V.D. Jhingan vs State on 15 March, 1955

Equivalent citations: AIR1955ALL531, 1955CRILJ1310

ORDER

Mulla, J.

1. This is an application under Section 561A, Criminal P. C. praying that the criminal proceedings pending before Sri B. N. Zutshi, Special Judge, Anticorruption be quashed. The applicant in this case is Sri V. D. Jhingan who was employed as Assistant Director, Enforcement, by the President of India in the Ministry of Industry and Commerce on 25-3-1949.

2. The prosecution case is that on 11-9-1951 the applicant accepted' a sum of Rs. 10,000/- as the first instalment out of an agreed total of Rs. 30,000/- as an illegal gratification for recommending to the 'District Magistrate, Kanpur, that the cloth licence issued to one Sri Sidh Gopal may not be cancelled. Thus charge was investigated by the Special Police Establishment, Delhi who recovered this amount from the applicant.

The prosecuting agency then applied for sanction to prosecute the applicant but the Ministry of Industry and Commerce instead of granting the sanction at that stage decided to bold an enquiry under Rule 55, Civil Services (Classification, Control and Appeal) Rules. This decision was communicated to the prosecuting agency on 26-8-1952 and on its basis a final report was submitted in the court of Sri. Girja Shankar Misra, the Anti-corruption Magistrate at Lucknow, before whom the case was pending.

Sri Misra accepted the report and discharged the applicant. His- bail bonds were also cancelled and the sum of Rs. 10,000/- recovered from him was also ordered to be returned.

3. The departmental enquiry against the applicant continued till September 1953 and as the charges were found to be proved, the applicant was dismissed from service on 25-11-1953. The Delhi Police again arrested the applicant on 30-1-1954 and in February 1954 the charge that was withdrawn earlier was again pressed against the applicant.

This prosecution is now pending before Sri B. N. Zutshi, the Anti-Corruption Judge and it is against this prosecution that the applicant has filed this application.

4. Section 561A, Cr. P. C. no doubt gives power to a High Court to quash the proceedings if it finds that such an order is necessary to prevent an abuse of the process of any court. In other words an order under this section should only be passed where there is a glaring defect on the face of the proceedings which makes the prosecution untenable and where there is no reasonable chance of the accused being convicted. This can be only either on account of a legal flaw or because the alleged

facts do not constitute an offence. Before me it is not contended that the facts of the case as alleged by the prosecution do not constitute an offence. It is, however, contended that the proceedings started are wholly illegal and it would waste the time of a court to take cognizance of this case.

5. Two main grounds have been taken before me. Firstly, it is contended that as the prosecution was withdrawn at an earlier stage and a departmental enquiry was substituted in its place, it shows that the sanctioning authority had given up the intention of prosecuting the applicant. It is urged that it is not open to the prosecuting agency to start this prosecution again after the departmental authority in the exercise of the discretion had refused to give a sanction. Reading the evidence in the case I am of the opinion that it cannot be inferred that the sanctioning authority withheld its sanction and gave up the idea of prosecuting the applicant.

It is difficult to believe that although there was evidence to prove that an illegal gratification of Rs. 10,000/- out of an agreed total of Rs. 30,000/-was received by the accused, still the departmental authority considered that a criminal prosecution was not desirable and only departmental action would meet the ends of justice. No doubt the proceedings were withdrawn at a particular stage, but this was done with a view to hold a departmental enquiry. It would have been extremely distressing to the applicant himself if a departmental enquiry and a prosecution for an offence were conducted simultaneously.

Apart from this the same documents would have been necessary both in the Court as well as in the departmental enquiry and it would have been extremely inconvenient to arrange for these documents being shifted from one place to another all the time. The State had a perfect right to hold a departmental enquiry and it cannot be said that because the prosecution was launched it should not have beld a departmental enquiry. The State cannot be compelled to keep a public servant in service if the State has reasons to believe that such a breach of the rules of service has been committed by the public servant which, if proved, necessitates his dismissal. It is conceded by the counsel for the applicant that the withdrawal of the prosecution at the earlier stage did not amount to an acquittal and Section 403, Cr. P. C., is not applicable to the circumstances of the case. I, therefore, find that no exception can be taken to the departmental enquiry held in this case by the State.

This enquiry unfortunately took a very long time. It would be better if these enquiries are expedited because they result in delaying the prosecution to a great extent. In the case although thel offence is alleged to have been committed on 11-9-1951, yet the actual prosecution which is now pending before the Anti-Corruption Judge was starts ed in February 1954. A State has certainly a right to prosecute a public servant, if he misbehaves or commits an offence, but this prosecution should not be kept hanging over his head for years and years.

Even an offender should not be deprived of his right to restart his life after paying the penalty for the offence which he has committed, but if the prosecution is delayed for several years after it was detected, it means that he cannot take up any new work for at any moment the State may choose to prosecute him. However, there is no provision of law which lays down that criminal proceedings cannot be started because of inordinate delay. An accused cannot escape punishment for an offence,

if it is proved against him, merely because the prosecution was launched against him after considerable delay.

6. The second contention of the counsel for the applicant was that the . Anti-Corruption Judge cannot take cognizance of this criminal prosecution because the pre-requisite sanction necessary under Section 6, Prevention of Corruption Act has not been secured and filed by the prosecuting authority. Great stress was laid on the spirit of Section 6, Prevention of Corruption Act and it was argued that it contemplates that when an offence is committed by a public servant, he cannot be prosecuted without a sanction merely because the prosecution is started at a time when his services are terminated.

In other words it was contended that the application of Section 6, Prevention of Corruption Act is determined by the status of the offender not at the time when the prosecution is launched but at the time when the offence was committed. Section 6, Prevention of Corruption Act rung as follows :

> "(1) No court shall take cognizance of an offence punishable under Section 161 or Section 165, Indian Penal Code or under Sub-s. (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,
>
> (a) in the case of a person who is employed in connection with the affairs of the (Union) and is not removable from his office save by or with the sanction of the Central Government....;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from the office save by or with the sanction of the State Government.,,..;
>
> (c) in the case of any other person of the authority competent to remove him from his office."

On a careful reading of this section it becomes clear that an offender cannot invoke the protection of this section unless two conditions are fulfilled :

> (1) He was a public servant when the offence charged against him was committed (2) On the date when he is prosecuted there is some authority who could remove him from his office.

If any one of these two conditions does not exist, his case goes out of the ambit of Section 6. In other words Section 6 affords protection only to those public servants who were in office both on the date of the commission of the offence charged and the date when a court is asked to take cognizance. In neither of the following two cases would he be protected by section 6 and a sanction would not be necessary.

> (a) When the offence charged is alleged to have been committed before he became a public servant although the prosecution is launched while he is holding a public office.
>
> (b) Where the alleged offence was committed on a date when he was a. public servant but the prosecution was launched after he ceased to be a public servant.

In the caste described in (a) the first condition is not fulfilled. In the case described in (b) the second condition is lacking. The case of the present applicant falls under (b). On the date when the court took cognizance against him there was no authority who could remove him from office because he had already ceased to be a public servant. In other words Section 6 is enacted only for the protection of public servants and not ex-public servants. I 6a. The object of the Legislature seems to be clear, In enacting Section 6, it accepted the principle that where a public servant is prosecuted for an offence which challenges his honesty and integrity, the issue in such a case is not only between the prosecutor and the offender but the State is also vitally concerned in it as it affects the morale of the public services and also the administrative interests of the State. For these reasons the discretion to prosecute was taken away from die prosecuting agency and was vested in departmental authorities for they could assess and weigh the accusation in a far more dispassionate and responsible manner. The State obviously was only concerned with those offences which were committed by public servants while functioning in that capacity and for which they were sought to be prosecuted while holding such an office.

No administrative interests of the State were touched if the prosecution was started against a person who had ceased to be a public servant. The Legislature, therefore, intended to protect only those public servants whose prosecution was likely to affect the administrative interests of the State, It, therefore, by enactment conferred a special safeguard against the irresponsible prosecution of the members of a particular class but the moment a person stepped out of that class, he was no longer entitled to claim that privilege. Even on equitable grounds no exception can be taken to this intention of the Legislature. I can think of no justifiable reason why the law should offer a greater protection to a offender who has ceased to be a public servant than any other ordinary citizen. I, therefore, find, that the words of Section 6 not only correspond with the intention of the Legislature completely but there is also no inequity in the enactment. These words should, therefore, be given their natural meaning and any outside or far-fetched consideration should not affect their interpretation.

7. The weight of legal authority is also against the contention of the applicant. There are some earlier decisions which support this contention. These decisions were given in interpreting Section 197, Cr. P. C., which is an analogous section. In --'Sugan Chand v. Narain Das', AIR 1932 Sind 177 (A), which is a Bench decision, Aston A. J. C. observed;

> "I also agree with the learned Magistrate that it is the status of the accused at the time of the commission of the alleged offence and not his status at the time of the complaint or of the order issuing process which is material for the purposes of Section 197, Cr. P. C."

Similarly -- 'In re S. Y. Patil', AIR 1937 Nag 293 (B), Pollock J. observed:

> "The protection conferred by Section 197, Cr. P. G. would be largely illusory if it were open to people to wait until the public servant had ceased to hold that position and then lodge their complaint, for generally there is no question of limitation in criminal proceedings. A public servant who is on the verge of retirement would have no protection whatever. Section 197, Cr. P. C., therefore protects a person who is a public servant at the time of the alleged incident even if he ceased to be a public servant before the prosecution starts."

8. The later decisions, however, disagreed with this view. Tbe Nagpur decision cited above was overruled by a subsequent Bench decision of the same Court. In -- 'State Government, Madhya Pradesh v. Hafizul Rahman', AIR 1952 Nag 12 (C), the learned Judges observed :

> "If the protection given by a section is rendered illusory, that may be an argument for the Legislature to amend the provision. But that can afford no reason for the court to depart from the plain words used in the section. We are, therefore, of the view that Section 197 cannot afford any protection to a public servant after he has ceased to hold office."

9. In a recent Bench decision of our own Court, -- 'Ram Dhyan Singh v. State', AIR 1953 All 470 (D), Agarwala J., observed:

> "It is in our opinion further clear that the sanction to prosecute a person is required 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 cognizance of an offence mentioned in the section. The verb "is" in the above (Section 6(1)(a), Prevention of Corruption Act) refers to the date on which the court is called upon to take cognizance."

There is yet another Bench decision of the Bombay High Court, -- 'State of Bombay v. Vishwakant Shrikant', AIR 1954 Bom 109 (E), in which the Judges held :

> "In our view therefore the words "public servant" in Section 6(1) mean a person who is in service at the time when the court is called upon to take cognizance of the, offence. Section 6(1) has consequently no application to the case of the Public Servant who is no longer in service."

I find myself in agreement with the view expressed in the Allahabad and Bombay decisions.

10. A relief under Section 561A, Cr. P. C. can only be given if it is to secure the ends of justice or to prevent an abuse of the process of any Court. So far as the ends of justice are concerned, they are clearly against the prayer of the applicant, There is also no abuse of any process of court involved in this case. I reserve my opinion about that particular type of case where an offence is committed and

detected when a public servant 19 in office and where after the exercise of proper discretion (and not because the tree was equally rotten on the top) the sanctioning authority refused to grant the sanction but the prosecuting agency played a waiting game and as soon as the services of the public servant were terminated it launched a prosecution for the same offence. To the best of my knowledge there is no decision that covers such a case. Such a prosecution might amount to an abuse of the process of law, for it would be a clear circumvention of the rule of law laid down in Section 6. However, as held by me above, the circumstances of this case do not warrant the conclusion that the sanction was refused and if it was refused it was properly refused and it rightfully condoned the offence.

11. I, therefore, reject this application.

12. This case had been adjourned 'sine die'. The Anti-Corruption Judge should now take cognizance of the case and proceed with it.

13. The counsel for the applicant prays that I should certify it as a fit case for appeal before the Supreme Court I see no reason to grant this prayer.