State Inspector Of Police ... vs Surya Sankaram Karri on 24 August, 2006

Equivalent citations: 2007 (1) AIR JHAR R 73, AIR 2007 SC (SUPP) 1860, 2006 AIR SCW 4576, 2006 CRI. L. J. 4598, 2006 (2) CALCRILR 516, 2006 (3) ALL CJ 2079, 2006 (9) SRJ 376, (2006) 2 MAD LJ(CRI) 1244, (2006) 4 RECCRIR 53, (2006) 46 ALLINDCAS 716 (SC), (2006) 4 PAT LJR 73, (2006) 8 SCALE 451, (2006) 4 ESC 404, 2006 CALCRILR 2 516, (2006) 3 RAJ CRI C 695, (2006) 2 ORISSA LR 536, (2006) 4 JLJR 81, (2006) 35 OCR 318, (2006) 6 SUPREME 560, (2007) 1 BOMCR(CRI) 942, (2007) 1 ALLCRILR 206, 2007 ALLMR(CRI) 555, 2006 (7) SCC 172, (2006) 3 CRIMES 316, (2006) 4 EASTCRIC 148, (2006) 56 ALLCRIC 521, (2006) 3 ALLCRIR 2884, (2006) 3 CURCRIR 249, 2006 CRILR(SC MAH GUJ) 762, 2006 (3) SCC (CRI) 225, 2006 ALL CJ 3 2079, (2006) 110 CAL WN 552, (2006) 3 CHANDCRIC 252, (2007) 1 CAL LJ 138, 2006 CRILR(SC&MP) 762, 2007 (2) ANDHLT(CRI) 50 SC, (2007) 2 ANDHLT(CRI) 50, (2006) 2 ALD(CRL) 564

Author: S.B. Sinha

Bench: S.B. Sinha, Dalveer Bhandari

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           CASE NO.:
Appeal (crl.)  1335 of 2004

PETITIONER:
State Inspector of Police Visakhapatnam

RESPONDENT:
Surya Sankaram Karri

DATE OF JUDGMENT: 24/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
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J U D G M E N T S.B. Sinha, J.

The State is in appeal before us impugning the judgment and order dated 31st October, 2003 passed in favour of the respondent herein by the High Court of Judicature of Andhra Pradesh at Hyderabad whereby and whereunder a judgment of conviction and sentence passed as against the respondent under Section 13(2) of the Prevention of Corruption Act, 1988 ('the Act', for short) and sentencing

him to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs.4 lakhs and in default to suffer Simple Imprisonment for one year, was set aside.

The respondent was an Assistant Station Master. He was working in the South Eastern Railway, Vizianagaram, Andhra Pradesh from 16.12.1961 to February, 1984. He was promoted to the post of Commercial Inspector and was working in that capacity from February, 1984 to July, 1986 and as Senior Commercial Inspector from July, 1986 to December, 1993. He was later promoted as Chief Commercial Inspector and was working in the said capacity from December, 1993. His wife, Smt. K.S. Satyeswari, who examined herself as D.W.1, was an income tax assessee. All the three sons of the respondent had been working. A raid was conducted in his house and also in the houses of his sons. Some incriminating documents were allegedly recovered.

During investigation, not only the statement of the respondent, but also that of his wife and three sons were recorded by the Investigating Officer. The investigation was admittedly carried on by P.W.41 Shri K. Biswal and P.W.42 Shri N. Vishnu. Sanction of prosecution was accorded by P.W. 37 Shri Debaraj Panda, the then Senior Divisional Commercial Manager, South-Eastern Railway.

The check period under consideration was 1.1.1986 to 9.8.1994. The prosecution proceeded on the basis that whereas the total income of the respondent and his family members was Rs.6,73,203.69p. including loans and advances during the aforesaid check period, the respondent and his family members had expended Rs.3,31,068.75p.; and acquired assets both movable and immovable worth Rs.11,66,873.84p. during the said period. It was also alleged that respondent was in possession of assets and pecuniary resources in his own name as also in the name of his wife to the tune of Rs.6,54,738.90p., which was disproportionate to his known sources of income as on 9.8.1994.

Before the learned Special Judge the respondent examined defence witnesses, including his wife (D.W.1), his three sons, namely, Shri Karri Satyanarayana Sarma (D.W.2), Shri K. Srinivas (D.W.3), Shri K. Rama Sarma (D.W.4) and one Engineer, D.W.5 Shri A. Sridhar, who submitted his report in regard to valuation of respondent's house.

The learned Special Judge in his judgment, inter alia, opined that the sons of the respondent, other than his eldest son, did not make any contribution from their salaries. Reliance was placed on the valuation report submitted by the Engineer of the Income Tax Department, P.W.36 in preference to the Valuer appointed by accused, i.e., D.W.5. The High Court, however, by reason of the impugned judgment, inter alia, held that keeping in view the societal norms prevailing in India, vis-`-vis, the developed countries, the sons of appellant presumably make substantial contribution from their income to their parents.

The High Court also relied upon a large number of decisions of this Court in coming to the conclusion that if a reasonable margin of 10% is accorded, the respondent cannot be said to have failed to have proved in showing means for acquiring assets held and possessed by him as also by his wife.

Mr. A. Sharan, learned Additional Solicitor General appearing on behalf of the appellant in support of this appeal would submit that -

i) The wife of the respondent-D.W.1, having categorically stated that only the eldest son, namely, D.W.2 had been making contributions to the family, the learned Special Judge must be held to have arrived at a correct finding of fact that other sons of the respondent having been residing separately had not been making any such contribution.

ii) The rental income of Rs.88,318/- disclosed in the income tax return filed by D.W.1, was reckoned twice by the High Court and if the said sum is taken into consideration towards the income of the respondent, the High Court must be held to have committed an error in holding that the assets held by the respondent were marginally higher than the known sources of income.

iii) The learned Special Judge having assigned sufficient and cogent reasons to accept the report of the Engineer appointed by the prosecution, the same should not have been reversed by the High Court.

iv) The High Court also committed an error in calculating the household expenditure of the respondent.

Mr. A.T.M. Ranga Ramanujam, learned Senior Counsel appearing on behalf of the respondent, however, submitted :

> (i) The learned Special Judge committed a manifest error in so far as he failed to take into consideration that the investigation carried out by the P.Ws. 41 and 42 was wholly illegal having not been carried out under the authorization of the Superintendent of Police; and
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> (ii) No document having been brought on the records to show that P.W.37 Shri Debaraj Panda was delegated with the power to accord sanction of prosecution as against the respondent, the same was vitiated in law.

Although, we have strong reservation in regard to the manner in which the High Court dealt with the entire appeal, but we are satisfied that the investigation carried out by the Investigating Officers was wholly unfair. We, for the reasons stated hereinafter, are also of the opinion that the P.W.37 could not be said to have been delegated with the power of according sanction of prosecuting the respondent.

The Prevention of Corruption Act was enacted to consolidate and amend the law relating to prevention of corruption and for matters connected therewith. The Act is a Special statute. It contains special procedure not only in regard to the manner in which the complaint is to be filed, but also the mode and manner in which the investigation into an offence thereunder is required to be carried out. It provides for trial by Special Judges appointed for the said purposes.

Section 26 of the Act lays down that the powers of the Special Judges. He has a power to try summarily under Section 6. Section 13 provides for criminal misconduct by a public servant. The fact that respondent is a public servant is not in dispute. Section 13(e) specifies criminal misconduct of a public servant where, an accused himself or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Provisions of the 1988 Act, no doubt, like the 1947 Act seek to protect public servant from a vexatious prosecution. Section 17 provides for investigation by a person authorized in this behalf. The said provision contains a non-obstante clause. It makes investigation only by police officer of the ranks specified therein to be imperative in character. The second proviso appended to Section 17 of the Act provides that an offence referred to in clause (e) of sub-Section (1) of Section 13, shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. Authorization by a Superintendent of Police in favour of an officer so as to enable him to carry out investigation in terms of section 17 of the Act is a statutory one. The power to grant such sanction has been conferred upon the authorities not below the rank of Superintendent of Police. The proviso uses a negative expression. It also uses the expression "shall". Ex-facie it is mandatory in character. When the authority of a person to carry out investigation is questioned on the ground that he did not fulfil the statutory requirements laid down therefor in terms of the second proviso, the burden, undoubtedly, was on the prosecution to prove the same. It has not been disputed before us that the Investigating Officer, P.W.41, did not produce any record to show that he had been so authorized. Shri K. Biswal, the Investigating Officer, while examining himself as P.W.41, admitted that he had not filed any authorization letter stating :

> "I have received the specific authorisation from S.P., C.B.I., to register a case but I have not filed the said authorisation letter."

No explanation has been offered therefor. Even no attempt was made to bring the said document on record at a later stage.

Although a specific contention was raised in that behalf on behalf of respondent, the learned Special Judge negatived the same holding :

> "It is contended that P.Ws. 41 and 42 failed to produce orders of the Superintendent of Police, C.B.I., Visakhapatnam which are mandatory under the second proviso to section 17 of the Prevention of Corruption Act, for any Inspector of Police to take up investigation into an offence under Section 13(1)(e) of the Act. No doubt, the prosecution did not file the orders of the Superintendent of Police, C.B.I., Visakhapatnam in this regard. But, P.W.41 deposed that he registered this case and issued Ex.P-54 F.I.R. on the instructions of Superintendent of Police, C.B.I., Visakhapatnam. In the cross-examination, he deposed that he received specific authorization from the Superintendent of Police, C.B.I, Visakhapatnam to register the case. Ex.P-54 F.I.R. which was forwarded to this Court by the Superintendent of

> Police, C.B.I./S.P.E., Visakhapatnam, shows that P.W.41 deposed that as per the orders of the Superintendent of Police, C.B.I., Visakhapatnam, he took up investigation in this case. Though it is contended by the defence counsel that the orders of the Superintendent of Police authorizing P.Ws. 41 and 42 to investigate into this case were not filed into court, there is absolutely no cross-examination of P.Ws. 41 and 42 to investigate into this case inspite of there did not in fact give any such orders authorizing P.Ws. 41 and 42 to investigate into this case inspite of there being lengthy cross-examination of those witnesses."

The approach of the learned Special Judge, to say the least, was not correct. When a statutory functionary passes an order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is unknown in Administrative Law. The statutory functionaries are enjoined with a duty to pass written orders.

Submission of the learned Additional Solicitor General was that the respondent did not further cross-examine the said witnesses to the effect that no such order in writing was passed, and thus, he cannot be said to have been prejudiced in any manner whatsoever. We do not agree.

It is now well settled that when a document being in possession of a public functionary, who is under a statutory obligation to produce the same before the court of law, fails and/or neglects to produce the same, an adverse inference may be drawn against him. The learned Special Judge in the aforementioned situation was enjoined with a duty to draw an adverse inference. He did not consider the question from the point of view of statutory requirements, but took into consideration factors, which were not germane.

Illegality apart, the manner in which the investigation was conducted, is condemnable. The least that a court of law would expect from the prosecution is that the investigation would be a fair one. It would not only be carried out from the stand of the prosecution, but also the defence, particularly, in view of the fact that the onus of proof may shift to the accused at a later stage. The evidence of P.W.41 raises doubts about his bona fide. Why he did not examine important witnesses and as to why he had not taken into consideration the relevant documentary evidence has not been explained. He did not even care to ascertain the correctness or otherwise of the status of both of the respondent and his wife before the Income Tax Department. Above all, he did not produce before the Court the statements made by the appellant, his wife and those of his sons, although they were relevant. Had the statements of D.W.3 and D.W.4 been produced before, the learned Special Judge might not have opined that the sons of the respondent, other than D.W.2, did not make any contribution to their parents at all. If such statements were made by the said witnesses before the Investigating Officer, omission on the part of D.W.1, the wife of the respondent, to state the same before the Special Judge might have taken a back seat and the statements of other sons of the respondent, namely, D.W.3 and D.W.4 might not have been ignored by the learned Special Judge.

The courts are obliged to go into the question of prejudice of the accused when the main investigation is concluded without a valid sanction. {See State of Andhra Pradesh vs. P.V. Narayana [(1971) 1 SCC 483 :

> AIR 1971 SC 811]. } It is true that only on the basis of the illegal investigation a proceeding may not be quashed unless miscarriage of justice is shown, but, in this case, as we have noticed hereinbefore, the respondent had suffered miscarriage of justice as the investigation made by P.W.41 was not fair.
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> The learned Trial Judge furthermore also committed a serious error in so far as he failed to take into consideration that Shri Debaraj Panda, who examined himself as P.W.37, being a Senior Divisional Operations Manager, was not competent to accord sanction for prosecution of the respondent herein. He, in his evidence, accepted that under the Rules he was not the competent authority to remove him from service. However, he stated that he had been delegated with power of removing the Chief Commercial Inspector of the Headquarter of South-Eastern Railway. He also stated :
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> "It is not true to suggest that only General Manager and Divisional Railway Manager are the competent persons to remove the accused from service and also to accord sanction to prosecute him. It is not true to suggest that I am not competent to remove the accused from service and also accorded sanction to prosecute him. The delegation of powers in respect of certain officers by the Head quarters, South Eastern Railway are available in a Booklet called as "Delegation of Powers" on Establishment matter."

The purported delegation of power had never seen the light of the day. No reliance thereupon could have been placed to arrive at a finding that the said witness was authorized to accord sanction. The learned Special Judge did not apply his mind to these aspects of the matter at all.

This question came for consideration before this Court in Sailendra Nath Bose vs. State of Bihar [AIR 1968 SC 1292], wherein it was categorically held :

> "P.W. I deposed that the appellant was a Class III officer and that he could have been appointed or dismissed by the Deputy Agent Personnel who is subordinate to him. Therefore he (P.W. 1) was competent to grant previous sanction under Section 6(1) of the Prevention of Corruption Act. P.W. 1's assertion that the appellant could have been removed from his office either by the Deputy Agent Personnel or by himself was challenged in his cross-examination. The trial court as well as the High Court have relied on the oral evidence of P.W. 1 in coming to the conclusion that the sanction granted is valid. In our opinion those courts erred in relying on oral evidence in deciding the validity of the sanction granted. Hence, we asked the learned counsel for the respondent to satisfy us with reference to the rules on the subject that P.W. 1 was competent to remove the appellant from his office. For this purpose we granted him several adjournments. Though our attention has now been invited to some rules, those rules do not establish that P.W. 1 was competent to grant the sanction in

question.

> As per Rule 134 of the Indian Railway Establishment Code, published in 1959, authorities competent to make first appointment to non-gazetted posts in the Indian Railways are the General Manager, the Chief Administrative Officer or lower authority to whom he may delegate power. There is no evidence to show that this power has been delegated to the heads of the department. No provision in the Indian Railway Establishment Code, 1959 prescribing the authorities competent to remove from office a class III officer was brought to our notice. But the prefatory note to Vol. I of the Code says, "The revised Chapter XVII and revised Appendices I and XII will be printed later for inclusion in this edition. Till such times these are printed, the rules and provisions contained in Chapter XVII and Appendices IV and XVIII in the 1951 Edition (Re-print) as amended from time to time shall continue to apply."

In State of Karnataka through CBI vs. C. Nagarajaswamy [(2005) 8 SCC 370], it was held :

> "Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage."

When a sanction is granted by a person not authorized in law, the same being without jurisdiction, would be a nullity.

For the reasons aforementioned, we are of the opinion that the impugned judgment need not be interfered with. The appeal is, accordingly, dismissed.