

(2018) 02 RAJ CK 0007
In the Rajasthan High Court
Case No : 47 of 2017

Sohan Lal Singathia S/o Rugha Ram

APPELLANT

Vs

The State of Rajasthan Through Public Prosecutor

RESPONDENT

Date of Decision : 17-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 19](#), [Section 197](#), [Section 227](#)
- Subordination of Metropolitan Magistrates - Prosecution of Judges and public servants - Discharge

Citation : (2018) 02 RAJ CK 0007

Hon'ble Judges : Sandeep Mehta

Bench : Single Bench

Advocate : Himmat Jagga, R.K. Bohra

Final Decision : Dismissed

Judgement

1. The instant revision has been preferred on behalf of the petitioner Sohan Lal Singathia being aggrieved of the order dated 28.09.2016 passed by

the learned Special Judge, Special Court, Anti Corruption Cases, Sri Ganganagar in Sessions Case No.01/2016 whereby, the learned court below

directed framing of charges against the petitioner and the co-accused persons for the offences under Sections 13(1)(d) read with Section 13(2) of

the Prevention of Corruption Act and Section 120B of the IPC.

2. Facts in brief are that the petitioner was posted as a Patwari in the district Sri Ganganagar at the relevant point of time. An FIR No.429/2012

came to be registered against the petitioner and the co-accused persons for the above offences with the allegation that they had indulged in criminal

misconduct while carrying out mutation of a disputed chunk of agricultural land in relation whereof, certain litigations were pending in the revenue

courts. Before the result of investigation could be submitted, the petitioner superannuated from his post. Charge-sheet came to be filed against the petitioner, Rameshwar Lal Joshi, the then Tehsildar (since retired), Shishpal Singh Girdawar and Jagdish Rai Girdawar, being the public servants involved in the offences and Barkhadas being the beneficiaries of the fraudulent transaction. The matter was taken up by the learned Special Court for consideration of charges and a detailed order was passed on 28.09.2016 directing framing of charges against the petitioner for the offences mentioned above. The said order is under challenge in the instant revision.

3. Though the impugned order was challenged on numerous grounds but, while arguing the matter, the basic thrust of arguments advanced by Shri

Jagga, learned counsel representing the petitioner, was that the prosecution did not procure a sanction for prosecuting the petitioner in this case as

warranted by Section 197 Cr.P.C./ Section 19 of the prevention of Corruption Act and thus, the court could not have taken cognizance against the

petitioner and his trial is vitiated. He relied upon the Supreme Court decisions in the cases of R. Balakrishna Pillai vs. State of Kerala & Anr.

Reported in AIR 1996 SC 901 and State of Punjab vs. Labh Singh reported in 2015(1) RLW 236 (SC) and implored the Court to set aside the

impugned order on the ground that no sanction to prosecute the petitioner was procured by the investigating agency before submitting the charge-

sheet against him.

4. Per contra, learned Public Prosecutor opposed the submissions advanced by the learned counsel for the petitioner and urged that procurement

of prosecution sanction is only essential where, the charge-sheet is filed against a retired government servant for the offences under the Indian Penal

Code committed by the public servant while discharging his official duty. He contended that no sanction is required for prosecuting a public servant

for the offences under the Prevention of Corruption Act if he has superannuated and ceased to be a public servant before submission of charge-

sheet. On these grounds, he implored the Court to dismiss the revision.

5. I have given my thoughtful consideration to the arguments advanced at Bar and have gone through the material available on record.

6. So far as the merits of the case are concerned, suffice it to say that the trial court has considered in detail, the entire factual matrix available on

record and the material collected by the investigating agency in support of the charge-sheet and recorded sound and substantial reasons concluding

that sufficient evidence is available to put the accused up for trial and hence, this Court is of the view that as the due satisfaction as warranted by

Section 227 Cr.P.C. has been recorded by the trial court in the impugned order, the same is not liable to be interfered on merit.

7. Now coming to the legal aspect of the matter i.e. whether the trial court could have taken cognizance and proceeded against the petitioner for

the offences under the Prevention of Corruption Act without availability of a valid prosecution sanction. Even in the Supreme Court Judgment cited

by the learned counsel Shri Jagga in the case of Labh Singh (supra) is concerned, manifestly the said argument has been turned down. At para

No.7 of the judgment, Hon''ble Supreme Court observed as below:

In the present case the public servants in question had retired on 13.12.1999 and 30.04.2000. The sanction to prosecute them was rejected

subsequent to their retirement i.e. first on 13.09.2000 and later on 24.09.2003. The public servants having retired from service there was no

occasion to consider grant of sanction under Sec. 19 of the POC Act. The law on the point is quite clear that sanction to prosecute the public

servant for the offences under the POC Act is not required if the public servant had already retired on the date of cognizance by the court. In S.A.

Venkataraman vs. State (1958 SCR 1040) while construing section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari

materia with section 19(1) of the POC Act, this court held that no sanction was necessary in the case of a person who had ceased to be the public

servant at the time the court was asked to take cognizance. The view taken in S. A. Venkataraman (supra) was adopted by this court in C.R.

Bansi vs. State of Maharashtra (1970) 3 SCC 537 and in Kalicharan Mahapatra vs. State of Orissa (1998) 6 SCC 411 and by the Constitution

Bench of this court in K. Veeraswamy vs. Union of India. The High Court was not therefore justified in setting aside the order passed by the

Special Judge insofar as charge under the POC Act was concerned.

8. Manifestly thus, the law is well settled that no sanction is required to prosecute a public servant who has ceased to hold office when prosecution

is for the offences under the Prevention of Corruption Act. So far as the offence

under Section 120B IPC is concerned, the same is an ancillary charge and is being applied for proving the nexus of the petitioner and the other public servants with the private accused and as such, this Court feels that no sanction would be required for the said charge as well. In the case of R. Balakrishna Pillai (supra) relied upon by Shri Jagga, it was clearly held that the charge under the Prevention of Corruption Act could not be disturbed even if the sanction was not taken because the public servant concerned had retired by the date of taking of cognizance. So far as the charge under Section 120B IPC is concerned, true it is that if the ratio of R. Balakrishna Pillai (supra) is applied *stricto sensu* to the facts of the present case, the said charge would have to be struck down because manifestly, cognizance was taken against the petitioner for the said offence without procuring sanction under Section 197 Cr.P.C. However, this Court is of the opinion that no prejudice would be caused to the petitioner on this count and the requirement of sanction for the said offence would have to be considered at the stage of final decision of the case in light of the Supreme Court decision in the case of State of H.P. vs. M.P. Gupta reported in (2004)2 SCC 349 wherein, it was held that protective umbrella under Section 197 Cr.P.C. is available only when the alleged act done by the public servant is directly connected with discharge of official duty and is not a cloak for indulging in the offence. Hon'ble the Supreme Court also went on to hold that it is no part of duty of public servant to enter into criminal conspiracy or criminal misconduct. On these grounds, it was concluded that sanction for prosecution is not necessary to prosecute a public servant for the offence under Section 120B IPC.

9. In view of the above discussion and finding no shortcoming, either factual or legal, in the impugned order dated 28.09.2016 passed by the learned Special Judge, Special Court, Anti Corruption Cases, Sri Ganganagar, I find no merit in the instant revision petition which is dismissed as such. The trial court shall expedite the trial. The record be returned forthwith.