
(2002) 10 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Criminal Review Petition No. 65/02 and 66/02

State of Jammu & Kashmir

APPELLANT

Vs

Rajani Sehgal and Others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 435, 561A

Citation : (2003) 1 JKJ 21

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : A.R. Parihar, A.A.G, for the Appellant; P. Kohli and D.S. Chauhan, for the Respondent

Final Decision : Allowed

Judgement

These two Revision Petitions which are admitted shall stand disposed of vide this common Judgment.

1. The Session Judge, Udhampur was of the opinion that the prosecution case suffers from a legal infirmity and in presence of such legal infirmity

the prosecution of the accused is not possible unless sanction is obtained. It is this order which is subject matter of challenge in these petitions

preferred by the State.

2. The facts in brief are as under:

(i) Respondent Rajani Sehgal was posted as Incharge Superintendent Sub Jail Reasi w.e.f. 1993 to 1996. It is submitted that during this period,

She committed large number of irregularities and illegalities in the purchase of electric bulbs. The purchases which were made during the above

period were to the extent of Rs. 204717. It was stated that this was done in connivance with respondents No. 2 and 3 who were also posted in

the same sub jail as Assistant Superintendent and Store Keeper. The matter was reported to the Inspector General of Police. A case was

registered against the respondent. It was found that offences u/s 409, read with Section 420 of the Penal Code were prima-facie committed by the

respondent. An exception was taken to these proceeding on the plea that sanction u/s of the Penal Code was required. The court below has come

to the conclusion that sanction is, infact required. It is this order which is subject matter of challenge in this petition.

(ii)The above aspect of the matter has been considered by this Court in the case of Central Bureau of Investigation V. Romesh Kumar, 561 - A

Cr. P.C. No. 19/97, decided on 28th Aug. 2000. The precise question which was gone into in the above case stands formulated in the opening

part of the judgment. For facility of reference this para is being reproduced below :-

Would the prosecution be guilty of resorting to a device or making an attempt to camouflage or smoke scree in prosecuting a person under the

penal provisions of the Penal Code when the facts primarily and essentially disclosed that the acts also fall within the parameters of prevention of

Corruption Act and which acts require prior sanction for initiating prosecution? The hard reality is that if the prosecution is initiated under the

Prevention of Corruption Act, then sanction is required, if it is plainly under the penal provisions of Penal Code, then of course the sanction is not

required .

3. Therefore, the question as to whether trial can go on without obtaining sanction when a particular Act falls within two statutory provisions - one

which requires sanction and the other which does not so require was gone into. The Full Bench decision given by the Bombay High Court in the

case of The State Vs. Sahebrao Govindrao Jadhav, , which supports the proposition as put across by the State was taken note of. The view

expressed by the Gauhati High Court in the case reported as Sudhendra Kumar Bhattacharjee Vs. State, , was a view to the contrary and this was

also considered. B.L. Hansaria, J, later Judge of the Supreme Court, expressed an opinion to the effect that the salutary requirement of obtaining

previous sanction cannot be set a naught by prosecuting a public servant for an offence under the Penal Code for which no sanction is necessary,

though the offence attracts the mischief of provision(s) of law mentioned in Section 6 of the Prevention of Corruption Act. As per the learned

Judge, ""Such a course would really frustrate the purpose for which previous sanction has been deemed necessary by the Legislature."" In doing so,

the learned Judge placed reliance on a decision of Andhra Pradesh High Court reported as AIR 1975 AP 663, A. Veeraiah Vs. State, What was

observed by SubbaRao C.J. (Later Chief Justice of India), was summarized in the following words.

If the facts constitute an offence requiring either the sanction of a superior authority or the filling of a complaint by a court, it cannot be evaded by

adopting the device of omitting one of the ingredients of the offence and prosecuting him under some other section. This was illustrated by saying

that if a public servant received an amount on behalf of the State and dishonestly misappropriated the same, the offence directly fell under S. 5(1)

(c) of the Act and he could be prosecuted only with the previous sanction of the authority; and the prosecution could not, by adopting the device of

ignoring the fact that the accused was a public servant, evade the requirement of previous sanction by filling a complaint under S. 408 of the Penal

Code.

4. The Gauhati High placed reliance on an earlier decision of Patna High Court reported as AIR 1955 Pat. 453, K.P. Sinha Vs. Aftabuddin

wherein it was held that the law relating to previous sanction cannot be evaded by prosecuting an accused under a Penal provision which does not

require sanction.

(iii) The other decisions which were referred to in the case of Central Bureau of Investigation Vs. Romesh Kumar, mentioned above, are Basir-ul-

huq and Others Vs. The State of West Bengal, . The above decision of the Supreme Court is again an authority for the proposition that if a

particular offence falls within two statutory enactments, one requiring sanction and the other not requiring it, then the provision which requires

sanction cannot be evaded. The State Vs. Gurcharan Singh, , is another decision which was also taken note of. This decision takes note of General

Clauses Act also. It was pointed out that where as u/s 409 of the Penal Code, no sanction is required when a person is prosecuted, the prevention

of Corruption Act requires a sanction in the case of every accused, It was

observed that as prevention of Corruption Act has introduced various important procedural changes, an accused cannot be deprived of the same.

(iv) Ram Nath Vs. King Emperor, 1925 Allahabad 230 and Perianna Muthirian Vs. M, Vengu Ayyar and the others AIR 1929 Mad 21 are other

decisions which were also taken note of in the case Central Bureau of Investigation,. Refereed to above. Ultimately, it was conclude as under :-

After having gone through the judgements noticed above, I am of opinion that interpretation which help a citizen in a criminal case should be

preferred. Therefore, following the view expressed by the Andhra Pradesh and Patna High Courts, which view was, infact, noticed by the Gauhati

High Court, referred to above ,and on which decision Reliance was place by the Court of Revision, I am of the view that the prosecution of the

respondent is not possible unless sanction is obtained. This view is also supported by one of the earliest decision of Punjab High Court, State Vs..

Gurcharan Singh (supra).

5. What is said above is fully attracted to the facts of this case also. This Revision Petition preferred by the State is thus found to be without merit

and is dismissed.