
(2011) 10 OHC CK 0013
In the Orissa High Court
Case No : CRLMC No. 3080 of 2010

Subhashree Das ' Mili Panda and others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Unlawful Activities (Prevention) Act, 1967 — Section 16, 17, 18, 20, 20A(2)

Citation : (2011) 10 OHC CK 0013

Hon'ble Judges : Inderjit Mahanty, J

Bench : Single Bench

Advocate : Manoj Kumar Mishra, P.K. Jena, S.B. Pradhan and D.P. Mohapatra, for the Appellant; Debasis Panda, Addl. Government Advocate, for the Respondent

Judgement

Indrajit Mahanty, J.—The present petition u/s 482 Code of Criminal Procedure has been filed by the Petitioners, namely, Subhashree Das " Milli Panda, Kishore Kumar Jena and Sangram Kumar Bhoi " Sangram Bhola with a prayer to quash the proceeding in G.R. Case No. 16 of 2010 pending before the learned J.M.F.C., Banpur and S.T. No. 12/116 of 2010 in the court of learned Ad hoc Addl. Sessions Judge (F.T.C.), Khurda arising out of Balugaon P.S. Case No. 8 of 2010 corresponding to CID (CB) P.S. Case No. 1 of 2010.

2. Learned Counsel for the Petitioners sought to quash the criminal proceeding initiated against the Petitioners inter alia, on the following grounds:

(A) Investigation not done by DSP, the competent officer empowered to investigate the case under the UAP Act.

(B) Sanction is not valid sanction.

(C) Documents relied on by prosecution has not formed part of the record.

(D) Proper court has not taken cognizance.

(E) Court trying the case is not competent.

3. Learned Addl. Government Advocate, on the other hand, opposed the prayer made on behalf of the Petitioners and made response to each of the contentions noted hereinabove.

4. Although various contentions were advanced in course of the argument, this Court is of the view that contention "B" as noted hereinabove, ought to be dealt with at the outset, since the determination thereof would be vital for the purpose of ultimate outcome of the case and the other contentions may not be required to be determined.

5. Mr. M.K. Mishra, Learned Counsel for the Petitioners submitted that, the Petitioners have been charged with the offences under Sections 16, 17, 18, 20, 21, 38 and 40 of the Unlawful Activities (Prevention) Act. 1967 (hereinafter referred to as "the U.A.P. Act") and for an offence under Chapters-IV and VI of the Act the previous sanction of the Central Government or, as the case may be, the State Government is required in term of Section 45 of the U.A.P. Act.

6. For better appreciation, Section 45 of the U.A.P. Act is quoted hereinbelow:

45. Cognizance of offences.- (1) No Court shall take cognizance of any offence

(i) Under Chapter III without the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf;

(ii) Under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under Sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government.

On a conjoint reading of both the Sub-sections (1) and (2) of Section 45 of the U.A.P. Act, it is clear therefrom that the State Government is required to "appoint an officer" to act as an "authority" for conducting an "independent review of the evidence gathered" in course of the investigation and such officer appointed to carry out independent review, shall make a "recommendation" within the time as may be prescribed "to the appropriate Government".

7. Learned Counsel for the Petitioners asserted that

incorporation of the requirement for appointment of an officer to conduct an "independent review", as incorporated to Sub-section (2) of Section 45 of the

Act, serves a very important purpose. The prosecution under the Unlawful Activities (Prevention) Act, is an extremely stringent law, Parliament provided a safeguard to avoid frivolous prosecution.

It is asserted that in the present case, the State of Orissa has not made "appointment" of any officer to carry out the "independent review" and further, there has been "no prescription of any time limit" for making the necessary "recommendation". In the absence of the appointment of an officer to conduct the independent review or prescription of any time limit for making recommendation, it is contended that the sanction in the present case, is not a valid sanction in law.

In this aspect, Learned Counsel for the Petitioners placed reliance upon the speech of Hon''ble Home Minister while moving the draft bills in the Rajya Sabha and in his speech, the Hon''ble Home Minister, clearly stated that the legislative intent behind Section 45(2) of the Act was for "creating an independent executive to review the entire evidence gathered in course of investigation and then to make a recommendation whether the case was a fit for prosecution or not". This was prescribed by the Hon''ble Home Minister in order to filter and buffer and such independent authority who was required to review the entire evidence would provide the very salutary safeguard. Such an authority independent from the investigators was the "biggest buffer against arbitrariness."

8. Sri Debasis Panda, learned Additional Government Advocate on behalf of the State produced a letter dated 24.2.2011, containing an extract taken from File No. PIC/1 (Pro) 93/2011 which contains the "review notes" of one Sri A.M. Prasad, the Special Secretary/Additional Secretary of Home Department. It is claimed that the said Sri Prasad had reviewed the evidence as required under Sub-section (2) of Section 45 of the Act and had "recommended approval of the prosecution". He further submitted that since the Special Secretary/Additional Secretary of Home Department had considered and reviewed the evidence collected in the course of investigation and had recommended sanction for prosecution of the Petitioners, no error or grievance on this score ought to be entertained.

9. In the light of the aforesaid submissions, in course of hearing, learned Additional Government Advocate for the State was asked to produce any document/order of appointment of Sri A.M. Prasad, Special Secretary, issued by the appropriate authority, appointing him as the "review authority" u/s 45(2) of the Act, 1967. To this query, learned Additional Government Advocate, fairly responded that, no such formal appointment order appointing the Special Secretary for the purpose of reviewing cases u/s 45 of the Act is available on record. To a further query of the Court as to whether the State have prescribed any time limit for the purpose of producing such report by the reviewing authority, learned Addl. Government Advocate for the State also responded in the negative.

In view of the aforesaid response of the State, it is clear therefrom that the State have failed to produce before this Court any documentary evidence in order to establish the appointment of the Special Secretary A.M. Prasad as the authority for the purpose of carrying out an independent review as required u/s 45(2) of the Act. I am also constrained to note that the State have also failed to produce any document or order prescribing any "time limit" for furnishing of such recommendation, by the independent review authority. Apart from the aforesaid fact, this is relevant herein to take note of Speech of the Hon"ble Home Minister, copy of which has been furnished by the Learned Counsel appearing for the Petitioner and the same is quoted herein below:

Finally, Sir, we have incorporated a very salutary provision. To the best of our knowledge- I don't know, I may be corrected by the Law Minister or the Law Secretary later - it is the first time we are introducing this. In a prosecution under the UAPA, now, it is the executive Government which registers the case through a police officer. It is the executive Government which investigates the case through an investigating agency, namely, the police department. It is the executive Govt. which sanctions u/s 45. Therefore, there is a fear that a vindictive or a wrong executive Govt. could register a case, investigate and sanction prosecution. There is a fear. May be, it is not a fear that is entirely justified but you cannot say that it is entirely unjustified. So what are we doing? The executive Govt. can register the case because no one else can register a case. The executive Govt., through its agency, can investigate the case. But, before sanction is granted under 45(1) we are interposing an independent authority which will review the entire evidence, gathered in the investigation, and then make a recommendation whether this is a fit case of prosecution. So. here, we are bringing a filter, a buffer, an independent authority who has to review the entire evidence that is gathered and, then, make a recommendation to the State Govt. or the Central Govt. as the case may be. a fit case for sanction. I think, this is a very salutary safeguard. All sections of the House should welcome it. This is a biggest buffer against arbitrariness which many Members spoke about. Sir, these are the features in the Bill.

In this respect, reference needs to be made to the case of Rambhai Nathabhai Gadhvi and Others Vs. State of Gujarat, wherein it is held as follows:

As the provisions of TADA are more rigorous and the penalty provided is more stringent and the procedure for trial prescribed is summary and compendious, the sanctioning process mentioned in Section 20-A(2) must have been adopted more seriously and exhaustively than the sanction contemplated in other penal statutes. If there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction.

In the case of Manoranjan Prasad Choudhary v. State of Bihar (2005) XXX OCR (SC) 370, it is held that "it is also well settled proposition of law that where there is no sanction by the competent authority, the proceeding itself stands vitiated".

10. In view of the conclusions/finding reached hereinabove, this Court is of the considered view that, no cognizance could have been taken against the Petitioners in the absence of any valid sanction of the prosecution and in this regard, although sanction for prosecution had been obtained, yet the same was not based upon a review by a validly appointed authority to carry out "independent review of evidence" obtained in course of investigation. Therefore, the very foundation for obtaining such sanction being not in consonance with law, the order of cognizance dated 16.7.2010 passed by the learned J.M.F.C, Banpur in G.R. Case No. 16 of 2010 ought to be quashed and this Court directs accordingly.

Insofar as the other contentions as noted hereinabove are concerned, this Court is of the view that the same need not be dealt with in the present case, since the order of cognizance has been quashed and the same are left open for adjudication in any appropriate proceeding, if the same is raised.

11. With the aforesaid observations and directions, the CRLMC is allowed.