

Ram Dhyan Singh vs State on 13 January, 1953

Equivalent citations: AIR1953ALL470, AIR 1953 ALLAHABAD 470

JUDGMENT

Agarwala, J.

1. This is a revision application against the conviction of the applicant under Section 161, I.P.C., and a sentence of one year's rigorous imprisonment and a fine of Rs. 200/-. The facts, briefly stated, are as follows :

2. The applicant was a cloth Inspector in the Supply Department at Basti towards the end of 1947. He was a temporary hand whose services were to terminate on 31-3-1948. The case for the prosecution was that certain persons applied for licenses for salt shops and the applications were sent to the applicant for report. The people applying for licenses went to the applicant for licenses, but the applicant demanded a bribe of Rs. 25/- from each one of the persons who wanted a license. Certain persons resolved among themselves not to pay the bribe, but one of them, later, backed out, paid the bribe and got the license. On learning this, the others consulted a vakil and approached the District Magistrate who initialled currency notes worth Rs. 75/- and sent them to the Tehsildar, directing him to lay a trap and if bribe be accepted by the applicant, to arrest him red-handed.

3. On 3-1-1948, at about noon, the Tehsildar of Domariaganj went with two persons who wanted licenses to the house of the applicant. Those persons were sent into the room which Ram Dhyan Singh applicant was occupying, while the Tehsildar stood outside and sent for the Sub-Inspector. A bribe of Rs. 40/- was paid to the applicant by the two persons and thereafter one of them came out and signalled to the Tehsildar, who came with the Sub-Inspector and searched the accused's person. The initialled notes of Rs. 40/- were found on the person of the applicant. The Tehsildar then reported the matter to the District Magistrate.

4. The applicant was suspended on 26-1-1948. As he was a temporary hand, his service automatically terminated on 31-3-1948. But the question of his pay from 26-1-1948 on which date he was suspended till 31-3-1948, remained to be considered. Before this could be considered, however, the applicant was prosecuted. The charge-sheet was submitted in Court on 30-4-1948, after he had ceased to be in Government service. The Magistrate convicted the applicant on June 30, 1949. After this, the order of his dismissal was passed on 23-7-1949, and he was dismissed from service with effect from the date of his suspension. The effect of this order was not that the applicant was dismissed on 23-7-1948, because his services had already come to an end on 31-3-1948; the effect of the order was that he was deprived of his pay from 26-1-1948, up to the 31-3-1948. Thus, on the date on which he was prosecuted he was no longer in Government employ. The applicant's

conviction was upheld by the lower appellate Court.

5. No sanction for the prosecution of the applicant was obtained. In this revision, the only question for determination is whether sanction was required for the prosecution of the applicant. Section 6 of the Prevention of Corruption Act, No. II of 1947, under which the applicant was prosecuted, runs as follows :

"No Court shall take cognisance of an offence punishable under Section 161 or Section 165 of the Indian Penal Code or under Sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction, -- (of) (a) in the case of a person who is employed in connection with the affairs of the Federation and is not removable from his office save by or with the sanction of the Central Government or some higher authority, (of the) Central Government; **

(c) In the case of any other person, of the authority competent to remove him from his office."

It is quite clear that the section applies to an offence being committed by a person who was a public servant at the time when he committed the offence. It is, in our opinion, further clear that the sanction to prosecute a person is required only when he happens to be a public servant on the date on which he is prosecuted, because the crucial date on which the sanction for the prosecution is required is the date on which a Court is asked to take cognisance of an offence mentioned in the section. The section, in an abbreviated form, may be read like this :

"No Court shall take cognisance of an offence except with the previous sanction
.....

(of a particular authority) in the case of a person who is"

a Government servant. The verb 'is', in the above sentence, refers to the date on which the Court is called upon to take cognisance. If the accused is not a Government servant on that date, the Court cannot refuse to take cognisance of the offence. The object of the Legislature seems to be that persons who are in public service should not be unnecessarily harassed. Where a person is not a public servant at all on the date of the prosecution, no question of unnecessary harassment has to be considered by the Government and no question of sanction should arise in his case.

The view that we are inclined to take is supported by a number of authorities, vide : -- 'Suraj Narain v. Emperor', AIR 1938 All 513 (A) ; -- 'Prosad Chandra v. Emperor's AIR 1943 Cal 527 (B), and -- 'Emperor v. P. A. Joshi', AIR 1948 Bom 248 (C). Against this view there are only two decisions which were brought to our notice, viz., -- 'Suganchand v. Naraindas', AIR 1932 Sind 177 (D) and -- 'In Re S. Y. Patil', AIR 1937 Nag 293 (E). Both these decisions were referred to in the Calcutta case and were disapproved. The Nagpur case was overruled by a later decision of that Court: -- 'State Govt., M.P. v. Hifzul Rahman', AIR 1952 Nag 12 (F).

6. As the applicant was not a public servant on the date on which the charge-sheet was submitted against him, sanction to prosecute was not necessary. There is no force in this application; it is dismissed. The applicant is on bail; he shall surrender to his bail and serve out the sentence.

7. Leave to appeal to the Supreme Court is refused.