(2003) 08 AHC CK 0178

In the Allahabad High Court

Case No : Criminal Revision No''s. 163-66 of 1998

Simson Andreu Egbert APPELLANT

Vs

State RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1)

Citation : (2003) 3 ACR 2662

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

Bench : Single Bench

Advocate : Arun Sinha, for the Appellant; G.A., for the Respondent

Judgement

N.K. Mehrotra, J.—These four criminal revisions have been filed against the order dated 3.3.1998, passed by the II Ird Additional Chief Judicial Magistrate, Lucknow, in Criminal Case Nos. 3880 of 1990, 3881 of 1990, 3385 of 1990 and 3882 of 1990.

2. Since all the revisions have been preferred against one and the same order passed in the above mentioned four criminal cases, all these revisions have been heard together and are being disposed of by a common judgment.

3. The revisionist was the Sales Tax Officer, Grade-II in Khand-10, Lucknow during the relevant period in the year 1990. He issued Form No. 31 to the different firms and those firms did not deposit the sales tax dues and those firms were not traced out when the recovery was issued. Therefore, four different reports were lodged against the revisionist and four crimes were registered against him. At the time of framing of the charge, the revisionist sought protection of Section 197 of the Code of Criminal Procedure and it was contended before the learned Magistrate that cognizance cannot be taken unless sanction for prosecution is accorded in accordance with the provisions of Section 197 of the Code of Criminal Procedure. The learned Magistrate did not accept this contention and held that it is a case of misappropriation of the Government

Revenue and the act performed does not come in the performance of the official duty, therefore, the sanction is not required.

4. I have heard the revisionist in person because the learned Counsel did not appear in spite of several adjournments. I have also heard the learned Additional Government Advocate for the State.

5. Admittedly, the revisionist was Sales Tax Officer, Grade-II, at the relevant time. The revisionist has admitted that the Commissioner, Trade Tax was the appointing authority, therefore, he is removable from his office by the order of the Commissioner, Trade Tax. Section 197(1) of the Code of Criminal Procedure is as follows:

197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government ;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

6. The aforesaid provision u/s 197 of the Code of Criminal Procedure is applicable in the case of a public servant not removable from his office save by or with the sanction of the Government and in those cases where the offence alleged to have been committed by such public servant by acting or purporting to act in discharge of his official duty. In view of the admitted factual position, the Trade Tax Commissioner being the appointing authority of Sales Tax Officer, Grade-II, the office which the revisionist was holding, no sanction of the Government is required for the removal of the revisionist from the post of the Sales Tax Officer, Grade-II.

7. In view of the above, I find that the protection of Section 197 of Code of Criminal Procedure is not available for prosecution of a person holding the post of the Sales Tax Officer, Grade-II, who is removable without sanction of the Government.

8. Therefore, all the aforesaid four revisions are dismissed.