
(2013) 12 MP CK 0085

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1230 of 2013

Sewak Ram Shivdedi

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0085

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Mukesh Pandey, for the Appellant; Aditya Adhikari, Special Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Gupta, J.—Heard on admission. The applicant has challenged the order dated 6.6.2013 passed by the Special Judge under Prevention of Corruption Act, Jabalpur in Special Case No. 185/2013, whereby the application u/s 197 of the Cr.P.C. filed by the applicant was dismissed and charges under Sections 420 /120-B of the IPC were framed against him.

2. The prosecution's case, in short is that, the applicant was working as a Deputy Director (Gram Udyog Board). A loan was sanctioned to the accused Dayaldas Prajapati for Shail Chalk/Kumhar Udyog on 29.3.1993 and approximately a sum of Rs. 82,975/- was given to him by the present applicant after sanctioning of the loan. It was found that the accused Dayaldas was not running any Udyog as shown in his application. The applicant and the co-accused by their connivance produced some false documents and a sum of Rs. 60,645/- was granted to him where at the most, a sum of Rs. 34,325/- could be given to the beneficiaries. The employer of the applicant refused to grant the sanction u/s 19 of the Prevention of Corruption Act and therefore, a charge sheet for the offences punishable under Sections 13(1)(d) & 13(2) of the Prevention of Corruption Act could not be filed. However, the charge sheet was filed for the offences punishable under Sections 420 /120-B of the IPC.

3. The applicant had moved an application u/s 197 of the Cr.P.C., which was dismissed by the trial Court and the charges under Sections 420 /120-B of the IPC were framed.

4. After considering the submissions made the by learned counsel for the parties, the matter may be considered in two parts. Firstly, whether any sanction was required u/s 197 of the Cr.P.C. and secondly, whether the alleged charges could be framed against the applicant.

5. Learned counsel for the applicant has submitted that the applicant was a public servant therefore, a sanction was required. He has placed his reliance upon the judgment passed by the Hon''ble Apex Court in the case of R. Balakrishna Pillai Vs. State of Kerala, , in which it is held that if alleged criminal conspiracy had directed in nexus with discharge of the official duties of the public servant then, sanction shall be required. He has also placed his reliance upon the order passed by the Single Bench of this Court in the case of Kailash Chandra Pathak (Dr.) Vs. M.P. Pollution Control Board and Another, .

6. On the other hand, learned Special Prosecutor has placed his reliance upon the judgment passed by the Hon''ble Apex Court in the case of State of H.P. Vs. M.P. Gupta, .

7. In the case of M.P. Gupta (supra), it is held by the Hon''ble Apex Court that there was no nexus in the crime of Sections 467, 468, 471, 420 and 120-B of the IPC with a public duty of the public servant and therefore, for the aforesaid crimes, no sanction u/s 197 of the Cr.P.C. is required. In the light of the judgment passed in the case of M.P. Gupta (supra) and R. Balakrishna Pillai (supra), if the present case is considered then, it would be apparent that the charges under Sections 420 /120-B of the IPC were alleged against the applicant. If the applicant is a public servant then, it was not expected from him that if he would do any cheating or such cheating falls under his public duty and therefore, in the specific judgment passed by the Hon''ble Apex Court in the case of M.P. Gupta (supra), no such sanction u/s 197 of the Cr.P.C. is required in the present case. Therefore, if the learned Special Judge has dismissed the application u/s 197 of the Cr.P.C. filed by the applicant then, no illegality or perversity has been done by him.

8. So far as the merits of the case is concerned, it is a golden yardstick relating to the framing of the charges that, if no rebuttal is given by the accused and with the help of the prosecution evidence, it appears that the accused can be convicted for any offence then, the charge of such offence shall be framed. The defence evidence cannot be considered at the time of framing of the charges. In the present case, prima facie, it is established by the prosecution that the applicant sanctioned and granted a loan to the person, who never prosecuted an Udyog as shown in his application. He could not get a huge amount for that Udyog and huge amount was sanctioned and granted by the applicant therefore, it shall be presumed that he cheated the State Government with connivance of

the co-accused and granted such a huge amount to the co-accused therefore prima facie, the offence punishable under Sections 420/120-B of the IPC shall constitute against the applicant. No illegality or perversity has been done by the Special Judge while framing of such charges against the applicant. On the basis of aforesaid discussion, the revision filed by the applicant Sewak Ram Shivdedi cannot be accepted and consequently, it is hereby dismissed at motion stage.