Gopi Nath vs The State on 6 December, 1952

Equivalent citations: 1953CRILJ719

ORDER

Chowdhry, J.C.

1. This is an application in revision by one Bakshi Gopi Nath against his conviction under Section 19(f), Arms Act. The trying Magistrate sentenced him to imprisonment till the rising of the Court and a fine of Rs. 50. On appeal the Sessions Judge maintained the conviction but set aside the sentence of imprisonment and reduced the fine to Rs. 5.

2. Pending this revision the petitioner has died, but as the revision is from a sentence of fine, it will not abate on the death of the petitioner on the principle applying to appeals under Section 431, Cr.P.C. Sita Ravi v. Emperor A.I.R. 1937 oudh 820 and Ramchand v. Emperor A.I.R. 1940 Lah. 274.

3. The prosecution in this case appears to be somewhat strange. The petitioner held a licence for a gun and a pistol which expired on 31.12.1950. He should have got the licence renewed before its expiry, but actually he filed an application for its renewal on 8.1.1951. It has come in. evidence that this delay of eight days was due to the petitioner having taken ill. It has also come-in evidence, as remarked by the Sessions Judge, that there were other similar eases of delay regarding renewal of licences, but that no action was taken in those cases. The present petitioner was, however, singled out and a charge-sheet was submitted against him on 23.4.1951 in respect of the said offence about 3½ months after his having applied for renewal of his licence.

4. The only point urged before mo by the-learned Counsel for the petitioner was that the previous sanction of the District Magistrate under Section 29 of the said Act obtained in this case was defective. It may be stated here in passing that a previous sanction under this section is necessary in Bilaspur, as held in Nizamuddin v. State A.I.R. 1952 Him. P. & B. 45. It appears that the prosecuting Inspector preferred an application before the District Magistrate for the requisite sanction. All that was mentioned in the application was that the petitioner had committed an offence punishable under Section 19(f), Arms Act, and that sanction to prosecute him was sought. The District Magistrate endorsed the word "allowed" on this application and affixed his signature. It was argued by the learned Counsel for the petitioner that such a sanction was invalid as the facts constituting the offence were never placed before the sanctioning authority.

In support of his argument, the learned Counsel cited Gokulchand Dwarkadas v. The King A.I.R. 1948 P.C. 82. It was laid down in this case by their Lordships as follows:

> Looked at as a matter of substance it is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold a sanction without knowledge of the facts of the case. Nor, in their Lordships' view, is a sanction given without reference to the facts constituting the offence a compliance with the actual

> terms of Clause 23, Under that clause, sanction has to be given to a prosecution for the contravention of any of the provisions of the Order. A person could not be charged merely with the breach of a particular provision of the Order; he must be charged with the commission of certain acts which constitute a breach, and it is to that prosecution that is for having done acts which constitute a breach of the Order that the sanction is required. In the present case there is nothing on the face of the sanction, and no extraneous evidence, to show that the sanctioning authority knew the facts alleged to constitute a breach of the Order, and the sanction 13 invalid.

5. That was a case of an alleged transgression of Clause 18(2), Cotton Cloth and Yarn (Control) Order, 1943, where previous sanction to prosecute was required under Clause 23 of that Order. The learned Sessions Judge has drawn a distinction between Clause 23 of the said Order and Section 29, Arms Act. A perusal of the two provisions, reproduced below, will, however, show that the distinction is without a difference.

6. Clause 23 of the Order runs as follows:

> No prosecution for the contravention of any of the provisions of this Order shall be instituted without the previous sanction of the Provincial Government (or of such officer of the Provincial Government not below the rank of District Magistrate as the Provincial Government may by general or special order in writing authorize in this behalf.

7. Section 23, Arms Act, is to the following effect:

> Where an offence punishable under Section 19, Clause (f), has been committed within three months from the date on which this Act comes into force in any province, district or place to which Section 32, Clause (2) of Act XXXI of 1860 applies at each date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency-town, of the Commissioner of Police.
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> There being no difference between the two provisions, the principle laid down by their Lordships of the Privy Council is clearly applicable in the present case.

8. Now, it is quite clear that the facts of the case wore not mentioned in the prosecuting Inspector's application. There is also no evidence aliunde that the facts were brought to the District Magistrate's notice. That being so, it is manifest that the District Magistrate accorded sanction to prosecute automatically without a knowledge of the facts of the case. It was observed by their Lordships in the said Privy Council ruling that a sanctioning authority can refuse sanction on any ground which commends itself to it, for example that on political and economic grounds they regard a prosecution as inexpedient. In the present case, it is doubtful if the District Magistrate would have granted the sanction if it had been brought to his notice that there had been delay of only 8 days in the petitioner

applying for renewal of his licence, let alone the further fact that there were a number of other similar cases of delay in which no action had been taken by the police. I therefore hold that the sanction to prosecute in this case was invalid, that the trying Magistrate had therefore no jurisdiction to try the case, and that this defect in jurisdiction could not be cured under Section 537, Cr.P.C.

9. The learned Government Advocate cited' the following rulings. The first was All Husain Khan v. Harcharan Das A.I.R. 1922 Lah. 146. That was a case where an application in revision was filed against an order of sanction itself under Section 197, Cr.P.C. and it was held that the High Court had no authority to interfere. In the present case, the revision is not directed against the order granting the sanction, but only the validity of that order is challenged.

10. The next case cited by him was China Chendrayya v. Maddukuri Subbarayudu A.I.R. 1923 Had. 338. In that case it was held that a sanction under Section 197 of the Code is not invalid for not recording any reasons for the sanction. In the present case also the District Magistrate need not have recorded his reasons so long as it wan clear that the facts of the case had been brought to his notice. Belying upon an earlier Madras decision, it was observed in this case that the sanction order must refer to some definite offence and should not be so vague that it is obvious that the sanctioning officer had not come to a decision of his own that reasonable grounds existed for the prosecution. This view really is in accord with that laid down in the aforesaid Privy Council ruling, for it shows that it recognized the necessity of the sanctioning authority coming to a decision of his own that reasonable grounds exist for the prosecution before granting the sanction.

11. Lastly, the learned Government Advocate cited Emperor v. Jehangir A.I.R. 1927 nom. 501. The main point decided in this case was that in granting a sanction under Section 197 of the Code, the Government need not specify the offences with the same degree of precision as in a charge. That does not, however, mean that the sanctioning authority need not apply its mind to the facts of the casa before according sanction. In tact, the sanction in this case does not appear to have suffered from the defect pointed out in the present case, as the following sentence appearing in the ruling clearly shows:

> The other details specified make it clear that the offence charged and enquired into was what it was throughout alleged to be.
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> Evidently therefore the necessary details of the offence appear to have been brought to the notice of the sanctioning authority. The rulings cited by the learned Government Advocate therefore are in fact in accord with the view laid clown by their Lordships in the said Privy Council ruling.

12. The revision is allowed, the conviction is set aside and it is hereby directed that the fine, if already realized, be refunded to the legal re-preventatives of the petitioner.