(2009) 10 JH CK 0043

In the Jharkhand High Court

Shyam Bihari Bhatt APPELLANT

Vs

The State of Jharkhand and Another RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 21
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 15, 19

Citation : (2009) 10 JH CK 0043

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The petitioner, through this application, has invoked the extra ordinary jurisdiction of this Court, as enshrined under Article 226 of the Constitution of India for quashing of the order as contained in Memo No. 917 dated 02.07.2007 (Annexure-6), under which sanction for prosecution against the petitioner was accorded by the respondent No. 2 The Managing Director, Jharkhand State Agriculture Marketing Board, Pandra, Ranchi.

2. The facts giving rise this application are that while the petitioner was posted as ''In-charge Marketing Secretary'', Agriculture Produce Marketing Committee, Chakulia, one Ganesh Prasad Rungta lodged an FIR against the petitioner, which was registered as Vigilance Case No. 35 of 2003 u/s 7/13 of the Prevention of Corruption Act, 1988, on the allegation that on 22.11.2003, the petitioner inspected a Rice Mill in his absence, being run in the name and style of M/s Bhagwati Rice Mill and as such stock register and electricity bill could not be shown to the petitioner. However, the petitioner handed over inspection report to the staff of the said Mill. When the complainant came to know all about it, he submitted the same before the Marketing Secretary and at that moment, the petitioner demanded Rs. 30,000/- as illegal gratification with a threat that if the said amount is not paid, he will assess the transaction of the Mill as per stock

found in course of physical verification which may go upto Lakhs. When no order was passed in spite of deposit of those documents, the complainant made a complainant before the Superintendent of Police, Vigilance to take appropriate action. Upon receiving the complaint, when verification was made on 09.12.2003, it was found to be true and accordingly, a raid was laid wherein the petitioner was trapped while accepting bribe money. Thereupon, the case was registered u/s 7/13(2) read with Section 13(i)(d) of the Prevention of Corruption Act, 1988. After the investigation, charge sheet was submitted on 05.02.2004 but the court did not take any cognizance any absence of any order of sanction for prosecution against the petitioner.

3. It is the case of the petitioner that while the matter was pending before the court below, the petitioner was allocated to Bihar cadre under order dated 13.09.2004 issued by the Government of India. Thereupon, the respondent No. 2 vide its order dated 07.12.2005 released the petitioner w.e.f. 12.12.2005 for giving joining before the Bihar State Agriculture Marketing Board, Patna. Accordingly, the petitioner gave his joining on 19.12.2005. Thereupon, the petitioner was transferred and posted as ''Junior Chemical Assistant'' in the Headquarters of the Board itself under order dated 31.12.2005.

4. Further case is that while the petitioner was discharging his duty under Bihar State Agriculture Marketing Board, Patna, the respondent No. 2-the Managing Director, Jharkhand State Agriculture Marketing Board, Ranchi accorded sanction for prosecution against the petitioner vide its order dated 02.07.2007. Thereupon, learned Special Judge, Vigilance, took cognizance of the offence u/s 7/13(2) read with Section 13(i)(d) of the Prevention of Corruption Act, 1988 vide its order dated 06.07.2007 (Annexure-7).

5. Being aggrieved with the order taking cognizance and also with the order under which sanction for prosecution was accorded, this writ application has been filed.

6. Sri Anil Kumar Sinha, learned senior counsel appearing for the petitioner submits that the petitioner presently or even on the date when the cognizance of the offence was taken, was under the employment of the Bihar State Agriculture Marketing Board, Patna and as such the competent person in terms of Sub-section (C) of Section 19 of the Prevention of Corruption Act, 1988 to grant sanction, would be the Managing Director or Controlling Officer of Bihar State Agriculture Marketing Board, Patna being an authority to remove him from his office, but in the instant case it was the respondent No. 2-The Managing Director, Jharkhand State Agriculture Marketing Board, Ranchi, who has accorded sanction and hence such sanction would be quite illegal and consequently order taking cognizance also becomes quite bad.

7. As against this, Sri V.P. Singh learned senior counsel appearing for the Jharkhand State Agriculture Marketing Board, Ranchi as well as Sri A.K. Kashyap, learned senior counsel appearing for the Vigilance submitted that though the

petitioner, presently or even on the date of taking cognizance was under the employment of Bihar State Agriculture Marketing Board, Patna but on the date of the commission of the offence, the petitioner was very much under the employment of the Jharkhand State Agriculture Marketing Board, Ranchi and as such the respondent No. 2-The Managing Director, Jharkhand State Agriculture Marketing Board, Ranchi would be competent to grant sanction for prosecution and not The Managing Director, Bihar State Agriculture Marketing Board, Patna. Learned Counsel by referring Sub-section (4) of Section 19 of the Prevention of Corruption Act, 1988 submitted that even otherwise order granting sanction, cannot be interfered with even it suffers from any error, omission or irregularity as the petitioner has failed to show that such sanction granted against him has occasioned or resulted in a failure of justice. In this respect, reference of a case of Parkash Singh Badal and Another Vs. State of Punjab and Others, has been made.

8. However, learned Counsel appearing for the petitioner countered the said submission by putting his point that when the respondent No. 2 is not competent to grant sanction, still he granted sanctioned for the prosecution and in that event, it will not be a case of mere irregularity, error or omission as it goes to the very root of the prosecution case and, therefore, such order warrants to be interfered with by this Court. In support of his submission, learned Counsel has referred to a decision in the case of State of Goa Vs. Babu Thomas,

9. Contentions raised on behalf of the parties on the point of sanction appears to be opposite to each other. On one hand legality and propriety of the order of the respondent No. 2, granting sanction for prosecution, has been questioned whereas the said sanction order as per the respondent is quite valid as on the date of the occurrence, it was the respondent No. 2, who was the person-competent to remove the petitioner from his office.

10. However, the question would be as to whether any sanction in terms of Section 19 of the Prevention of Corruption Act is required to be accorded when the petitioner on the date of taking cognizance has demitted the office, which he was holding as ''In-charge Marketing Secretary'', Agriculture Produce Marketing Committee, Chakulia?

11. The question posed above leads me to take notice of the provision as contained in Section 19 of the Prevention of Corruption Act, which reads as follows:

19. Previous sanction necessary for prosecution -

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the

Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under Sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

12. From perusal of the aforesaid provision, it would appear that Clauses (a) and (b) of Sub-section (1) specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, save and except with the sanction of respective Government sanction for prosecution needs to be obtained either from the Central Government or the State Government. In both the Clauses (a) and (b) emphasis has been given on the words "who is employed" in connection with the affairs of the Union or the State Government. Natural corollary would be that if he is not employed then the question of having sanction does not arise. Furthermore, under Sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In the event of a person not holding the said office on account of various reasons, then the question of removing him would never arise. Thus conjoint effect of Sub-section (1) and Sub-section (2) of Section 19 would be that if a person committed any wrong punishable under Sections 7, 10, 11, 13 and 15 of the Prevention of Corruption Act while holding the office but by the time when the charge sheet is submitted or cognizance is taken, if he demits the said office, then there would be no question of obtaining any previous sanction of the appropriate Government.

13. The aforesaid proposition of law has been laid down by the Hon''ble Supreme Court in the case of R.S. Nayak Vs. A.R. Antulay, where the question fell for consideration as to whether any sanction of the Governor was necessary when the appellant in his tenure as Minister had committed certain offences but subsequently at the time of launching prosecution he was a member of the Legislative Assembly. This question was dealt with in paragraph 24 of the said decision which reads as follows:

24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used (sic misused) nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged

or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used (sic misused) or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned Counsel that a minister who is indisputably a public servant greased his palms by abusing his office as minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and, therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defect the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant u/s 21 of the Indian Penal Code and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd end product which is necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue''s character.

14. The Hon''ble Supreme Court after considering the earlier decision emphatically held that the decision which lays down that in case where the public servant has ceased to hold the office, sanction is required to be obtained, is not the correct interpretation of Section 6 (as it was). The relevant discussion appears to be at paragraph 25 which reads as under:

We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decision in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6 .

15. The same view has been reiterated subsequently in a case of Prakash Singh Badal and Anr. v. State of Punjab and Ors. (supra). Again in a case of Balakrishnan Ravi Menon v. Union of India (2007)1 S.C.C. 45, the question fell for consideration as to whether sanction for prosecution is at all necessary in terms of Section 19 of the Prevention of Corruption Act when the petitioner of that case holding post of Chairman and Managing Director, Goa Shipyard Hotel committed certain offences under the Prevention of Corruption Act but retired and subsequently, appointed as Chairman and Managing Director of Transformers and Electricals Limited by the State of Kerala at the time of submission of the charge sheet. The Court after taking notice of the provision as contained in Section 19 of the Prevention of Corruption Act and also the ratio laid down in A.R. Antulay''s case did hold categorically that as the petitioner was not holding office of the Chairman and Managing Director of Goa Shipyard Limited at the relevant time when the charge sheet was submitted, question of obtaining any previous sanction of the Central Government does not arise.

16. In view of the aforesaid principles laid down by the Hon''ble Supreme Court, there has been no hesitation in holding that sanction for prosecution in terms of the Section 19 of the Prevention of Corruption Act, 1988 is not required to have for launching prosecution against the petitioner, as the petitioner on the date of taking cognizance, had already demitted the office, which according to the prosecution, have been misused.

17. Otherwise also, I do not find any merit in the submission advanced on behalf of the petitioner as Sub-section (2) of Section 19 of the Prevention of Corruption Act, 1988 does prescribe that whenever any doubt is raised as to who would be competent to grant sanction, such sanction shall be given by the authority who would be competent to remove the public servant from his office at the time when offence was alleged to have been committed. Admittedly, at the time of commission of the offence, it was the respondent No. 2, who was the competent to remove the petitioner from his office and as such he was competent to accord sanction for prosecution.

18. Thus, I do not find any merit in this application and hence it is dismissed.

