

(2016) 02 AHC CK 0123
In the Allahabad High Court
Case No : Case No. 3471 of 2014

Ramesh Chandra Maji

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, Section 190(1)(b), Section 190(1)(c), Section 197, Section 200, Section 202, Section 203, Section 319, Section 482

Penal Code, 1860 (IPC) — Section 120-B, Section 420, Section 467, Section 46

Citation : (2016) 02 AHC CK 0123

Hon'ble Judges : Mahendra Dayal, J.

Bench : Single Bench

Advocate : Kuldeep Srivastava, Nandit Srivastava and Tapeswar Kumar Maurya, for the Appellant; Bireshwar Nath and G.K. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Mahendra Dayal, J.—1. This application under Section 482 Cr.P.C. has been filed by the applicant for quashing of the order dated 13.06.2014 passed by Special Judge, Anti-Corruption, C.B.I. (Central), Lucknow in Criminal Misc. Case No. 34/2008, whereby the learned court below while rejecting the final report, has passed the order summoning the applicant and two others under Sections 120-B, 420, 467, 468, 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The applicant has also prayed for quashing of the entire criminal proceedings of Criminal Case No. 3/2014, pending in the Court of Special Judge, Anti-Corruption (Central), Lucknow.

2. The brief facts are that Shri J.C. Malhotra, Dy. General Manager, UCO Bank, Halsey Road Branch, Kanpur filed a complaint on 29.06.2006 against the officers of his own bank, namely, Kewal Krishna Mehta, Satyendra Sharma and the present applicant Ramesh Chandra Maji for committing the offence of criminal conspiracy, cheating, forgery, falsification of accounts, criminal misconduct to the

tune of more than Rs. 1.00 crore between the year 2003-2005. The matter was investigated by C.B.I. and closure report was submitted. The learned court below after receiving the final report, issued notices to the complainant Bank, who in turn filed a protest petition against the final report submitted by C.B.I. The learned court below considering the protest petition and the final report submitted by the C.B.I., rejected the final report and proceeded against the applicant and two others.

3. I have heard Shri Nandit Kumar Srivastava, learned counsel for the applicant and Shri Bireshwar Nath, learned counsel for the C.B.I. as well as Shri G.K. Srivastava, learned counsel appearing for the opposite party No. 2 - UCO Bank.

4. It has been contended by the learned counsel that in the complaint filed by the Deputy General Manager, UCO Bank, the allegation against the applicant was that during reconciliation of R.B.I. Accounts, one false entry was found to the tune of Rs. 24.00 lacs made to the account of Development Cooperative Bank. This was intentionally done to cover up the wrongful and fraudulent deeds of Shri K.K. Mehta. The C.B.I. during investigation did not find those allegation proved. It was found by the C.B.I. that the alleged entry of Rs. 24.00 lacs was a reversal of two wrong entries of Rs. 6.00 lacs each made on 06.01.2004 and 21.01.2004 in the account of Development Cooperative Bank Ltd. It was found that on these two dates, Rs. 6.00 lacs each was credited in the account instead of debiting the same as per the authority given by the Development Cooperative Bank Ltd. and when the error to this effect was found on 21.07.2004, the rectification voucher was passed and, therefore, the entry of Rs. 24.00 lacs was made on 21.07.2004 which was a genuine entry and was made to correct the error made earlier. It was also found by the C.B.I. during investigation that the applicant had passed alleged entry of Rs. 24.00 lacs on 21.07.2004 in the system on the basis of vouchers passed by the concerned officer. It was also found that the error was committed by the officer, who prepared the vouchers and passed the same. The making of alleged entry of Rs. 24.00 lacs by the applicant, was due to posting of vouchers preparation mistakes which was done earlier and no third party got benefited by this entry. There was no allegation against the applicant with regard to criminal misconduct, criminal conspiracy, cheating, forgery and falsification of accounts. It has also been contended by the learned counsel for the applicant that after receiving the protest petition against the final report, the learned court below ought to have followed the procedure of complaint case. The learned court below could not have summoned the applicant and two others after filing of the protest petition by the complainant. It has also been contended that the applicant was a public servant when the complaint was filed and the Court took cognizance, but no sanction of the authorities, as required under Section 197 Cr.P.C., was obtained. The direction to the C.B.I. to obtain prosecution sanction in the impugned order is also against the settled principles of law. The learned court below could not have legally taken cognizance of the offence under the Prevention of Corruption Act without the prosecution sanction in respect of the applicant.

5. Learned counsel for the applicant has relied upon a decision of this Court reported in , 1994 Cri.L.J., page 2132 - Ashok & Ors. v. State of U.P. & Anr. In this case, this Hon''ble Court has observed that although the Magistrate has power to take cognizance under Section 190(1)(b), if he satisfied that there is sufficient material to make out a prima-facie case against the accused irrespective of the police report to the contrary, but straightway he cannot take cognizance on the basis of protest petition which is duly supported by the affidavit of the witnesses without following the procedure of the complaint case.

6. Similar view has been expressed by this Court in the case of Anil Kumar Chauhan v. State of U.P. & Anr. reported in , 2004 Cri.L.J. Page 3557. In this case also, it has been held that after receipt of the final report and filing of the protest petition, the learned Judge was required to treat the protest petition as complaint and record the statement of the informant under Section 200 Cr.P.C. and his witnesses under Section 202 Cr.P.C. Thereafter, he was required to decide the issue of process against the accused provided he found sufficient grounds to do so.

7. Reliance has also been placed upon a judgment reported in , 2011 (1) JIC Page 218 (All) - Syed Abrar Hussain v. State of U.P. & Anr. In this case also, it has been held by this Court that once the protest petition is filed by the complainant, the Magistrate cannot take cognizance on the basis of the documents filed by the complainant unless the protest petition is treated as complaint and the procedure of the complaint case is followed.

8. Learned counsel for the applicant has also placed reliance upon a Supreme Court's decision rendered in the case of Vasanti Dubey v. State of Madhya Pradesh, reported in , (2012) 1 Supreme Court Cases (Cri) Page 1007. In this case also, the police after investigation had submitted final report, but the Court while refusing to accept the same, directed the police to file charge-sheet. The order was challenged before the High Court in revision petition and the High Court quashed the order directing submission of the charge-sheet on the ground that there was no power expressly or impliedly conferred on a magistrate to call upon the police to submit a charge-sheet when police had sent a final report stating that no case is made out against the accused. The Hon''ble Supreme Court observed that if the Magistrate does not agree with the final report submitted by the police, he can take cognizance under Section 190(1)(c) or order further investigation but cannot straightway direct for submission of the charge-sheet to the police. After quashing of the aforesaid order, the statement of the complainant was again recorded and the statement of his witnesses were also recorded but again it was found that there was no material against the accused to proceed. This time the learned Magistrate rejected the closure report and took cognizance under Section 190(1)(c) Cr.P.C. Hon''ble the Supreme Court found that when the court refuses to accept the closure report, it was his statutory and legal duty to either pass a fresh order taking cognizance or proceed with the inquiry under Section 200 Cr.P.C. by examining the complainant

after which he had to record reasons why he disagrees with the final report. The Hon''ble Supreme Court further observed that taking cognizance straightway and directing investigating agency to obtain sanction to prosecute, despite the fact that the investigating agency had reported that sufficient evidence was not there to justify the prosecution was also not correct. Against the order taking cognizance and directing the investigating agency to obtain sanction, a criminal revision was preferred before the High Court, which was dismissed. The Hon''ble Supreme Court in the aforesaid background found that the court below was not competent to proceed with the matter without sanction for prosecution. The order taking cognizance and directing the investigating agency to obtain sanction, amounts to sheer abuse of the process of law.

9. Learned counsel for the C.B.I., Shri Bireshwar Nath has submitted that after the final report is submitted by the investigating agency, the Magistrate has three options. First option is that he may refuse to accept the final report and take cognizance of the offence forthwith if he finds that from the material collected during investigation, there is sufficient evidence to proceed against the accused; the second option open to the Magistrate is that he may order for further investigation if he finds that investigation has not been done properly and the third option open to the Magistrate is that he may treat the protest petition filed by the complainant as complaint case and after following the procedure prescribed for the complaint case, may either dismiss the complaint or pass order under Section 203 Cr.P.C., summoning the accused persons.

10. In the present case, after the final report was submitted, the notice was issued to the complainant upon which a protest petition was filed by him. However, the learned court below adopted the first option and on the basis of material on record, came to the conclusion that submission of the final report by the investigating agency was not proper and there was sufficient evidence to proceed against the applicant and two others. Thus, the Court below has not committed any illegality while adopting the first option of taking cognizance under Section 190(1)(b) Cr.P.C. It has also been submitted by Shri Bireshwar Nath that since the investigating agency had to submit the final report, therefore, the prosecution sanction was not at all required but when the Court found that there was sufficient material to proceed against the applicant, the Court rightly directed the investigating agency to obtain prosecution sanction. It has also been informed by him that now the prosecution sanction has been obtained and the same is in the record of the court below.

11. Shri Bireshwar Nath has further contented that the case law relied upon by the applicant, does not apply to the facts of the present case for the reason that the learned court below has not taken into consideration the protest petition filed by the opposite party No. 2. According to him, when a final report is submitted by the investigating agency, it is mandatory upon the Court to issue notice to the complainant before taking into consideration the final report. In this case also, the learned court below rightly issued notice to the complainant to which the

opposite party No. 2 appeared and filed a protest petition stating therein that the final report submitted by the investigating agency was not correct and the applicant along with others co-accused have committed the offence.

12. A perusal of the impugned order reveals that the learned court below has not taken into consideration the protest petition and has simply relied upon the material available in the case diary. It has further been submitted that the scope of Section 482 Cr.P.C. is only to prevent miscarriage of justice and abuse of process of law. The applicant along with others having responsible post in UCO Bank has committed forgery by which the Bank has suffered monetary loss and for this reason also, the applicant along with others is liable to be prosecuted. The learned court below, therefore, has not committed any illegality in taking cognizance and directing the investigating agency to obtain prosecution sanction.

13. It has not been disputed by the parties that the applicant was a public servant within the meaning of the Act. As per Section 19 of the Prevention of Corruption Act, the Court is barred from taking cognizance of an offence except with previous sanction. It has also not been disputed that when the court below had taken cognizance of the offence, there was no sanction for prosecution. The sanction order obtained by the investigating agency is subsequent to the order taking cognizance of the Court. In the present case, it has not been the case of the applicant that there is any irregularity, error or omission in the sanction order. It is a case in which there was no sanction order at the time when the cognizance was taken by the Court.

14. The Hon''ble Supreme Court in the case of State of Goa v. Babu Thomas, reported in , 2005 Supreme Court Cases (Cri) Page 1995 has held that a sanction for prosecution goes to the root of the case. Sub-section (1) of Section 19 clearly prohibits that the Court shall not take cognizance of the offence except with the previous sanction of the competent authority.

15. In these circumstances, the order taking cognizance without there being a sanction order was illegal in view of the provisions of Section 19 of the Prevention of Corruption Act and the law laid down by Hon''ble the Supreme Court, referred to above.

16. The submission on behalf of the C.B.I. is that other two co-accused, who were summoned by the court below, had already retired by the time the cognizance was taken, therefore, no prior sanction was required, has not merit. In case of Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another, reported in , (2005) 12 Supreme Court Cases Page 709, it has been held by Hon''ble the Supreme Court that Section 19(1) of the Prevention of Corruption Act creates a complete bar on the power of Court to take cognizance of offence alleged to have been committed by a public servant except with previous sanction of the competent authority. The sanction under the Act for prosecution is required to be obtained with respect to specific accused. Therefore, the submission that if sanction for prosecution has been granted in respect of one of

the accused, any other public servant for whose prosecution no sanction has been granted, can also be summoned to face prosecution, cannot be accepted. The Hon''ble Supreme Court has held that although the Court takes cognizance of an offence and not of an offender but such type of contention can be held to be good only when the Magistrate takes cognizance under Section 190 Cr.P.C. Prevention of Corruption Act is special statute and Section 19 thereof has an overriding effect over the general provision of Section 190 or Section 319 Cr.P.C. A special Judge treating an offence under the Prevention of Corruption Act cannot summon another accused and proceed against him in the absence of valid sanction.

17. For the aforesaid reasons, the order passed by the learned court below taking cognizance of the offence without valid sanction of the competent authority and without following the procedure of complaint case, is bad in law. The learned court below after filing of the protest petition by the complainant and thinking it proper to consider the arguments raised by the learned counsel for the complainant, ought to have adopted the procedure of complaint case under the provisions of Cr.P.C., and after that, he should have recorded a finding as to whether the applicant was liable to be prosecuted or not but before taking cognizance of the offence, the sanction for prosecution was also required. The order passed by the court below, therefore, cannot be allowed to stand and is liable to be set aside.

18. In the result, the application under Section 482 Cr.P.C. is allowed and the order dated 13.06.2014 passed by Special Judge, Anti-Corruption, C.B.I. (Central), Lucknow in Criminal Misc. Case No. 34/2008 is hereby quashed so far as it relates to the present applicant Ramesh Chandra Maji. However, keeping in view the fact that sanction for prosecution has now been obtained, it will be open for the court below to pass appropriate orders according to law in the light of observations made by this Court.