

State Of T.N. vs M.M. Rajendran on 5 February, 1997

Equivalent citations: (1998)9SCC268, AIRONLINE 1997 SC 181, (1997) MAD LJ(CRI) 543, 1998 (9) SCC 268, 1998 SCC (CRI) 1000

Bench: G.N. Ray, G.T. Nanavati

ORDER

1. This appeal is directed against the judgment dated 26-7-1995 passed by the Madras High Court in Criminal Appeal No. 9 of 1993. Such appeal was preferred by the respondent Mr. M.M. Rajendran against the judgment of the IIIrd Additional Sessions Judge, Madras dated 18-12-1992 passed in CC No. 1 of 1991 (Crime No. 3/90 -- Vigilance and Anti-Corruption Police, Madras). The respondent was a Sub-Inspector of Police, Crimes attached to Saidapet Police Station. He was convicted by the learned Sessions Judge, Madras by the said order dated 18-12-1992 for the offence under Sections 7, 13(2) read with Section 13(1)(d)(i)(ii) of the Prevention of Corruption Act and the consequential sentence passed for such offences. Before the High Court, it was alleged by the appellant that the said criminal case was not maintainable for not obtaining proper sanction required to be given by the appropriate authority for proceeding under the Prevention of Corruption Act. The trial court, however, proceeded on the footing that proper sanction was accorded by the City Commissioner of Police, Madras who was the proper authority to grant sanction against the accused. The High Court, has come to the finding that all the relevant materials including the statements recorded by the Investigating Officer had not been placed for consideration by the City Commissioner of Police, Madras because only a report of the Vigilance Department was placed before him. The High Court has also come to the finding that although the Personal Assistant to the City Commissioner of Police, Madras has deposed in the case to substantiate that proper sanction was accorded by the City Commissioner of Police, the witness has also stated that the report even though a detailed one was placed before the Commissioner by him and on consideration of which the Commissioner of Police had accorded the sanction, it appears to us that from such deposition, it cannot be held conclusively that all the relevant materials including the statements recorded by the Investigating Officer had been placed before the Commissioner of Police. It appears that the Commissioner of Police had occasion to consider a report of the Vigilance Department. Even if such report is a detailed one, such report cannot be held to be the complete records required to be considered for sanction on application of mind to the relevant materials on records. Therefore, it cannot be held that the view taken by the High Court that there was no proper sanction in the instant case is without any basis. It, however, appears to us that if the sanction had not been accorded for which the criminal case could have been initiated against the respondent, there was no occasion either for the trial court or for the appeal court to consider the prosecution case on merits. Therefore, the High Court need not have made the finding on merits about the prosecution case. We make it clear that finding made by the courts on the merits of the case will stand expunged and will not be taken into consideration in future. In our view, the High Court should have passed the appropriate order by dropping the proceeding and not entering into the question of merits after it had come to the finding that the proceeding was not maintainable for want of sanction. It is, however, made clear that it will be open

to the appellant-State of Tamil Nadu to proceed afresh against the respondent after obtaining necessary sanction if the State so desires. The appeal is accordingly disposed of.