

## Ganga Narain vs State on 8 September, 1955

**Equivalent citations: AIR1956ALL197, AIR 1956 ALLAHABAD 197**

ORDER

Roy, J.

1. Ganga Narain has been committed to the Court of Sessions at Farrukhabad under Section 409, I. P. C. The charge against him is that he as a public servant, namely, as an Extra Agricultural Amin in Tehsil Kanauj, committed criminal breach of trust of a certain sum of money between 15-2-1950, and 31-3-1950. Ganga Narain moved an application before the learned Sessions Judge to the effect that the act complained of amounted to "criminal misconduct" as defined in Section 5, Prevention of Corruption Act, No. II of 1947, consequently the procedure prescribed by Section 7, Criminal Law Amendment Act, No. XLVI of 1952, has to be followed and the case was exclusively triable by the Special Judge, and it was not triable by the Sessions Judge.

That contention did not find favour with the learned Sessions Judge and he rejected the application holding that the order of commitment was not bad in law. From that order Ganga Narain has come up in revision to this Court and it has been contended by him that the case was triable exclusively by the Special Judge appointed under the Criminal Law Amendment Act of 1952.

2. Learned counsel for the applicant has urged that the applicant is a public servant; that the offence he is alleged to have committed can be grouped under the heading "criminal misconduct" and the applicant can, therefore, be convicted under Section 5(2), Prevention of Corruption Act; that Section 6 of that Act provides that no Court shall take cognisance of an offence punishable under Sub-section (2) of Section 5 of the Act without the previous sanction of persons mentioned in the section; that Section 6 of the Criminal Law Amendment Act, No. XLVI of 1952 provides that the State Government may by Notification in the Gazette appoint as many special Judges as may be necessary for a particular area to try offences under Sub-section (2) of Section 5, Prevention of Corruption Act, 1947; that Section 7, Criminal Law Amendment Act, 1952, lays down that notwithstanding anything contained in the Code of Criminal Procedure, 'or in any other law, any offences specified in Sub-section (1) of Section 6 of the Act, shall be triable by Special Judges only under the special procedure laid down in Section 8 of the Act and that consequently the applicant could not have been committed to the Court of Sessions under Section 409, I. P. C., nor could the Sessions Judge take cognisance of the matter as Sessions Judge.

3. The matter came up for decision in the case of -- 'Bhup Narain v. State', AIR 1952 All 35 (A). In that case Bhup Narain Saxena, who was an Inspector in the Rural Development Department, was prosecuted and convicted under certain sections of the Penal Code. The trial was by the Court of Sessions and it was by that Court that Bhup Narain Saxena had been convicted.

An application was moved from that conviction and sentence in this Court under Section 561A read with Section 435 of the Code for the setting aside of the charge and the entire proceedings in the Sessions Trial inclusive of the conviction and sentences. A learned single Judge of this Court referred the application to a Bench for deciding whether the Sessions Trial, in which the accused was charged under various sections of the Penal Code could proceed in the absence of sanction under Section 6 of the Prevention of Corruption Act, 1947, when the accused could be charged under Section 5 of Act II of 1947.

In that case the argument was that the accused was a public servant and the act complained of amounted to "criminal misconduct" as defined in Section 5 (2). Consequently the prosecution must be deemed to be under Section 5 (2) of the Prevention of Corruption Act and whether the accused was charged under that section or under appropriate sections of the Indian Penal Code, the provisions of the Prevention of Corruption Act would apply.

It was held that the definition of "criminal misconduct" in Section 5 can include cases which fall under the provisions of the Penal Code; that where a new offence has been created under an Act, there can be no doubt that the accused must be proceeded against in accordance with the provisions of that Act, but where the offence is one which was punishable under the Penal Code, and is now made punishable under the Prevention of Corruption Act also, it is open to the prosecution to proceed against the accused under the general law, that is under the Penal Code, or under the special provisions contained in the Act.

The Division Bench accordingly rejected the application of Bhup Narain Saxena under Section 561A and under Section 435, Criminal P. C.

4. The matter came up for decision before a Full Bench of this Court in -- 'Om Prakash v. The State', (S) AIR 1955 All 275 (B). In that case it was held that Section 5, (1) (c), Prevention of Corruption Act of 1947 had not the effect of repealing Section 409, Penal Code, in its application to public servants and it is open to the State to prosecute a public servant for committing criminal breach of trust under Section 409, Penal Code; that if a case comes within the purview of either of the two Acts of the Legislature and if the prosecution agency decides to prosecute a person under one of the Acts, his action will be quite proper and no exception can be taken to it; that the prosecution of a public servant for the offences of criminal breach of trust under the general law, namely, Section 409, I. P. C. and not under the special law, namely, Section 5 (1) (c), Prevention of Corruption Act, is not hit by Article 14 of the Constitution; that the rule about sanction as laid down in Section 6 of the Prevention of Corruption Act has no application when a public servant is prosecuted under the general law for an offence under Section 409, I. P. C., which does not find place in Section 6, Prevention of Corruption Act; that a trial under Section 409, Penal Code, will be regulated by the procedure laid down in the Code of Criminal Procedure; and that it is only if a prosecution is launched under Section 5 (2), Prevention of Corruption Act, that the special procedure prescribed under that Act will have to be observed, and the Court shall not take cognisance of that offence in absence of sanction obtained from the proper authority.

5. The present matter is practically covered by the decision, of the Full Bench of this Court cited above. It has been contended by learned counsel for the applicant that the Full Bench did not take account of the provisions of Sections 6 and 7, Criminal Law Amendment Act, No. XLVI of 1952, and it has been argued that if these provisions had been taken note of, probably the view of the Full Bench would have been different.

Section 6, Criminal Law Amendment Act (No. XLVI of 1953), says that the State Government may by notification appoint as many Special Judges as may be necessary for a particular area to try offences punishable under Section 161, Section 165, or Section 165A, Penal Code, or Sub-section (2) of Section 5, Prevention of Corruption Act, No. II of 1947.

Section 7 of the Criminal Law Amendment Act of 1952 says that notwithstanding anything contained in the Code of Criminal Procedure or in any other law, the offences specified in Sub-section (1) of Section 6 of the Act shall be triable by Special Judges only. Now an offence under Section 409, Penal Code, is not an offence which is enumerated in Section 6, Criminal Law Amendment Act, 1952.

Consequently a case under Section 409, I. P. C., against a public servant can be tried by the Sessions Judge after it has been committed to him by the Magistrate and it would not be open for the applicant to contend that because by implication his conduct may be described as "criminal misconduct" in discharge of his duties within the meaning of those words in Section 5, Prevention of Corruption Act, 1947 he could be so tried only under the special procedure as provided under the Criminal Law Amendment Act, 1952.

In the year 1952 an Act further to amend the Prevention of Corruption Act of 1947 was passed. This was the Prevention of Corruption (Second Amendment) Act. No. LIX of 1952. Section 4 of this Act made an amendment to Sub-section (4) of Section 5 of the principal Act No. II of 1947 where in place of the original Sub-section (4) of Section 5 of the principal Act the following sub-section was substituted:

"(4) The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him."

6. This amendment to Section 5 of Act No. II of 1947 makes it amply clear that the applicant could be prosecuted under Section 409, I. P. C., and proceedings against him could be taken under the general law & the provisions of Section 5 of the Prevention of Corruption Act, 1947, could be in addition to, and not in derogation of, any other law that was in force at that time, and that the applicant as a public servant could not under the provisions of Section 5 itself be exempted from any proceeding which might, apart from Section 5 of the Corruption Act, be instituted against him.

I am, therefore, definitely of opinion that Section 15 (1) (c), Prevention of Corruption Act of 1947 has not the effect of repealing Section 409, Penal Code, in its application to public servants and it is open to the State to prosecute a public servant for committing criminal breach of trust under Section

409, Penal Code; that Sections 6 and 7, Criminal Law Amendment Act (No. XLVI of 1952) have got no application to such a case, and it is not necessary that the case should have been sent to the Special Judge for trial under the special procedure laid down under the Criminal Law Amendment Act of 1952; and that having regard to the amendment of Sub-section (4) of Section 5 of the Prevention of Corruption Act, No. II of 1947, by the Prevention of Corruption Act (Second Amendment) Act No. LIX of 1952 the provisions of Section 5 of the principal Act shall be in addition to and not in derogation of, any other law for the time being in force and nothing contained in Section 5 of the principal Act shall exempt any public servant from any proceeding which might, apart from Section 5 itself, be instituted against him.

Consequently there was no error in the case having been committed by the learned Magistrate to the Court of Sessions for trial under Section 409, I. P. C. In this view of the matter, there is no force in this revisional application which must be dismissed. The order of stay is discharged. The record be sent down to the Court of the learned Sessions Judge for trial according to law.

7. It has been contended on behalf of the applicant that since the matter covers a substantial question of law, it should be certified to be a fit case for appeal to the Supreme Court. Having regard to the trend of decisions stated above and having regard to the provisions of amended Sub-section (4) of Section 5 of Act No. II of 1947 by the Prevention of Corruption (Second Amendment) Act of 1952, I do not think that it is a case where the matter should be taken up to the Supreme Court. The prayer is therefore refused.