
(1991) 03 BOM CK 0037

In the Bombay High Court

Case No : Criminal Writ Petition No. 212 of 1989

Prabhakar Govind Sawant

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 27(3)

Citation : (1992) 1 BomCR 17 : (1991) 1 MhLj 1051

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : C.J. Sawant, S.S. Dhinde and V.K. Tawade, instructed by Bhaishankar Kanga and Co, for the Appellant; P.M. Vyas, Assistant Public Prosecutor for the respondent Nos. 1 and 2, A.P. Mondargi, for the Respondent

Judgement

M.F. Saldanha, J.—The petitioner in this case is an ex-Government servant. He had joined Government service as a surveyor in the Land Records Department in the year 1954 and in the year 1978, he was promoted to the post of Sheristedar in the City Survey Office III, Bombay Suburban District, Santacruz, Bombay. The petitioner opted for voluntary retirement in April 1980 after having put in a total period of 24 years of service. There is no dispute about the fact that competent authority of the Government by order dated 29-4-1980 permitted the petitioner to retire from service. It appears that right upto the year 1984, the finalisation of the petitioners pension was not completed. On 6-7-1984, the Anti-corruption authorities had raided the petitioner's residence and it is the petitioner's case that nothing incriminating was found and that he was informed, that there was certain investigations which were being carried on in relation to issue of F.S.I. by some builders and that there was a likelihood of the petitioner being required as a witness in relation to those cases. Thereafter, the petitioner appears to have made certain representation in relation to his pension case and on 27-12-1986, a certificate was issued to the effect that there was no proceeding pending against the petitioner. As late as on 27-3-1987, the petitioner appears to have finally

received his pension papers after which he has been receiving his pension. The petitioner was also paid the arrears of pension and gratuity.

2. It is the grievance of the petitioner that the State Government has granted sanction for the prosecution of the petitioner and that pursuant to the said sanction, three charge-sheets have been filed against him for various offences and that there was a likelihood of three more such prosecutions. It is relevant to point out that apart from the petitioner, there are several other accused in these cases. According to the averments in the petition, though three charge-sheets have been filed, the prosecution has been furnished with copies in only two of the cases i.e. Special Case No. 12 of 1986 and Special Case No. 24 of 1986. The present petition is confined to Special Case No. 12 of 1986 which arises out of C.R. No. 41 of 1984. It appears that the prosecution case is to the effect that certain offences were committed by the present petitioner and other pursuant to a criminal conspiracy during the period 7-9-1988 to 10-10-1988.

3. Mr. C.J. Sawant, learned Counsel appearing on behalf of the petitioner with Mr. Shinde and Mr. Tawade has challenged the sanction order on one solitary ground alone viz., that under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, there exists a statutory bar to the institution of any judicial proceedings against a Government servant in respect of events which took place more than four years before such institution. Admittedly, the sanction issued and the institution of the proceedings are both more than four years beyond the date on which the petitioner retired from service viz., 30-4-1980. On this ground, it is the submission of Mr. Sawant that the sanction granted by the State Government for the petitioner's prosecution is in contravention of Rule 27(3) and is liable to be quashed by this Court.

4. Mr. Sawant, in support of his submission pointed out that the Rules in question are statutory provisions and that they are rules framed in exercise of powers under Article 309 of the Constitution and consequently, the order of sanction which is in contravention of the rule would have to be quashed. The subsidiary submission advanced by Mr. Sawant was that there is a statutory principle in the promulgation of Rule 27 in making a provision of the type as we find in Rule 27, because a Government servant, after his retirement is to be free of all the left-over problems in relation to his period of service. It is assumed, that even if certain matters come to the notice of the Government, whereby legal action is required to be taken against an ex-Government servant, for a variety of reasons, power to institute such legal proceedings must be exercised within a reasonable time. Even under the Limitation Act, civil law contemplates a time-frame within which legal action must be instituted as otherwise, the cause of action is deemed to be extinguished or, in any event, no such action is permissible before a Court of law. Even as far as criminal law is concerned, under the new Criminal Procedure Code, limitation has been provided in respect of various offences as in the opinion of the Legislature, in those of the cases where the prosecuting agency does not proceed within a reasonable period of time, the law must

prescribe a bar as no useful purpose will be served by seeking to resurrect matters that are several years old. The Criminal Procedure Code, however, does make an exception with regard to the provisions in relation to limitation for taking cognizance of certain criminal offences. In the case of offences of a serious nature, no such limitation has been provided, the obvious reason being that there is an overriding consideration in the case of these offences and even if for any reason, the prosecution is not commenced within a reasonable time, the institution of such proceedings is not barred. Whether or not a Court will sanction such proceedings if there is normal delays is a slightly different matter but we are immediately concerned with the issue as to whether there exists a statutory or a legal bar to the very maintainability of the proceedings.

5. Mr. Vyas, learned A.P.P. has vehemently submitted that the entire basis for the argument advanced on behalf of the petitioner is fallacious. Mr. Vyas has pointed out and to my mind, quite justifiably and correctly, that the Criminal Procedure Code is the statute that governs the conduct of the prosecution before the trial Court and that the offences with which the present petitioner and the other accused stand charged are offences of a serious nature whereby under the provisions of the Criminal Procedure Code, there is no limitation prescribed. Under these circumstances, it is technically open to the prosecuting agency to institute and commence a prosecution at any point of time, there being no bar to the institution of such proceedings. More importantly, what Mr. Vyas has pointed out is that the provisions of section 27 of the Rules in question which have been relied on by Mr. Sawant cannot be pressed into operation in the present case. Mr. Vyas has submitted that having regard to the provisions of Article 254(1) of the Constitution of India, where there is a repugnancy between a provision of law made by a State and Central law, not only will the Central law prevail but that the provision of law which is repugnant to the Central statute shall be void to that extent. The case law under Article 254 is very explicit and the principle that is required to be called out from the plethora of cases under Article 254 of the Constitution is well settled and, consequently, Mr. Vyas is fully justified in submitting that the provisions of the Criminal Procedure Code which is a Central statute shall have an over-riding effect and shall prevail notwithstanding any provision in the Pension Rules framed by the State Government that is repugnant to those provisions. Further support to the submission canvassed by Mr. Vyas is lent by the judgment of the Supreme Court reported in *State of Punjab Vs. Kailash Nath*, , in the case of *State of Punjab v. Kailash Nath*. In that case, the Supreme Court was concerned with an identical rule relating to the State of Punjab, and the Supreme Court read down the provision while holding that the provision in the State rule must be interpreted to mean that for purposes of sanction of pension or withholding of pension etc., that there shall be a time bar as prescribed in the rule viz., four year and that if any such proceedings have not been instituted within that period of time, that the Government shall be required for pension purposes to totally disregard or ignore any proceedings that may have been instituted thereafter if such proceedings are maintainable. To this

extent, in the light of the view taken by the Supreme Court, the legality of the sanction order that has been questioned only on the basis of the time-frame as enunciated in Rule 27 will have to be upheld. The sanction order in question has been challenged before me on this solitary ground. The maintainability of the prosecution on the basis of this sanction order, therefore, cannot be called into question in the present petition.

6. Mr. Sawant pointed out that he is not pressing any of the other contentions that may have been set out in the petition or that may have arisen. Mr. Sawant has requested me to make a note of the fact that the petitioner shall not be precluded from challenging the legality or validity of the grant of sanction or the sanction order itself before the trial Court or any other Court on any grounds other than the one that has been repelled in this petition viz., its validity in relation to Rule 27 of the Pension Rules.

7. Mr. Sawant made a weak attempt to advance a submission that the investigating agency has not complied with the legal requirement of sifting the evidence gathered by it for purpose of ascertaining as to whether there existed on record any overt act committed by the petitioner or whether there existed sufficient material on record to justify the prosecution of the petitioner even u/s 120-B on a conspiracy charge. Mr. Sawant submitted, that as far as the present petitioner is concerned, that he has working as a Shristedar, which, in other words, meant his duties were those of looking after the record. It is the prosecution case that certain alterations had taken place in relation to the records. Mr. Sawant submitted that even after the investigating agency has been able to trace the persons who are responsible for such tampering and the investigating agency desires to proceed against them, that it would still not be justified in proceeding against the present petitioner who was merely the custodian of the records in question unless and until there exists specific-evidence to justify his inclusion even with regard to a conspiracy charge.

8. Mr. Vyas, in reply to this submission, has pointed out that for purposes of deciding this particular issue canvassed by Mr. Sawant, that it will be necessary to scrutinise not only the charge-sheet but all the supporting documents which the prosecution has put forward before the trial Court. It is his submission that the exercise in question ought not to be gone into by the High Court in exercise of its powers u/s 482 Cr.P.C., when, in fact, it is the function of the trial Court to consider an application if the accused were to raise the contention before that Court and contend that there is no case made out against him and that, therefore, he should be discharged. The submission of Mr. Vyas is partly valid in so far as the record of the case is not before this Court and it would not be the function of this Court to examine this is sue since the petitioner before me is entitled to canvass this point and get it adjudicated before the trial Court.

9. Mr. Sawant, however, is justified in making a grievance of the fact that the petitioner, after 24 years of service has retired in 1980 and that a period of 11 years has elapsed thereafter. He states that the prosecutions have been pending

since about the year 1986 and that having regard to the congestion before the Court and the volume of the cases, that there is every likelihood that several years will elapse before the case is even taken up for hearing and disposal. In the submission of Mr. Sawant, there is no justification for the inclusion of the petitioners in that prosecution, and if as submitted by Mr. Sawant, the police have mechanically included his name merely because he happened to be in charge of the documents without there being any plausible justification or sufficient ground to proceed against him, is correct then, the grievance made before me would be a valid one.

10. In this view of the matter, the petitioner is granted liberty to move the trial Court by way of an application for discharge and in the event of such an application being preferred, the trial Court shall hear the parties and dispose of the application in question on a priority basis and in any event, preferably within a period of three months of the filing of the application in question.

11. In this view of the matter, the present petition fails. Rule is discharged accordingly. Interim relief to stand vacated.