

(1988) 12 AHC CK 0019

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 11610 of 1986

Rangesh Sharma and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 22-12-1988

Acts Referred:

Companies Act, 1956 — Section 617
Criminal Procedure Code, 1973 (CrPC) — Section 197, 200, 202, 482, 561A
Electricity (Supply) Act, 1948 — Section 5, 81, 82
Electricity Act, 1910 — Section 56
Penal Code, 1860 (IPC) — Section 21, 218, 420, 427, 466

Citation : (1990) CriLJ 861

Hon'ble Judges : A.N. Dikshita, J

Bench : Single Bench

Advocate : A.B.L. Gaur, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.N. Dikshita, J.—By means of this application u/s 482, Cr. P.C. applicants Rangesh Sharma, Assistant Engineer, Meters Vidyut Parikshan Sakha Etah and Mahendra Deo Sharma, Executive Engineer, Vidyut Parikshan Khan, Mainpuri have prayed for quashing the order of the learned Judicial Magistrate, Etah dt. 6-6-85 (Annexure-3) in Criminal Case No. 1904 of 1984 and the order dt. 5-3-86 (Annexure-4) passed by learned V Addl. District Judge, Etah. The appellants have also prayed for quashing the complaint Annexure 15-2-80 filed by Opposite Party No. 2 Jagdish Chandra Sharma filed under Sections 466/467/420/218/427, I.P.C.

2. Facts as they are revealed are that opposite party No. 2 Jagdish Chandra Sharma was working as Junior Meter Tester in the office of the Electricity Test Division, Etah, Applicant No. 1 Rangesh Sharma was posted there as Assistant Engineer (Meters) in the said division while applicant No. 2 Mahendra Deo Sharma was the Executive Engineer Electricity Test Division, Mainpuri. It transpires that per order dt. 24-3-77 the U.P. State Electricity Board (hereinafter

referred to as the Board) in supersession of D.O. No. 3576-F/EE-B-207/1963 dt. May 29, 1963 issued the above order dt. March 24, 1977 by which considering the fact that the post of Meter Reader, Sub-Station Attendant, Switch Board Attendant, Junior Meter Tester and Repairer enjoy the same qualification and scale of pay, formed a combined cadre of such personnel. A combined seniority list of these four categories of employees was also directed to be prepared and it was also made clear that these four categories of employees shall be interchangeable. Copies of this order were sent for information and guidance of Field Officers and also for ensuring that none of the aforesaid categories are allowed to remain at a particular post for more than three years keeping the administrative point of view. According on the above Board order dt. 24-3-77 on Sri M.D. Sharma, Superintending Engineer and in view of the Administrative work Jagdish Chandra Sharma opposite party No. 2 who was posted as Junior Meter Tester vide Officer Memo No. 10803/E.L.C. (M) dt. 8-7-78 was transferred vide office Memo No. 11981-ELO E-2 dt. 31-7-78. He was transferred and posted on his original post under the Electricity Distribution Sub-Division I Etah as Sub-Station Attendant with immediate effect in the interest of the work.

3. Aggrieved opposite party No. 2 filed a writ petition in the Lucknow Bench of the High Court and the following order was passed on 8-9-78:

"Notice has been taken by Sri K. B. Sinha on behalf of the respondents.

As the impugned order can affect the right of the petitioner seniority which may not be liable to be compensated adequately in terms of money, we issue an interim order restraining the respondents not to effect petitioners seniority on the basis of the impugned orders dt. 24-3-1977 and 31-7-1978 (Annexures 8 and 10 to the writ petition) so as to effect the petitioner's right claimed in this petition."

Sd./- Hari Swarup Sd/-U.C. Srivastava."

It may also be mentioned here that Jagdish Chandra Sharma, Opposite Party No. 2 was working at the relevant time as a Fine Mechanic purely on temporary basis and was liable to be transferred as soon as some other incumbent is appointed on that post. One Tara Chand was permanently posted as Fine Mechanic in the Electricity Test Division, Mainpur and consequently Jagdish Chandra Sharma was transferred as Sub-Station Attendant-vide order dt. 31-7-78.

4. It is alleged by opposite party No. 2 in the complaint that on coming to know of the order dt. 8-9-78 passed by a Division Bench of this Court at Lucknow the applicants and the Superintending Engineer exercised pressure on opposite party No. 2 when opposite party No. 2 went to serve the order dt. 8-9-78 by committing forgery. It was shown that the applicant has been relied on 2-9-78.

5. It would thus be apparent that the complaint has been filed under Sections 466/467/420/218/427 of the I.P.C. on this allegation that the relieving order dt. 2-9-78 was the outcome of a forgery, conspiracy and mischief etc.

6. After recording the statement of the complainant u/s 200 and the other witnesses u/s 202, Cr. P.C. applicants and one Sri Ahmad Saeed, Superintending Engineer, Electricity Circle were summoned. Sri Ahmad Saeed filed an application u/s 482, Cr. P.C. which was registered as Criminal Misc. Application No. 396 of 1981. By order dt. 3-5-82 Hon''ble P.S. Gupta, J. quashed the proceedings against Ahmad Saeed Superintending Engineer. The applicants have now preferred this application for quashing the orders and the complaint as stated above.

7. Before proceeding to examine the rival contentions the following facts are relevant for the determination of the controversy:

(i) U. P. State Electricity Board is a body incorporated having been constituted u/s 5 of the Electricity (Supply) Act 1948 (Act 54 of 1948).

(ii) Applicants are the officers of the U.P. State Electricity Board.

(iii) Opposite party No. 2 Jagdish Chandra Sharma is an employee of the U.P. State Electricity Board.

(iv) In this context it is necessary to mention that the Electricity (Supply) Act 1948 was enacted to provide for protection of supply of electricity and generally for taking measures conducive to electrical development and for all matters incidental thereto.

8. Indian Electricity Act 1910 (Act IX of 1910) was enacted to amend the law relating to supply and use of energy. These two Acts were enacted for erection and maintenance of plants, machinery and supply lines. The provisions of the above two Acts are thus interrelated for the generation, transmission, distribution and use of the electricity and other necessary measures required to be taken in the direction. It would thus be imperative that for such generation, transmission and distribution and other works officers and employees are answerable to the Board for the application of the provisions of the above Acts.

9. Section 56 of the Indian Electricity Act 1910 (Act IX of 1910) provides protection for acts done in good faith. It reads as under:

"56. Protection for acts done in good-faith.-- (1) No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

(2) No Court shall take cognizance of an offence under this Act, by a public officer except with the sanction --

(a) in the case of a person employed in connection with the affairs of the Union of the Central Government; and

(b) in any other case, of the (State Government)

The provisions of Electricity Supply Act 1948 provide that members, officers and servants of the Board would be public servants. Section 81 of the Electricity

Supply Act which defines members, officers and servants of the Board to be public servants is recited herein below:

"81. Members, Officers and servants of the Board to public servants.-- All (members and officers and other employees) of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the I.P.C. (45 of 1860)."

Electricity (Supply) Act further provides protection to persons acting under this Act. Section 82 of the Electricity (Supply) Act provides such protection to persons acting under this Act and it is reproduced hereinbelow:

"82. Protection to persons acting under this Act.-- No suit, prosecution or other legal proceeding shall lie against (any (member or officer or other employee) of the Board) for anything which is in good faith done or intended to be done under this Act."

Section 81 of the Electricity (Supply) Act thus enjoins that all the members, officers and other employees of the Board shall be public servant within the meaning of Section 21 of the I.P.C. It is not necessary to quote in extenso the definition of the word "Public Servant" as enjoined u/s 21, I.P.C. Clause 12 of Section 21, I.P.C, which is relevant for the purpose is reproduced below:

"Twelfth.-- Every person --

(a) in the service or pay of the Government or remunerated by fees or commission for the. performance of any public duty by the Government;

(b) in the service of pay of a local authority, a corporation established by or under a General, Provincial or State Act, or a Government company in Section 617 of the Companies Act, 1956 (1 of 1956)."

With this retrospect the instant controversy is to be settled.

10. Learned counsel for the parties have been heard at some length.

11. Learned counsel for the applicant has vehemently urged that the learned Magistrate erroneously and illegally took cognizance of the complaint for want of a previous sanction as enjoined u/s 197, Cr. P.C. Section 197, Cr. P.C. is engrained hereinbelow:

197, Prosecution of Judges and Public Servants --

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction --

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the

affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government,

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of Sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that, subsection will apply as if for the expression "Central Government" occurring therein, the expression "State Government" was substituted.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or Public Servant is to be conducted, and may specify the Court before which the trial is to be held.

This provision clearly indicates that it would be applicable to a public servant not removable from his office save by or with the sanction of the Government. It is only such public servants who are removable from office by or with the sanction of the Government with (sic) a previous sanction is required for taking cognizance of an offence alleged to have been committed by such public servant while acting or purporting to act in the discharge of their official duty. It thus prohibits the Court to take cognizance of such offences against the public servants except with the previous sanction obtained. Such previous sanction was required in regard to an employee employed in connection with the affairs of the Union Government, by Central Government and in the other case where an employee is employed in connection with the affairs of the state by the State Government. This submission deserves to be repelled with the same vehemence with which the submission has been made. Neither the applicants are employed in connection with the affairs of the State Government nor is it necessary to obtain the previous sanction of the State Government. Such an ill-merited submission only deserves to be spurned as it smacks of ignorance of the relevant provisions of the Statute as well as service condition of the members, officers and other employees of the Board. As to how such a submission has been vigorously urged appears to be wholly incomprehensible. To conceive of such a situation that the members, officers and the other employees of the Board would be removable by State Government is repugnant in intent and misconceived in its character.

12. Howsoever unceremonious the submission may be the fact remains and is to be examined as to whether the applicants deserve protection as engrained u/s

56 of the Indian Electricity Act and Section 82 of the Electricity Supply Act.

13. As discussed above the applicants are no doubt the officers of the Board and Section 56 as well as Section 82 comes to their rescue and provides protection available to them. On 20-9-78 when the offence is alleged to have been committed applicant No. 1 was the Assistant Engineer in the service of the Board and so was applicant. No. 2, the Executive Engineer. Allegations in the complaint are insipid and defy the common sense as to why the two officers would embark upon doing criminal acts when the order dt. 8-9-78 only prohibits that the seniority be not affected. The order dt. 8-9-78 nowhere restrains the applicants or the Board from transferring opposite-party No. 2 from his instant posting. It is difficult to reconcile as to how and why the applicants would ante-date the order from 28-9-78 to 2-9-78. Section 56 of the Indian Electricity Act clearly provides that no suit, prosecution or other proceedings shall lie against any public officer or any servant of the local authority for anything done in good faith purporting to be done under this Act. It further enjoins that no Court shall take cognizance of an offence under this Act against a public officer except with the sanction granted in the case of a person employed in connection with the affairs of the Union of the Central Government and in any other case of the State by the State Government. Similar is the protection provided to members or officers or other employees of the Board u/s 82 of the Electricity (Supply) Act. This provision clearly prohibits that no suit, prosecution or other proceeding shall lie against any member or officer or employee of the Board for anything which is in good faith done or intended to be done under this Act. The provisions of Section 56 of the Indian Electricity Act are identical to Section 82 of Supply Act. It is thus incumbent on the person who is charging a member, officer or employee of the Board that the act complained of was neither done in good faith nor was it intended to be done under this Act but before doing so it is absolutely necessary that prior sanction is obtained and it is only when such a sanction exists that the Court can take cognizance of an offence. In respect of a member, officer or employee a person has to obtain the sanction from the Board without which no Court would be competent to take cognizance of the alleged offence.

14. It is thus manifest that before proceeding against the applicants a sanction much less a valid sanction exists. Before proceeding with the case it was incumbent on the prosecution to prove that a valid sanction had been granted by the sanctioning authority on being satisfied that a case has been made out constituting an offence. The grant of a sanction is not an idle formality but a solemn and sacrosanct act as it affords the umbrella of protection to public servants against frivolous prosecutions. It has to be strictly complied with before any prosecution could be launched against the concerned public servant. It requires strict compliance. It is thus radiantly revealing that the policy underlying the provisions for grant of sanction is that there should not be an unnecessary harassment of a public servant. (See C.R. Bansi Vs. The State of Maharashtra, .

15. It is also well settled that the existence of a valid sanction is a prerequisite

for taking cognizance by courts. It is incumbent on the courts before taking cognizance that they enquire whether there is a valid sanction to prosecute the public servant for the offences alleged to have been committed by him as public servant while discharging his duties (See R.S. Nayak Vs. A.R. Antulay, . In the case of R.R. Chari Vs. State of U.P., it has been held that a trial without a valid sanction where one is necessary has been held to be a trial without jurisdiction. Any case instituted without a proper sanction must fail. It is a manifest defect in the prosecution rendering the entire proceeding void ab initio. In the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, it was held as under:

"...that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. The Supreme Court further went on to stress that the prosecution cannot be given a chance to produce material in the appeal before the Supreme Court to satisfy that the sanctioning authority had duly applied its mind to the facts constituting the offence. It was also held in a criminal case the Supreme Court or for that matter any Court should not ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution".

16. From the above discussion it is clear that no sanction much less a frivolous one was obtained for the prosecution of the applicants. In the absence of any such sanction the trial Court had no jurisdiction to take cognizance of the case. The proceedings before the trial Court were void ab initio being without jurisdiction. In the case of Mohd. Shafi Ullah Ansari v. State of U.P. 1986 All LJ 996 and in the case of Rewa Chand Khattar v. State of U.P. 1986 All LJ 1528 it was held by this Court that in the absence of a sanction the trial would be deemed to be void ab initio and without jurisdiction.

17. Learned counsel for opposite party No. 2 submitted that a sanction would be obtained but in a criminal case the Supreme; Court or for that matter any Court should not direct fresh evidence to fill up a lacuna deliberately left by the prosecution as was held in the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, .

18. Learned counsel for opposite party No. 2 then submitted that the application u/s 482, Cr.P.C. is not maintainable and this Court shall not interfere with the proceedings. The submission is without any merit. It is only in such cases that where inherent jurisdiction of the Court has to be invoked so as to prevent abuse of the process of Court. It would be a futile exercise to permit the proceedings to continue where a sanction is not available and the jurisdiction has been illegally assumed. A public servant cannot be prosecuted on the mere whims and caprice of a person. A perusal of the complaint would reveal the capricious and malicious approach of opposite party No. 2 to file a complaint against the applicants. It is in such circumstances that to secure the ends of justice that the inherent powers of this Court have to be invoked.

19. Provisions of Section 482, Cr.P.C. are analogous to Section 561A of Cr.P.C. of

1898 (old Code). In the case of R.P. Kapur Vs. The State of Punjab, their Lordships observed as follows:

"(6) Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court u/s 561A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code...

It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would ensure the ends of justice. If the criminal proceedings in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance furnish cases under this category.... Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 561A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide: In Re: Shripad G. Chandavarkar, ; Jagat Chandra Mazumdar v. Queen Empress ILR (1899) Cal 786 ; Dr. Shankar Singh Ganda Singh Vs. State of Punjab, ; Nripendra Bhusan Ray Vs. Gobinda Bandhu Majumdar, and Ramanathan Chettiar Vs. K. Sivarama Subramania Aiyar,

In the instant case as has been held above, the sanction for the prosecution of the applicants was necessary. It is manifestly apparent that for the want of requisite valid sanction there is a legal bar against the institution or continuation of the proceedings pending in the trial Court. It is in such cases that it would be justifiable to quash the proceedings as any continuation of the criminal proceeding against the applicants would amount to abuse of the process of the Court. Ends of justice would also require that the proceedings pending in the Court below are liable to be quashed. It is only to invoke inherent jurisdiction that the instant case is a proper case where the inherent power should be

exercised.

20. Opposite party No. 2 being aggrieved of his transfer affecting the terms and condition of his service had already filed a writ petition. There is nothing on record about the fate of the petition. As has been pointed out above the applicants would not have gained any fruits by interpolating or antedating the relieving papers from 20-9-1978 to 2-9-1978. The applicants thus deserve to be saved from such aggressive postures of opposite party No. 2. It would be a sad day if such delinquent employees are permitted to implicate their senior officers by cooking up false and imaginary allegations. It would have been a fit case for issuing a direction for drawing departmental proceedings for harassment of such officers the trend of indiscipline has to be curbed as such indiscipline affects public good and public welfare. However, I am constrained to issue such a direction in view of the fact that the case is of a decade back.

21. In view of the above the application deserves to succeed.

22. In the result the application succeeds and is hereby allowed. The order of Judicial Magistrate dt. 6-6-85, the order dt. 5-3-86 of the revisional Court and the complaint filed against applicants are hereby quashed.