
(1999) 01 KL CK 0019

In the High Court Of Kerala

Case No : Criminal M.C. No. 1477 of 1995

P. Prathapachandran and Another

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 02-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, 168, 419, 420, 465
Prevention of Corruption (Amendment) Rules, 1965 — Rule 9(1)
Prevention of Corruption Act, 1947 — Section 19, 6, 6(1), 6(2)
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(1), 19(2)
Prevention of Corruption Rules — Rule 10

Citation : (1999) 2 ALT(Cri) 163 : (1999) CriLJ 2002 : (1999) 2 ILR (Ker) 418

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : S.P. Aravindakshan Pillai, for the Appellant; K.P. Satheesan and P.B. Sahasranaman, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Mohamed Shafi, J.—Accused 2 and 3 in C. C. No. 1/94 on the file of the Special Judge, CBI Court-11, Ernakulam are the petitioners. This petition is filed to quash the entire criminal proceeding initiated against them. Petitioners and 3 other accused persons were tried for the offences punishable under Sections 419, 420, 465, 471 and 168 read with Section 120B, IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, on the basis of the charge-sheet laid by the Inspector of Police, CBI/ SPE, Cochin. Petitioners raised several objections before the Special Judge to the effect that the prosecution is invalid for want of proper sanction to prosecute them.

2. It is seen that the prosecution against the petitioner and other accused were launched alleging criminal conspiracy, misappropriation etc. during the period 20-6-89 to 26-2-90. Though all the accused raised objection regarding want of proper sanction to prosecute them, only the petitioners pressed the contention

before the learned Special Judge and the learned Special Judge negated that contention by order dated 8-8-95. Hence this Crl.M.C. is preferred before this Court.

3. Petitioners contended that the appointing authority is the Chairman of the Cochin Shipyard. The Chairman and Managing Director delegated his powers regarding the authority to take disciplinary action including removal from service to the Chief Manager, Ship Repair Operations and Chief Manager (Personnel) and others by order dt. 21-8-86. By order dt. 29-10-91 issued by the Deputy General Manager (Personnel) the above power has been delegated to the Deputy General Manager (Personnel) also. Sanction in respect of 2nd accused in this case is issued by the Deputy General Manager (Training) on 6-4-93 and sanction to prosecute the 3rd accused has been granted by Deputy General Manager (SR-II) on 12-4-93. Therefore the petitioners have contended that the sanction order as contemplated u/s 19(2) of the Prevention of Corruption Act is not issued by the competent authority in this case since during the period the offences were alleged to have been committed, the Deputy General Manager (Training) and the Deputy General Manager (SR-II) were not delegated with the authority to exercise the powers. Those contentions were negated by the learned Special Judge.

4. It is seen that the 2nd accused was appointed as Mechanist Grade-I. He was subsequently redesignated as Mechanist Grade-III. During the period 1989-91, he has been working as Mechanist Grade-IV in training department. The Deputy General Manager(Training) was the Head of the Department in training department at that time. The Chairman and Managing Director by order dt. 10-11-92 delegated disciplinary powers to the Deputy General Manager (Training) and Deputy General Manager (Training) passed the order of sanction of prosecution against the 2nd accused on 6-4-93.

5. The 3rd accused was appointed as the Mechanist Grade-I by the Chairman and Managing Director and that post was re-designated as Mechanist Grade-III. During the period 89-91, he was redesignated as Mechanist Grade-I. The Deputy General Manager (SR-II) was the Head of the Department. The Chairman and Managing Director delegated the disciplinary powers to Deputy General Manager SR-II by order dt. 6-3-92. Therefore, it is clear that the Deputy General Manager (Training) as well as the Deputy General Manager (SR-II) was competent to accord sanction for prosecution against accused 2 and 3 on 6-4-93 and 12-4-93 respectively, the dates on which they granted permission to prosecute them.

6. It is contended that the Deputy General Manager (Training) and Deputy General Manager (SR-II) were not delegated with the powers of disciplinary authority during the period 20-6-89 to 26-2-90 for which the petitioners are prosecuted in this case and, therefore, the sanction accorded by them to prosecute the petitioners is invalid. Counsel for respondents submitted that the material point of time for granting sanction to prosecute the accused u/s 19(1) (c) of the Prevention of Corruption Act is the time when the Court is called upon

to take cognizance of the offence. He argued that even if the crime was registered much prior to the date of sanction since the sanction is accorded by persons competent to give sanction at the time when the Court was called upon to take cognizance of the offence, the sanction for prosecution granted against the petitioners in this case is perfectly legal and valid as given by competent authority.

7. Counsel for petitioners submitted that the competency of the person granting sanction to prosecute u/s 19(1)(c) of the Prevention of Corruption Act should be considered at the time when the offences alleged to have been committed and not at the time when the Court was called upon to take cognizance of the offence by filing charge-sheet after investigation spread over a long time. According to them, the contention of the respondents that the competency of the authority granting sanction for prosecution should be considered on the date when the Court is called upon to take cognizance of the offence is not at all sustainable. In support of the contention counsel for petitioners relied upon the decision reported in *State of Haryana Vs. N.C. Tandon*, . In that case the Supreme Court considered the sanction given u/s 6(1) and (2) of the Prevention of Corruption Act, 1947 for prosecution of public servant. In that judgment the Supreme Court has observed as follows (at page 1445 of Cri LJ) :-

Thus the test as indicated in this sub-section for judging the competency of the authority giving the sanction is, whether at the time of the alleged commission of the offence, it had the power to remove the public servant from his office.

No other order of the Engineer-in-chief made prior to 24-6-1971 under Rule 10 of 1952 Rules or under Rule 9(1) of the 1965 Rules delegating the power of appointment to posts in Class III service has been placed before us. We have, therefore, no alternative but to hold that on 24-6-71 Brig. Naresh Prasad, Zonal Chief Engineer, North Western Zone, Chandigarh was not competent to remove the accused-respondent Tandon from the post of Superintendent, B & R Grade-I, Chandigarh and as such the order sanctioning the prosecution of the respondent was bad in law.

The provisions of Section 19 are identical with Section 6 of the Prevention of Corruption Act, 1947. Therefore, counsel for petitioner submitted that the above decision of the Supreme Court is applicable to the facts of this case also initiated under the provisions of the Prevention of Corruption Act.

8. In the decision reported in *R.S. Nayak Vs. A.R. Antulay*, the five-Judges Bench of the Supreme Court has observed as follows :-

Existence of a valid sanction is a pre-requisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servant.

The bar is to the taking cognizance of offence by the Court. Therefore, when the Court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to

have been committed by him as public servant. ...It, therefore, appears well-settled that the relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 6 is the date on which the Court is called upon to take cognizance of the offence of which he is accused.

9. In the decision reported in A. Venkata Swamy Vs. State Central Bureau of Investigation, the Andhra Pradesh High Court relying upon the judgment of the Supreme Court, reported in R.S. Nayak Vs. A.R. Antulay, referred to above has observed as follows :-

In the case on hand, on the date of which the Magistrate has taken cognizance of the offence, the Regulations were in force and the Deputy General Manager was the authority competent to remove the petitioner from service. So long as the said provision is in force, and is not struck down under Article 226 of the Constitution, the Court dealing with criminal cases cannot go into the validity of the said regulation. u/s 6(1)(c) of the Act, in the case of persons who are not employed in connection with the affairs of the Union or affairs of the State, previous sanction can be granted by the authority competent to remove him from his office.

10. Even though counsel for petitioners vehemently argued that the decision reported in State of Haryana Vs. N.C. Tandon, is to the point and has considered the competency of the person according sanction to prosecute the public servant and held that he should be competent to give sanction on the alleged date of commission of offence and in the subsequent decision reported in R.S. Nayak Vs. A.R. Antulay, referred to above the question of competency of the officer to grant sanction on the date of alleged commission of offence was not a point in issue and is not considered by the Supreme Court, I find this contention is not sustainable as it has been clearly laid down by the Supreme Court in that decision that the point of time relevant for competent authority to accord sanction to prosecute u/s 19(1)(c) of the Prevention of Corruption Act is the time when the Court is called upon to take cognizance of the offence.

11. In this case there is no contention for the petitioners that on the date when the sanctions were accorded by the competent officers to prosecute the petitioners, they were not competent to grant sanction. Merely because of the fact that those officers were not competent to accord sanction to prosecute the petitioners u/s 19(1)(c) of the Prevention of Corruption Act on the alleged date of commission of the offence, the petitioners cannot contend that the sanction accorded by the competent officers on the date when the Court was called upon to take cognizance of the offence is illegal or incompetent Hence the contention raised by the petitioners against the validity of the sanction accorded u/s 19(1)(c) of the Prevention of Corruption Act and the competency of the officers who granted sanction in this case are absolutely untenable.

12. Hence the finding of the lower Court that the sanction accorded in this case

to prosecute the petitioners is legal and valid has to be sustained. In view of the above finding this Crl.M.C. is devoid of any merit and the same is dismissed.