(2008) 04 J&K CK 0034

In the Jammu And Kashmir High Court

Sham Lal Sharma APPELLANT

Vs

State of Jammu & Kashmir and Others RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Jammu and Kashmir Prevention of Corruption (Amendment) Act, 2006 — Section 5(2)
Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983 — Section 11, 12, 14, 9
Prevention of Corruption Act, 1988 — Section 5(1)(e)
Public Men and Public Servants (Declaration of Assets and other Provisions) Rules, 1998 — Rule 5

Citation : (2008) 2 JKJ 474

Hon'ble Judges : K.S. Radhakrishnan, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, C.J.—This petition has been filed u/s 561-A of the Code of Criminal Procedure seeking following reliefs:

(1) Quashing of FIR No. 80 of 1995 registered with Police Station Vigilance Organization, Jammu for offence u/s 5(2) of the Prevention of

Corruption Act, Samvat 2006 read with Sections 9/11/12/14 of the Jammu & Kashmir Public Men and Public Servants (Declaration of Assets

and Other Provisions) Act, 1983;

(2) Quashing of order dated September 29, 2007 whereby court of Special Judge Anti-Corruption, Jammu has framed charges against the

petitioner under the aforementioned provisions of law and directed trial of the petitioner for the said offences;

(3) Prohibition restraining the court below from proceeding with trial of the petitioner.

2. Court of Special Judge, Anti-Corruption, Jammu, after perusing the final investigation report submitted by the Commissioner, Vigilance

Organization and the Government order according sanction for prosecution, dated March 16, 1999, was satisfied that during the period from 1977

to December, 1995 the petitioner in his capacity as a public servant acquired assets disproportionate to his known sources of income and on or

about December, 1995 he had been in possession of pecuniary resources or property in his name and in the name of his wife to the extent which

were disproportionate to his known sources of income for which he could not satisfactorily account for and that he had acquired property both

movable and immovable in his name and in the name of his wife without obtaining any permission in writing from the prescribed authority and the

same had not been shown by him in his annual property returns. The court was convinced that the above acts committed by the petitioner fell

within the purview of Section 5(2) read with Section 5(1)(e) of the J&K Prevention of Corruption Act and Sections 9/11/12/14 of the Jammu and

Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983 and ordered that the petitioner be tried for the

aforesaid offences.

3. Shri D.S. Thakur, learned Counsel for the petitioner submitted that the proceedings initiated by the trial court were vitiated since no show cause

notice was issued to the petitioner as provided u/s 11 of the Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and

Other Provisions) Act, 1983, enabling the petitioner to explain the reasons for non-submission of the annual property returns. Learned Counsel

submitted that due to failure to follow the above provision, the sanction order for prosecution granted by the Government was also vitiated and

hence prayed for quashing the criminal proceedings initiated against the petitioner. Learned Counsel submitted that the charge framed against the

petitioner for offences u/s 5(2) read with Section 5(1) (e) of the J&K Prevention of Corruption Act and Sections 9/11/12/14 of the Jammu and

Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983 is bad in the eye of law. Learned Counsel laid

stress on the judgment of a learned Single Judge of this Court in S.K. Puri v. State 2004 (2) JKJ 607.

4. Shri B.S. Salathia, learned Additional Advocate General, appearing for the State, on the other hand defended the framing of charges against the

petitioner. According to the counsel the acts of the petitioner, prima facie, fell within the offences punishable u/s 5(2) read with Section 5(1)(e) of

the J&K Prevention of Corruption Act and Sections 9/11/12/14 of the Jammu and Kashmir Public Men and Public Servants (Declaration of

Assets and Other Provisions) Act, 1983. Learned Counsel submitted that assuming that no notice was issued to the petitioner for non-submission

of the annual property returns u/s 11 of the Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions)

Act, 1983, it is of no consequence since acquisition of assets, disproportionate to the known sources of income, also is a criminal misconduct

which falls u/s 5(2) read with Section 5(1)(e) of the J&K Prevention of Corruption Act. Counsel further submitted that the offence u/s 5(2) of the

Prevention of Corruption Act and other related provisions are independent offences which have nothing to do with non-furnishing of the annual

returns, which may also amount to criminal misconduct.

5. Vigilance Organization had received information that the petitioner was in possession of disproportionate assets in the shape of palatial house at

Katra, a big hotel and huge landed property. Based on information received by them, a preliminary enquiry was conducted and the charges

levelled against the petitioner were, prima facie, established. Accordingly, a case FIR No. 80/1995, was registered with Police Station, Vigilance

Organization, Jammu and investigation was taken up. After completion of the investigation, final investigation report has been submitted before the

trial court and has also been made available to this Court. Details of investigation are recorded therein and I am not reiterating these details in this

judgment. After completion of the investigation they found that petitioner was in possession of disproportionate assets to the tune of Rs. 16,94,956

and offence u/s 5(2) of the Prevention of Corruption Act was, prima facie, established against the petitioner. According to the investigating agency,

he was not in a financial position to raise the assets which are held by him and are disproportionate to his known sources of income. It was also

noticed that he had also failed to obtain prior permission from the prescribed authority for raising the assets which in itself is an offence under

Sections 12/14 of the Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983.

6. On going through the FIR, sanction order granted by the Government, report of the Vigilance and the order passed by the trial court. I am of the

considered view that this is not a fit case where this Court should exercise its inherent powers u/s 561-A of the Code of Criminal Procedure. I also

find no basis in the contention raised by the learned Counsel for the petitioner that since no show cause notice was issued to him for non-

submission of the annual property returns u/s 11 of the Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and Other

Provisions) Act, 1983, it would vitiate the sanction accorded by the Government u/s 6 of the Prevention of Corruption Act, Samvat 2006 and also

the proceedings initiated u/s 5(2) read with Section 5(1)(e) of the Jammu and Kashmir Prevention of Corruption Act and Sections 9/11/12/14 of

the J&K Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983. In my view, the decision of this Court in S.K.

Purl v. State (supra) cited by the learned Counsel would not apply to the facts of this case which, in my view, is clearly distinguishable. The

allegation raised in that case was that the Managing Director of J&K Housing Board had deliberately not submitted his property returns to the

prescribed authority for the year 1990 to 1993 and the aforesaid act violated the Conduct Rules u/s 11 of J&K Public Men and Public Servants

(Declaration of Assets and other Provisions) Act, 1983. So far as the present case is concerned, charges are framed on the basis of report of the

Vigilance for acquisition of properties disproportionate to his known sources of income which is totally an independent and distinct offence.

7. The Prevention of Corruption Act, Samvat 2006 (1949 AD) has been enacted for more effective prevention of bribery and corruption by public

servants. Section 5 of the Act deals with criminal misconduct and Section 5(1)(e) says that a public servant is said to commit the offence of

criminal misconduct if he or any person on his behalf is in possession or has at any time during the period of his office, been in possession for which

the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Section 5(2)

says that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine. The above provision, in my view, is an independent provision which has

no connection with imposition of penalty for non-submission of annual property returns under the provisions of Section 11 of the Jammu and

Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983. True, the non-submission of annual property

returns may entail penalty u/s 11 of the Act, which is also misconduct as specified in Clause (e) of subsection (1) of Section 5 of the Prevention of

Corruption Act. Section 11 of the Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983

prescribes issue of a show cause notice. Rule 5 of the Public Men and Public Servants (Declaration of Assets and other Provisions) Rules, 1998

deals with the procedure to be followed while issuing the show cause notice. Specified time is also prescribed therein for serving a notice and

seeking an explanation for non-submission of the returns. Failure to do so would attract proceeding u/s 11 of the 1983 Act, but the mere fact that

no notice, as contemplated u/s 11 of the Act read with Rule 5 of the Rules, was issued, if so facto, would not create embargo in initiating

proceedings under sections 5(2) read with 5(1)(e) of the Prevention of Corruption Act. I, therefore, find no basis in the contention raised by the

learned Counsel.

8. Learned Counsel for the petitioner also referred to the decision of the Apex Court in State Inspector of Police Vs. Surya Sankaram Karri, . In

my view the said decision would not apply to the facts of this case and is clearly distinguishable. Apex Court was hearing a regular criminal appeal

and was not dealing with a case falling u/s 561-A Cr. P. C. or Section 482 Cr. P. C. Apex Court on facts found that the investigation conducted

was not fair which, in my view, is not applicable to the facts of this case.

9. Rest of the grounds raised by the learned Counsel for petitioner for quashing the FIR, in my view, are also unsustainable. Detailed investigation

has been conducted by the investigating agency which was time consuming and the delay if any in presenting the FIR has not caused any prejudice

to the petitioner and the petitioner has not demonstrated the same on facts. I also find no infirmity in the orders whereby sanction was accorded by

the Government for prosecuting the public servant and, in my view, this is not a fit case where this Court should exercise its inherent powers u/s

561-A Cr. P. C, or extra ordinary jurisdiction under Article 226 of the Constitution of India read with Section 103 of the State Constitution.

10. The petition lacks merit and is, therefore, dismissed.

