

(2000) 09 GAU CK 0008
In the Gauhati High Court
Case No : Criminal Misc Case No. 8 of 1999

Nani Gopal Bhattacharjee	Vs	APPELLANT
S. Choudhury and Others		RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12
Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 6
Penal Code, 1860 (IPC) — Section 21

Citation : (2000) 3 GLT 662

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : Mr. C.S. Sinha, for the Appellant; Mr. H.K. Bhattacharjee and Mr. G.S. Das, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition u/s 482 of the Code of Criminal Procedure is directed against the order passed by the learned Judicial magistrate 1st Class, Agartala, West Tripura on 13.10.1999 in Case No. C.R. 312 of 1990.

2. The fact, relevant for the purpose of deciding the matter in issue, in short, is that a criminal proceeding was launched against the Tripura Jute Mills Ltd. and the present petitioner, Shri Nani Gopal Bhattacharjee, who was serving as Managing Director of the said Jute Mill at the relevant time, for commission of offence under sections 6 and 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 alleging, inter alia that the accused persons have failed to pay the employees' contributions to the Provident Fund. After closure of the prosecution evidence, the present petitioner filed an application claiming protection u/s 197 CrPC on the ground that he being a public servant u/s 21 of the I.P.C., the court should not have taken cognizance of offence without necessary sanction. The case of the petitioner is that he was a member of the

Tripura Civil Service and at the relevant time he was holding the post of Managing Director of Tripura Jute Mills Ltd. on deputation and as he was not removable from office without the sanction of the State Government, sanction u/s 197 CrPC was a must for prosecuting him. The learned trial Judge after hearing both sides. vide impugned order dated 13.10.1999, rejected the prayer of the petitioner. Hence the present application u/s 482 CrPC for setting aside the said order and for quashing of the proceedings.

3. I have heard Mr. C.S. Sinha, learned counsel for the petitioner and Dr. H.K. Bhattacharjee, learned counsel for the respondent Provident Fund Inspector, the complainant of the case.

4. There is no dispute at the Bar that the Tripura Jute Mills Ltd. is a company, registered under the Companies Act and it is wholly/ substantially owned by the State of Tripura and the said Jute Mill being a public sector undertaking, is a State within the meaning of Article 12 of the Constitution.

5. The question whether the protection by way of sanction u/s 197 of the Code of Criminal Procedure is applicable or not to the officers of Govt. companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of pervasive control of the Government, was the subject matter for consideration before the Apex Court in the case of Mohd. Hadi Raja Vs. State of Bihar and Another, After considering its earlier decisions, the Apex Court observed -

"20. Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the Government and such instrumentality discharges the duties and functions which the State intends to do as indicated in Ajay Hasia case, such instrumentality or agency is nonetheless a juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed, as of rule, an action of the Government by its employees or by an authority empowered by the Government. It may be indicated here that it is not necessary that persons falling under any of the descriptions given in various clauses u/s 21 of IPC need to be appointed by the Government. If such person falls under any of the descriptions as contained in various clauses of Section 21 of the Indian Penal Code, such person must be held to be a public servant. Explanation 1 of Section 21 indicates that persons falling under any of the above descriptions are public servants whether appointed by the Government or not. Explanation 2 indicates that wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant whatever legal defect there may be in his right to hold that situation. Sub-clause (b) of clause 12 of section 21 expressly makes the officers

of local authority and corporation established by or under a Central, Provincial or State Act. or a government-owned company as defined in Section 617 of the Companies Act, 1956, public servants. But protection u/s 197 CrPC is not available to a public servant unless other conditions indicated in that section are fulfilled.

21. It is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf the Government as such within the meaning of Section 197 CrPC.

23. The importance of the public undertaking should not be minimised. The Government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and distinct legal entity, such instrumentality stands on a different footing than the government departments.

26. Therefore, it wilt not be just and proper to bring such persons within the ambit of section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by court."

6. The court held that protection by way of sanction u/s 197 Cr.P.C. is not applicable to the officers of the Govt. companies or public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution.

7. The learned counsel for the petitioner has further submitted that in the present case, the petitioner Shri Nani Gopal Bhattacharjee was a confirmed officer under the Tripura Civil Services Grade-II and he was sent on deputation only to Tripura Jute Mills Ltd. vide Annexure-1(a), which shows that the petitioner was posted as Managing Director on deputation basis vide Shfi G.K. Rao, IAS, transferred. It is, therefore, contended that though he was working as Managing Director in the said Jute Mills, he continued to be an officer of Tripura Civil Services removable from office by the State Government and because of his lien in the service, he is entitled to protection u/s 197 Cr.P.C.

8. A similar question had arisen before the Apex Court in the case of S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, Shri S.S. Dhanoa, a member of I.A.S. was serving in the Ministry of Agriculture and by Notification, issued by the Government of India, his services were placed at the disposal of Department of Co-operation, for his appointment as the General Manager, Super Bazaar,

Connaught Place. New Delhi and while he was serving as such, the Municipal Corporation, Delhi prosecuted him for storing/selling adulterated honey at the said Super Bazar. Although the General Manager of the said Super Bazar was not removable without the prior approval of the Central Government and even if considering the legal protection that the appellant is deemed to be a member of the Service, the Apex Court held that the protection u/s 197 CrP.C. was not available to the appellant as at the relevant time he was not employed or discharging his duties in connection with the affairs of the Union.

9. In the present case also it is seen that at the material time, the petitioner was no deputation under Tripura Jute Mills Ltd. which has its own legal entity. Although he was not removable from service. Without the approval of the State Government, at the relevant time he was not discharging his duties in connection with the State affairs. I, therefore, hold that the learned trial Magistrate rightly rejected the application for protection u/s 197 Cr.P.C. and the present application has got no merit.

10. In the result, the petition stands dismissed.

11. Send down the records.