

(2019) 02 MP CK 0073

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 3852 Of 2018

Zakir Lala @ Mohammad Zakir

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 196, 196(2), 397, 401
Unlawful Activities (Prevention) Act, 1967 — Section 3, 6, 10, 10(1), 10(a), 13, 13(1),
45, 45(1), 45(2)
Evidence Act, 1872 — Section 27

Citation : (2019) 02 MP CK 0073

Hon'ble Judges : S. K. Awasthi, J

Bench : Single Bench

Advocate : A.M. Mathure, Vijay Sharma, Hemant Sharma

Final Decision : Allowed

Judgement

(1) The applicant has preferred this petition under Section 397 read with Section 401 of Criminal Procedure Code (in short ' Cr.P.C.). Being aggrieved with the judgment dated 02.08.2018 passed by 14th Additional Session Judge, Indore in criminal appeal No.435/2017 whereby the order of conviction dated 11.07.2017 passed by the Judicial Magistrate First Class, Indore in criminal case No.13445/2008 has been affirmed by which the applicant has been convicted for the offence Punishable under Section 10 (a) and 13(1) of the Unlawful Activities (Prevention) Act 1967 (hereinafter referred as " Act") and sentenced to undergo 1 year R.I. and 2 years R.I. with fine of Rs. 500/-each respectively with default stipulation.

(2). The facts of the case are that on 02.04.2008, officer-in-charge of Police Station - Sarafa received a secret information that senior activist of Student Islamic Movement of India (in short " SIMI") is misguiding the people and making false propaganda against the government. On the aforesaid information station house officer Prabha Chouhan alongwith other staff reached to the

Nihalpura masjid at 10:30 am and apprehended the applicant. On the personal search of accused six books and four pamphlets were seized vide seizure memo (Ex. P-3). Applicant/accused was arrested and offence punishable under Section 3, 10,13 of the Act was registered. On 03.04.2008 police also recorded the disclosure statement of the applicant/accused under Section 27 of the Evidence Act and on the basis of which six pamphlets and eight books were also seized from the house of the applicant/accused vide seizure memo (Ex.P-2). After completion of the investigation, charge-sheet was filed before the Court of Judicial Magistrate on, Indore 07.06.2008. On 27.06.2018, the trial court took cognizance of the offence against the applicant/accused and then framed charges under Section 10(a) and 13(1) of the Act. The applicant abjured his guilt and claimed trial. After recording the evidence adduced by the parties, trial court convicted the applicant vide judgment dated 11.07.2017 against which criminal appeal No.435/2017 has been preferred, same was dismissed vide judgment dated 02.08.2018 by the 14th Additional Sessions Judge, Indore affirming the conviction and sentence passed by the trial court. Being dissatisfied with the judgments passed by the courts below, applicant has preferred this criminal revision.

(3). Learned senior counsel for the applicant has submitted that as per provision of Section 45 of the Act the court cannot take cognizance without previous sanction of Central Government or any officer authorized by the Central Government in this behalf (in short "competent authority"). In the present case charge-sheet was filed before the trial court on 07.06.2008 and on the basis of which the court took cognizance against the applicant, however, the sanction of prosecution (Ex.P-8) was produced by the police before trial court 27.06.2008, therefore, the court below have committed grave error in taking the cognizance of the offence without previous sanction under Section 45 of the Act which is vitiated the trial. It is also submitted that the courts below failed to consider that the sanction can be granted only after considering the report of the competent authority. The competent authority is required to make an independent review of the evidence gathered in the course of investigation and make a recommendation within the prescribed time. Therefore, provisions of Section 45(2) of the Act has not been followed. The sanction (Ex.P-8) has not been accorded for prosecution under the Act. It has been granted for prosecution of appellant under Section 196 of the Cr.P.C. which indicates that sanction authority was not aware about the extension of declaration under Section 3 & 6 of the Act and without applying of mind sanction was granted. Under these circumstances, learned senior counsel for the applicants prays that revision may be allowed and the judgment of conviction passed by the trial court may be set aside and applicant be acquitted from the aforesaid charges.

(4). Per contra, learned Public Prosecutor for the respondent/States opposed the prayer made by the applicant and submits that though the court had taken cognizance for the offence on 07.06.2008 without there being sanction of the appropriate government as required under Section 45 of the Act, nevertheless,

the State government accorded sanction on 27.06.2018, therefore, defect, if any, stands cured. Therefore, he prayed for rejection of the revision.

(5). I have heard learned counsel for the parties and perused the record.

(6). In the present revision petition two legal points arises for consideration:

(I). Whether in absence of the sanction of the the Central Government or any officers authorized by the Central Government in this behalf cognizance of an offence by the competent court can be taken under Section 10 (1) and 13(1) of the Act, if not, whether sanction accorded subsequently shall legalize the proceedings following the date of cognizance; and

(ii). Whether the sanction granted by the authorized officer is not according to the section 45 (2) of the Act.

(7). For ready reference Section 45 of the Act is quoted below:-

"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 authorised 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."

(8). A bare perusal thereof suggest that no court shall take cognizance of any offence punishable under Chapter 3 (Section 10 (a) and 13(1) of the Act) without previous sanction of the Central Government or any officer authorized by the Central Government in this behalf.

(9). Though the cognizance is not defined in Criminal Procedure Code however, in catena of decisions of the Hon'ble Supreme Court it has been held that 'cognizance' is an act which accrued when first applied its judicial mind with a view to proceed with the matter and therefore when the charge sheet under section 173 of Cr.P.C. filed by the police on 07.06.2008, the requirement of the taking cognizance of the competent court in respect of offences is satisfied.

(10). Admittedly, no sanction was accorded by the competent authority on the date when the trial court had taken cognizance of the aforesaid offence, the said sanction was accorded on 27.06.2008. As such the cognizance had taken excess of the jurisdiction of the trial court. The contention of the learned Public prosecutor for the State that subsequently sanction was accorded on 27.06.2008 the defect of want of sanction for the offence punishable under Section 10(1) and 13(1) of the Act stands cured and the trial cannot be vitiated for the simple reason that requirement of sanction by the Central Government as contemplated under Section 45(1) is before cognizance is taken and not subsequently. It is not an incidence of procedural irregularity which could be remedied retrospectively.

(11). Taking cognizance of an offence kicks starts the prosecution of a delinquent and involves a process of interference with his personal liberty, therefore, the requirement of prior sanction of the competent authority is a basic jurisdictional fact before function action may be taken for taking cognizance of the offence. Hence, this court is unable to accept the contention that subsequent sanction accorded on 27.06.2008 shall legalize the prosecution initiated after taking cognizance on 27.06.2008, hence, contention is rejected.

(12). The offence under Section 10 (a) and 13(1) of the Act are of the nature of association of unlawful activities and therefore, provision of sanction of the Central Government or any officer authorized by the Central Government in this behalf is necessary for taking cognizance of the offence against the accused person. In the present case, when police filed charge-sheet against the applicant, there was no sanction was available for prosecution of the applicant for the offence punishable Chapter 3 (Section 10 (a) and 13 (1) of the Act) and court has taken cognizance of the said offence on 07.06.2008 without previous sanction therefore, for want of sanction of the prosecution for the above offence is on the date of cognizance on 07.06.2008, the prosecution of the present applicant is vitiated.

(13). From perusal of the sanction (Ex. P-8) granted Additional Chief Secretary of State of Madhya Pradesh, Home Department, it appears that sanction has been granted after considering the report from the District Magistrate, Indore about the activities of the applicant and considering the evidence gathered in the course of investigation and after that granted sanction against the applicant. In the last paragraph of the sanction, it is mentioned that sanction of prosecution has been granted under Section 196 (2) of Cr.P.C. in place of 45 (2) of the Act but only that basis it cannot be said that the sanction was granted without applying the mind.

(14). After considering the aforesaid material, this court is of the view that for want of sanction for the offence punishable under Section 10(a) and 13 (1) of the Act is on the date of of cognizance i.e. 07.06.2008 the cognizance has taken without prior sanction, therefore, the trial court as well as appellate court has committed error in not considering the illegality committed by the prosecution and convicted the applicant for the aforesaid offence, hence, this criminal revision is allowed and applicant acquitted from the aforesaid charges. Applicant is in Jail, he be released immediately if he is not required in any case.

Record of the courts below be sent back alongwith copy of this order.