

(2011) 02 GAU CK 0075

In the Gauhati High Court

Case No : Criminal Petition No. 10 (SH) of 2010

Shiv Kumar Agarwala

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Criminal Procedure Code, 1973 (CrPC) — Section 196, 196(1A), 196(2), 468, 468(2) (C)

Penal Code, 1860 (IPC) — Section 294, 323, 500, 505(2), 505(3)

Citation : (2011) CriLJ 1999 : (2011) 2 GLT 205 : (2011) 3 RCR(Criminal) 880

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : G.N. Sahewalla and H.L. Shangreiso, for the Appellant; M.F. Qureshi, K. Chisa and I.C. Jha, for the Respondent

Judgement

T. Vaiphei, J.—This criminal petition u/s 482 Code of Criminal Procedure, 1973 filed by the Petitioner challenges the validity of the orders dated 8.4.2010 and 2.12.2009 passed by the learned Chief Judicial Magistrate, Shillong in GR. Case No. 38(SV 2006 taking cognizance of the offences charged against him without valid prosecution sanction.

2. The facts of the case prompting this criminal proceeding may be briefly noticed at the outset. The Petitioner claims to be the Secretary of the Rajasthan Vishram Bhawan for a considerable period of time and the member of the Executive Committee of the Vishram Bhavan on the basis of the election held on the direction of this Court. It is alleged by him that the Respondents No. 2 to 11, with the evil design of removing him from the helm of the affairs of the Vishram Bhavan, lodged a written complaint on 14.11.2005 with the police by falsely alleging that he had circulated a pamphlet in and around Shillong town with an intention to create enmity, hatred and ill will among different communities besides defaming them. No case was initially registered by the police though G. D. entry was made on 14.11.2005. On 16.11.2005, according to the Petitioner,

the police, merely on the basis of a sheet of paper without any contents but with the signatures of Respondents 4 to 11 received by them vide GDE No. 533 dated 16.11.2005, registered Shillong Sadar P.S. Case No. 176(11)2005 under Sections 505(2)/500 IPC. This was followed by the arrest of the Petitioner from his house at midnight: he was, however, released on bail by the Court. It is also the case of the Petitioner that the police, after investigation of the case, charge-sheeted him under Sections 505(2)/500 IPC without obtaining prosecution sanction to stand the trial before the learned Chief Judicial Magistrate, Shillong. The learned Chief Judicial Magistrate transferred the case to the file of the learned Judicial Magistrate, Shillong. The learned Judicial Magistrate without application of mind issued summons to the Petitioner vide the order dated 17.2.2006.

3. It is the further case of the Petitioner that the learned Judicial Magistrate completely overlooked the fact that he could not take cognizance of the offence u/s 505(2) IPC without prosecution sanction issued by the competent authority u/s 196(1A) Code of Criminal Procedure and illegally proceeded to take cognizance of the said offence together with the offence u/s 500 IPC. He accordingly pleaded not guilty to the charge and claimed to be tried whereupon the learned Magistrate started recording prosecution evidence. However, the prosecution belatedly filed an application on 16.10.2008 before the learned Magistrate praying for directing the Investigating Officer of the case to obtain the prosecution sanction from the competent authority. The objection raised by the Petitioner against the application was, however, rejected by the trial Court, which by the order dated 21.11.2008 passed in G.R. Case No. 38(S) 2006 directed the prosecution to obtain the sanction within two months. The trial Court also directed therein that prosecution evidence would continue to be recorded in the interregnum. Aggrieved by this, the Petitioner approached this Court in Criminal Petition No. 34(SH) of 2008 for appropriate order. This Court by the order dated 26.08.2009 disposed of the case and remanded the same to the trial Court. On 04.09.2009, the learned Chief Judicial Magistrate directed the prosecution to obtain the sanction within a month and fixed 06.10.2008 for submission of the prosecution sanction. The prosecution sanction was apparently submitted by the prosecution before the learned Chief Judicial Magistrate on 02.12.2009. In the meantime, the Petitioner on 13.11.2009 filed an application before the trial Court for discharging him from the case on the ground, among others, that taking cognizance of the offences charged against him was barred by limitation u/s 468 Code of Criminal Procedure. The trial Court, however, by the order dated 08.05.2010 rejected the application and proceeded with the case from where it was left earlier and fixed 28.04.2010 for evidence. This is how this criminal petition has been filed.

4. In so far as the question of limitation is concerned, Mr. G.N. Sahewalla, the learned senior counsel for the Petitioner has rightly abandoned this issue. The offence of Section 500 IPC is punishable with imprisonment for two years with fine whereas the offence of Section 505(2) IPC is punishable with imprisonment for three years or with fine or with both. u/s 468(2)(C) Code of Criminal

Procedure, the period of limitation for the offence punishable with imprisonment for a term exceeding one year but not exceeding three years is three years. Section 469(1)(a) explains that the period of limitation, in relation to an offence, shall commence on the date of the offence if the commission of the offence was known. In the case at hand, the offences were allegedly committed, as per the FIR at Annexure-I, on 04.11.2005 at around 7 P.M. whereas the complaint was lodged on 16.11.2005. Even if we assume that the period of limitation for the graver offence of Section 505(2) Code of Criminal Procedure is three years u/s 468(2)(c), the trial Court is not barred from taking cognizance of the offences in view of the glaring fact that the complaint was lodged by the Respondents 2 to 11 within 12 days of the alleged commission of the offences. The date on which the prosecution sanction was filed before the trial Court is not relevant for the purpose of determination of the period of limitation for taking cognizance of an offence. The relevant date for computation of the period of limitation prescribed u/s 468 Code of Criminal Procedure has come up for consideration before the Apex Court, though in the context of taking of cognizance by a Magistrate or issuance of process by a Court, in *Japani Sahoo v. Chandra Sekhar Mohanty* (2007) 7 SCC 394. In that case, the incident took place on 02.02.1996. A complaint was filed against the Respondent within three days of the incident. But the Magistrate took cognizance of the matter and issued summons against the Respondent in respect of the offences under Sections 294 and 323 IPC after more than one year of the incident. The Respondent filed a petition u/s 482 Code of Criminal Procedure for quashing the said proceedings on the ground that the said complaint was barred by limitation u/s 468 Code of Criminal Procedure. The High Court allowed the said petition by holding that the date relevant and material for deciding the bar of limitation u/s 468 Code of Criminal Procedure was the date of taking cognizance by the Court and not the date of filing of the Complaint. On appeal, the Apex Court set aside the order of the High Court and directed the trial Court to proceed with the case. After reviewing a number of decisions, this is what the Apex Court said:

48. So far as the complainant is concerned, as soon as he files a complaint in a competent Court, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings.

49. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the Court or the Magistrate to issue process or take cognizance. But the complainant cannot be penalized for such delay on the part of the Court nor can he be non-suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated a complainant approaches the Court well within the time prescribed by law. In such cases, the doctrine "actus curiae neminem

gravabit" (an act of Court shall prejudice none) would indeed apply. (Vide Alexander Rodgers v. Comptoir D'Escompte) One of the first and highest duties of all Courts is to take care that an act of Court does no harm to suitors.

50. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the Court had not taken an action within the period of limitation. Such an interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object to procedural law.

51. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if mat action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is a settled law that a Court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of *litera legis*. Connecting he provision of limitation in Section 468 of the Code with issuing process or taking cognizance by the Court may make it unsustainable and *ultra vires* Article 14 of the Constitution.

52. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings.

5. Now, if the crucial date for computing the period of limitation is not the date of taking cognizance by a Magistrate or issuance of process by a Court, a *fortiori*, the date on which the prosecution sanction u/s 196(2) Code of Criminal Procedure was filed by the police/prosecution before the trial Court cannot also be the crucial date for computing the period of limitation. If the contention advanced by the Petitioner is accepted, any prosecution can be stifled by dishonest and unscrupulous police by not applying for prosecution sanction within the prescribed period of limitation. Thus, the Respondents No. 2 to 11 cannot be penalized for the delay on the part of the prosecution in obtaining the

sanction. Once these Respondents lodged the FIR with the Shillong Sadar Police Station within the period provided for by law, it would be wholly unreasonable and inequitable if they are told that their grievances could not be ventilated as the police could not obtain the prosecution sanction within the period of limitation. They have no control over such process. Consequently, I unhesitatingly hold that the crucial date for computing the period of limitation is the date of lodging the FIR with the police and not the date of filing prosecution sanction by the police in Court. In the view that I have taken, there is no difficulty in holding that the complaint lodged by the Respondents is not barred by limitation.

6. Coming now to the main contention of the learned senior counsel for the Petitioner that the prosecution sanction is invalid, I have carefully gone through the order granting the sanction which is at Annexure -VIII. At this stage, I may refer to the correct legal position regarding the manner in which the sanction is to be granted by the competent authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution. What the Court has to see is whether or not the sanctioning authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact which may come into existence after the resolution granting the sanction has been passed, is wholly irrelevant. The grant of sanction is not an empty formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to the accused against frivolous prosecution and must therefore be strictly complied with before any prosecution can be launched against such an accused. In my opinion, the principles for granting prosecution sanction in respect of a public servant will also be applicable for granting sanction to prosecute a person accused of an offence punishable u/s 505(2) or (3) IPC. For example in AIR 1948 82 (Privy Council) , the Privy Council held that a sanction which names the persons to be prosecuted and specifies the provision of the Order which he is alleged to have contravened is not a sufficient compliance. Again in State (Delhi Administration) Vs. Shyam Lal, where sanction was granted in cyclostyled form mentioning name of the accused and where the food article as well as the date of lifting of the sample was also typed, but the sanctioning authority was not quoting the provisions of the Act for which offence the sanction to prosecute was being granted nor was he referring to the report of the Public Analyst, the Division Bench of the Delhi High Court held that the sanction was not valid. Sh. Hanuman Sharma Vs. State of Punjab and Others, was another case where the Punjab and Haryana High Court held the order of sanction in cyclostyled form not even mentioning the date on which the sample was allegedly taken to be invalid. In the instant case, the order of prosecution in a cyclostyled form which is at Annexure-VIII runs along the following lines:

SANCTION FOR PROSECUTION

Sanction for prosecution in connection with Shillong Sadar P.S. C/No. 176 C11/05

u/s 500/505(2) IPC:

I, Shri I. Lyngdoh. IAS District Magistrate, East Khasi Hills, Shillong having perused the case record/diaries and having been satisfied that a prima facie case u/s 500/505(2) IPC exists against the arrested accused person Shri Shiv Kumar Agarwala do hereby accord sanction for prosecution of the accused in Shillong Sadar P. S-C/No. 176(11)05 u/s 500/505(2) IPC in exercise of the power conferred on me u/s 196 Code of Criminal Procedure.

Sd/- District Magistrate,

7. A plain reading of the sanction order will revealed that the date of the sanction order was not even mentioned therein. Secondly, there is no evidence to show that the District Magistrate was aware of the facts constituting the offence of Section 505(2) IPC or that he did apply his mind for the same. For prosecuting the offence punishable u/s 500 IPC, no prosecution sanction is required. Yet, the District Magistrate granted prosecution sanction even for this offence! In my opinion, there is thus considerable force in the contention of the learned senior counsel for the Petitioner that the sanction order suffers from the vice of non-application of mind and is vitiated thereby. The grant of sanction is not an idle formality or an acrimonious exercise but is a solemn and sacrosanct act. It is incumbent upon the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the fact as constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio. - See Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, . Though the aforesaid decision was rendered in the context of prosecution sanction under the Prevention of Corruption Act, 1947, I do not see why the underlying principles therein should not be made applicable in a case of sanction for prosecuting an offence punishable u/s 505(2) IPC. However, as indicated above, no prosecution sanction is required for prosecution of the offence punishable u/s 500 IPC: the trial Court is, therefore, not barred from proceeding with the offence relating to Section 500 IPC.

8. For what has been stated in the foregoing, this criminal petition is partly allowed. The impugned proceeding pending against the Petitioner before the learned Chief Judicial Magistrate, Shillong in G.R. No. 38(S)/2006 in so far as offence punishable u/s 505(2) IPC is concerned, is hereby quashed. However, the trial Court shall proceed against the Petitioner in connection with the offence punishable u/s 500 IPC from the stage it has been stayed by this Court. Consequently, the interim order passed by this Court on 21.5.2010 stands merged with this judgment. No order as to costs.