

(2015) 02 KAR CK 0405
In the Karnataka High Court
Case No : Criminal Petition No. 100212/2015

Senior Divisional Engineer (East)

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 24
Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 21

Citation : (2015) 02 KAR CK 0405

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : Ajay U. Patil, for the Appellant; K.S. Patil, High Court Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J.—This petition is filed under Section 482 of Cr.P.C. seeking to quash the entire proceedings in C.C. No. 751/2014 pending on the file of J.M.F.C. II Court, Hubli, in respect of the offence punishable under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as, "the Act", for brevity).

2. The petitioner is the Senior Divisional Engineer (West) South Western Railway, Hubli. The allegation of prosecution is, petitioner has failed to comply with the certain provisions of the Act.

3. Learned counsel for the petitioner submits that the case is registered on the private complaint of the Labour Inspector without obtaining prior sanction under Section 10 and 24 of the Act. He further submits that the entire case is vitiated for want of sanction under Section 197 of Cr.P.C., since the petitioner is a government servant within the meaning of Section 21 of I.P.C.

4. In reply, the learned High Court Government Pleader relies on the judgment of the Apex Court reported in Mohd. Hadi Raja Vs. State of Bihar and Another, , wherein it is held as follows-

"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's case (supra), such instrumentality or agency is none the less 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 under Section 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 twelve 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 under Section 197 Cr.P.C is not available to a public servant unless other conditions indicated in that Section are fulfilled." 5. In the light of the above, it is the submission for the State, the petitioner, an officer of Railways, is not protected by Section 197 of Cr.P.C. and no irregularity is committed by the complainant. Even otherwise, if such sanction is required same can be obtained at any stage of the proceedings and the want of prior sanction is not an issue, which goes to the root of the case vitiating the entire proceedings.

6. The Apex Court in the case of G.A. Manterio v. The State of Ajmer (195/-II-LLJ-538), has laid down two tests for determining whether a person is an officer of the Government as under-

"i) Whether he is in the service of pay of the Government, and

ii) Whether he is entrusted with the performance of any public duty."

In the light of the said judgment this Court in General Manager, Wheel and Axle

Plant and Another Vs. State of Karnataka, has examined the case of the General Manager of Wheel and Axle of Railways, who was prosecuted without getting prior sanction as contemplated under Section 197 of Cr.P.C.

7. It has been held that the General Manager of Wheel and Axle of the Railways is a public servant. Further reliance was placed on the judgment of the Apex Court in State of Maharashtra v. Dr. Budhikota Suharao, AIR 1983 SC 901, wherein it was held that the requirement of obtaining sanction to prosecute is mandatory and taking cognizance of an offence in the absence of sanction cannot be allowed to stand.

8. In Mohd. Hadi Raja's case (supra), the Apex Court was adjudicating a common question of law in the bunch matters that, "whether the provisions of sanction under Section 197 of Code of Criminal Procedure, 1973 are applicable for prosecuting officers of the public sector undertakings or the Government Companies when on account of deep and pervasive control of finance and administration of such undertakings and government companies, they are held as State within the meaning of Article 12 of the Constitution of India."

9. But, here is the petitioner, who is directly employed by the Ministry of Railways in the name of the President of India. It is not the case of the prosecution that the respondent DRM South Western Railway is any such Public Sector Undertaking or a Government Company. Under the circumstances, as already held by this Court necessarily the petitioner herein is a public officer within the meaning of Section 21 of I.P.C. and prosecution launched without prior sanction under Section 197 of Cr.P.C. is vitiated.

10. Accordingly, petition is allowed. The entire proceedings in C.C. No. 751/2014 pending on the file of J.M.F.C. II Court, Hubli is quashed. However, liberty is reserved to the respondent to initiate the proceedings afresh against the petitioner after obtaining sanction under Section 197 of Cr.P.C. within one year from the date of obtaining certified copy of this order.