Bihar Vs. Ram Naresh Pandey, interpreting Section 494 of the Code of Criminal Procedure, 1898 and the decision in Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others, interpreting Section 321 of the Code of Criminal Procedure, 1973 do not call for any reconsideration. I am in full agreement with the views expressed in these decisions. I am satisfied that the Public Prosecutor had applied his mind to the

case before applying for withdrawal and the Chief Judicial Magistrate has not committed any error in giving his consent to such withdrawal.

19. The appeal is, therefore, dismissed.