

Keshava Nand Srivastava vs The State on 30 April, 1951

Equivalent citations: AIR1952ALL122, AIR 1952 ALLAHABAD 122

ORDER

Kidwai, J.

1. This is an application praying that the commitment of the applicant be quashed under Section 215, Cr. P. C.

2. The applicant holds the post of Assistant; Superintendent R.M.S. He officiated as Superintendent in the same department from 2nd January 1948, to 13th September 1948. One B.D.L. Sinha, a clerk in the E.M.S. sent a complaint against the applicant (Ex. 123) to the Post Master General, U. P. Circle and to the Director-General of Posts and Telegraphs, Sinha also sent several more representations to the higher authorities. Thereupon Sri Ganguli, Regional Complaints Officer, Post and Telegraphs, was sent to Allahabad to conduct a departmental enquiry.

3. On the termination of the enquiries made by Sri Ganguli the Deputy Director-General (complaints) sent a complaint (Ex. 114) to the Superintendent, Special Police Establishment, Delhi. The latter registered a case under Sections 120B and 420, Penal Code, and Section 5 of Act II [2] of 1947 (The Prevention of Corruption Act) and deputed Inspector A.B. Singh to investigate. As a result of the investigation a charge sheet was submitted by the Inspector against the applicant and a cousin of his, on the allegation that the two accused had conspired to cheat the postal department and they actually did cheat the department by overcharging, and allowing overcharge, for work done for the department. They were charged under Section 120B, Penal Code, and Section 5 (1)(d) read with Section 6 (2) of Act II [2] of 1947.

4. Before the charge sheet was submitted the sanction of the Post Master General, U. P. Circle was obtained for the prosecution of the applicant : vide EX. 118. The reason for this being that, at that time, the applicant held the post of Assistant Superintendent and it was in the power of the Post Master General to dismiss him : vide Ex. 119.

5. At a very early stage in the course of the trial the applicant objected that the investigation had been carried out by an Inspector which was against the provisions of Act II [2] of 1947 and consequently the magisterial enquiry should not proceed. The Magistrate rejected this objection on the ground that the applicant was charged with other offences also.

6. Evidence was then adduced and the applicant alone was committed under Section 5 (1) (d) read with Section (6) (2) of Act II [2] of 1947. He has made this application for quashing the commitment on a large number of grounds set out in his petition. Section 215, Cr. P. O., however, only permits the quashing of a commitment on points of law. Questions of fact cannot, therefore, be gone into

and it has to be seen whether there is any such point of law as will invalidate the commitment.

7. The learned counsel for the applicant has argued that there are two such points, each of which is by itself sufficient to render the commitment bad. They are : (1) That the Post Master General was not the proper authority to grant the sanction required by Section 6 (c) of Act II [2] of 1947 but the sanction of the Director General of Posts and Telegraphs was required and (2) That the investigation into the alleged offence by an officer below the rank of Deputy Superintendent of Police without the order of a first class Magistrate (which was admittedly not issued) is bad and vitiates the entire proceedings and the charge sheet.

8. Section 6 of Act II [2] of 1947 reads as follows :

"No Court shall take cognizance of an offence punishable under Section 161 or Section 165, 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,

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

9. It has thus to be determined which was the authority competent to remove the applicant from his office. Much controversy raged round the question as to how and by which authority the applicant was appointed because it was contended that the authority which appointed was the authority competent to remove. In the present case, however, the question of appointment and removal of an officer is governed by rules framed by the Department and fixing the powers and duties of various officers. It is the rules as to dismissal or removal that have to be considered no matter who appointed.

10. It has already been seen that, at the time that the offence was committed, the applicant was officiating as superintendent E.M.S. and at the time when the prosecution was launched he was only an Assistant Superintendent. It is agreed that a superintendent is the holder of a gazetted post whilst an Assistant Superintendent is not. In view of the classification given in Para 82 of Vol. 4 of the Posts and Telegraphs Manual, a Superintendent is a non ministerial officer while an Assistant Superintendent is a ministerial officer.

11. Under entry 12 of Schedule 1 (a) as introduced by correction slip No. 33 dated 1-6-1987, to the schedule contained in vol. 3 of the Posts and Telegraphs Manual it is the Head of Circle (the Post Master General) who can dismiss the higher class of ministerial officers in the Railway Mail Service Department.

12. In the case of gazetted officers the power of removal and dismissal is vested in the Director General of Posts and Telegraphs or some higher authority.

13. Thus if the sanction required is that of the authority which had power to dismiss the applicant at the time when the offence was committed, the sanction given in this case is defective, since the

sanction required was that of the Director-General. If, on the other hand, the sanction required was that of the authority having power to dismiss at the time that the case is instituted, the sanction is proper since, at that time, the Post Master General U. P. Circle was the proper authority.

14. The appellant's learned counsel contended that the sanction required was that of the authority, which had power to dismiss the applicant at the time that the offence was committed. He relied upon *Suganchand v. Naraindas*, A.I.R. (19) 1932 and 177 and *In re Section Y. Patil*, A. I. R. (24) 1937 Nag. 293, in support of this proposition. These two cases dealt with Section 197, Criminal P. C., which does not apply to the present case, and depend upon the interpretation of the language of that section.

15. The present case is governed by the Rules framed for the department which are contained in Ex. 117. That document provides that :

"The authority competent to punish an official who has committed irregularities while a member of one service (or holding one post), and who at the time of imposing the penalty is a member of another service (or holds a different post) should be the authority who is competent to deal with the official at the time the penalty is imposed, jurisdiction being determined in accordance with the actual post held by the delinquent at the time when the penalty is imposed."

16. The order then gives an illustration in which it is stated that if an official of grade B commits an offence but is officiating in grade A when orders as to punishment are to issue it is the authority competent to punish substantive holders of posts in grade A that can issue the orders. It was contended that this illustration shows that the rule relates to a case when there has been a promotion and not to a case where the officer has been reverted and so the rule should not be applied to the present case which should be governed by the two decisions mentioned earlier. This contention has no force.

17. An illustration to a section of a statute or to a rule must not be allowed to limit the operation of the rule. It is impossible to give illustrations to meet circumstances and the only object of an illustration is to make the rule more easily intelligible. The rule in question is quite general and is equally applicable to this case in which a person who was officiating in a post in grade A ceases to officiate and reverts to a post in grade B. Under the rule, the authority which is to issue orders of punishment in such a case will be the authority competent to punish the holder of a grade B post. Thus, if at the date the sanction was required, the applicant had to be dismissed, it would be the Post Master General that would dismiss him and it was his sanction that was required. The proceedings are thus not vitiated for any defect in the sanction.

18. The next question is whether the prosecution is bad because the investigation into the alleged offence was carried out by an officer below the rank of Deputy Superintendent of Police without the order of a Magistrate.

19. Sub-section (4) of Section 5 of Act II [2] of 1947 reads as follows :

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, & police officer below the rank of Deputy Superintendent of Police shall not investigate any offence punishable under Sub-section (2) without the order of a Magistrate of the first class or make any arrest therefore without a warrant."

The language of this Sub-section is similar to the language of the proviso to Section 3 of the Act, which is as follows :

"Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the first class or make any arrest therefore without a warrant."

20. It has been held in *Promod Chandra v. Rex*, (1951) 52 Cr. L.J. 397 (ALL.) that failure to comply with the proviso to Section 3, Prevention of Corruption Act, is an irregularity which falls within the ambit of Sub-section (2) of Section 155 of the Code, and accordingly the proceedings of the investigating officer cannot be called in question. This was so held because the proviso to Section 3 was treated as a proviso to Section 156, Criminal P. C., since that section governs investigations in all cognizable criminal cases.

21. The position with regard to Sub-section (4) of Section 5 is not different. No doubt that sub-section opens with the words "notwithstanding anything contained in the Code of Criminal Procedure" but that exception is designed to overcome the provisions of Section 156 (1), Criminal P. C., which permits all cognizable offences to be investigated by an officer in charge of a police station. Sub-section (4) of Section 5 lays down that notwithstanding anything contained in the Code an officer below the rank of Deputy Superintendent of Police, e.g. an officer in charge of a Police Station, cannot investigate a case of this kind. The words quoted do not go any further because Act II [2] of 1947 does not lay down any rules governing investigation and the rules contained in the Code of Criminal Procedure continue to govern investigations even in cases under Act II [2] of 1947. Thus the investigation by an officer below the rank of Deputy Superintendent of Police, however undesirable, was a mere irregularity and not an illegality vitiating the investigation and the complaint based upon it.

22. Of course if the irregularity results in injustice then the proceedings will be vitiated but, at this state, it is not possible to predicate whether any injustice will result in the trial of a case which the law directs shall be investigated by an officer not below the rank of a Deputy Superintendent of Police, except under the written orders of a Magistrate, & which has in fact been investigated by an officer holding a lower rank. That is a matter which will have to be considered by the Court hearing the case.

23. Thus there is no point of law which vitiates the commitment. The application is accordingly dismissed.