State Of Karnataka Through Cbi vs C. Nagarajaswamy on 7 October, 2005

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Bench: S.B. Sinha, R.V. Raveendran

CASE NO.:
Appeal (crl.) 1279 of 2002

PETITIONER:
State of Karnataka through CBI

RESPONDENT:
C. Nagarajaswamy

DATE OF JUDGMENT: 07/10/2005

BENCH:
S.B. Sinha & R.V. Raveendran

JUDGMENT:

J U D G M E N T WITH CRIMINAL APPEAL NO. 137 OF 2003 State of Karnataka through CBI Appellant Versus M.K. Vijayalakshmi Respondent S.B. SINHA, J :

Interpretation of Section 300 of the Code of Criminal Procedure (for short "the Code") is in question in these appeals which arise out of judgments and orders dated 9.1.2002 and 10.4.2002 in Criminal Petition Nos. 330 of 2000 and 4007 of 2001 respectively passed by the High Court of Karnataka at Bangalore.

We will notice the fact of both the appeals separately.

Criminal Appeal No. 1279 of 2002 The Respondent herein was working as a Junior Telecom Officer in Shankarapuram Telecom Exchange. One R. Veera Prathap made a complaint that he had demanded an illegal gratification for showing official favour whereupon a case in Crime No. R.C. 34A/1994 was registered. A charge sheet was filed therein and the Special Judge for CBI cases, Bangalore by an order dated 16.7.1999 took cognizance of an offence under Section 7 of the Prevention of Corruption Act, 1988 (for short "the Act"). In the trial, 12 witnesses were examined. The statement of Respondent under Section 313 of the Code was also recorded.

The learned Special Judge formulated two points for his determination:

"1. Whether the prosecution has proved that the sanction accorded for the

prosecution of the accused in this case is a valid sanction?

2. Whether the prosecution has further proved beyond any reasonable doubt that the accused has committed the offences punishable under S.7 and under S. 13(1)(d) R/w. S 13(2) of the Prevention of Corruption Act, 1988?"

In regard to point No. 1, the learned Special Judge was of the opinion that the sanction for prosecution accorded by PW11 was illegal and in that view of the matter, the same was determined in favour of the Respondent. In view of his findings as regard point No. 1, the learned Special Judge did not record any finding on point No. 2 and directed as under:

"Accused C. Nagarajaswamy is hereby discharged from the proceedings and his bail bonds stand cancelled."

A fresh charge sheet was filed after obtaining an order of sanction which came to be challenged before the High Court by the Respondent in an application filed under Section 482 of the Code.

Criminal Appeal No. 137 of 2003 The Respondent herein was working as a Manager in State Bank of Mysore, 4th Block, Rajajinagar, Bangalore. She had dominion and control over the management of the accounts of the Bank. She allegedly misappropriated a sum of Rs. 40,000/- wherefor a chargesheet was filed on 27.12.1984. While the criminal proceedings were pending, she was dismissed from service by an order dated 1.6.1985. She faced a full-fledged trial. She was examined under Section 313 of the Code and also laid defence evidence. The question as regard sanction accorded by the Managing Director of the Bank was raised by the Respondent herein before the learned XXI Addl. City Civil and Sessions and Special Judge, Bangalore, contending that only the Board of Directors was the competent authority therefor. By a judgment and order dated 14.11.1991, the learned XXI Addl. City Civil and Sessions and Special Judge while accepting the said plea directed:

"The sanction order (Ex. P28) is invalid. The sanctioning authority was not competent to issue the said sanction order. Further proceedings of the case is stopped and the accused is released. The Bail bond of the accused is cancelled "

A second chargesheet was filed after years on 18.8.1995 on the ground that as the Respondent has been dismissed from the service, no sanction was required for her prosecution. Cognizance was taken by an order dated 31.8.2001. The Respondent herein filed an application under Section 482 of the Code for quashing the criminal proceedings as also the said order dated 31.8.2001.

The High Court allowed the first application under Section 482 of the Code filed by the Respondent herein on the ground that when an accused faces a full-fledged trial, having regard to the provisions of the Code, the Trial Court must either record a judgment of conviction or acquittal and the accused cannot be discharged in terms of Section 227 of the Code after a full-fledged trial. In the second matter, the High Court was of the opinion that no fresh trial is permissible in law.

Mr. A. Sharan, learned Additional Solicitor General appearing on behalf of the Appellant would contend that the High Court committed a manifest error in passing the impugned orders insofar as it failed to take into consideration the ingredients of the provisions of Section 300 of the Code.

Relying on the decisions of this Court in Baij Nath Prasad Tripathi Vs. the State of Bhopal [(1957) SCR 650] and Mohammad Safi Vs. The State of West Bengal [AIR 1966 SC 69], Mr. Sharan would submit that in a case where a proper order of sanction was not passed, the court will have no jurisdiction to take cognizance thereof and as such a judgment passed therein shall be illegal and of no effect and in that view of the matter, subsequent trial with proper sanction is not barred.

Mr. Basava Prabhu S. Patil, learned counsel appearing on behalf of the Respondents would submit that Chapter XVIII of the Code does not envisage an order of discharge or dropping of the proceedings after a charge has been framed, witnesses are examined, the statement of the accused under Section 313 of the Code is taken and defence witnesses are examined.

Chapter XIX of the Code provides for trial of warrant-cases by Magistrates. An accused can be discharged in the cases instituted under Section 173 in terms of Section 239 of the Code in the event, the Magistrate considers the charge against the accused to be groundless wherefor reasons are required to be recorded. However, if charge is framed whereto the accused pleads not guilty, the prosecution and defence may lead their respective evidence. Section 248 provides for recording of a judgment of acquittal or conviction.

The Appellant was proceeded against the Respondents under the Act. Section 5 of the Act provides for the procedure and powers of the Special Judge. Section 19 of the Act mandates that no court shall take cognizance of offence punishable under the provisions specified therein except with the previous sanction by the authorities specified therein.

Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage. [See Ashok Sahu Vs. Gokul Saikia and Another, 1990 (Supp) SCC 41 and Birendra K. Singh Vs. State of Bihar, JT 2000 (8) SC 248] But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. [See B. Saha and Others Vs. M.S. Kochar, (1979) 4 SCC 177, para 13 and K. Kalimuthu Vs. State by DSP, (2005) 4 SCC 512] It is true that in terms of Clause (2) of Article 20 of the Constitution of India no person can be prosecuted and punished for the same offence more than once. Section 300 of the Code was enacted having regard to the said provision. Sub-section (1) of Section 300 of the Code reads as under:

> "Persons once convicted or acquitted not to be tried for same offence (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."

The essential conditions for invoking the bar under said provision are:

> (i) the court had requisite jurisdiction to take cognizance and tried the accused; and
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> (ii) the court has recorded an order of conviction or acquittal, and such conviction/ acquittal remains in force.

The question came up for consideration before the Federal Court in Basdeo Agarwalla Vs. King Emperor [(1945) F.C.R. 93] wherein it was held that if a proceeding is initiated without sanction, the same would be null and void.

In Yusofalli Mulla Noorbhoy Vs. the King [AIR 1949 Privy Council 264], it was held:

> "16 A court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law and S. 14 prohibits the institution of a prosecution in the absence of a proper sanction. The learned Magistrate was no doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decided that no valid sanction had been given the Court became incompetent to proceed with the matter. Their Lordships agree with the view expressed by the Federal Court in Agarwalla's case: (A.I.R. (32) 1945 F.C. 16: Cr. L.J. 510) that a prosecution launched without a valid sanction is a nullity."

The matter came up before this Court in Budha Mal Vs. The State of Delhi [Criminal Appeal No. 17 of 1952] disposed of on 3rd October, 1952 wherein a trial of the Appellant therein for alleged commission of an offence under Section 161 of the Indian Penal Code resulted in conviction but an appeal therefrom was accepted on the ground that no sanction for the prosecution of the Appellant was accorded therefor. The police prosecuted the Appellant again after obtaining fresh sanction whereupon a plea of bar thereto in terms of Section 403 of the Code was raised. Mahajan, J. speaking for a Division Bench opined:

> "We are satisfied that the learned Sessions Judge was right in the view he took. Section 403, Cr.P.C. applies to cases where the acquittal order has been made by a court of competent jurisdiction but it does not bar a retrial of the accused in cases where such an order has been made by a court which had no jurisdiction to take cognizance of the case. It is quite apparent on this record that in the absence of a

> valid sanction the trial of the appellant in the first instance was by a magistrate who had no jurisdiction to try him."

The aforementioned cases were noticed by a Constitution Bench of this Court in Baij Nath Prasad Tripathi (supra) wherein a similar plea was repelled stating:

> " The Privy Council decision is directly in point, and it was there held that the whole basis of Section 403(1) was that the first trial should have been before a court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the court was not so competent, as for example where the required sanction for the prosecution was not obtained, it was irrelevant that it was competent to try other cases of the same class or indeed the case against the particular accused in different circumstances, for example if a sanction had been obtained."

In Mohammad Safi (supra), this Court held:

> "6. It is true that Mr Ganguly could properly take cognizance of the offence and, therefore, the proceedings before him were in fact not vitiated by reason of lack of jurisdiction. But we cannot close our eyes to the fact that Mr Ganguly was himself of the opinion and indeed he had no option in the matter because he was bound by the decisions of the High Court that he could not take cognizance of the offence and consequently was incompetent to try the appellant. Where a court comes to such a conclusion, albeit erroneously, it is difficult to appreciate how that court can absolve the person arraigned before it completely of the offence alleged against him. Where a person has done something which is made punishable by law he is liable to face a trial and this liability cannot come to an end merely because the court before which he was placed for trial forms an opinion that it has no jurisdiction to try him or that it has no jurisdiction to take cognizance of the offence alleged against him. Where, therefore, a court says, though erroneously, that it was not competent to take cognizance of the offence it has no power to acquit that person of the offence. An order of acquittal made by it is in fact a nullity.
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> Relying upon Yusofalli Mulla Noorbhoy (supra), it was held:
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> "The principle upon which the decision of the Privy Council is based must apply equally to a case like the present in which the court which made the order of acquittal was itself of the opinion that it had no jurisdiction to proceed with the case and therefore the accused was not in jeopardy."

[See also State of Goa vs. Babu Thomas (2005) 7 SCALE 659] In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the Trial Court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the

provisions of Section 300 of the Code as even then, it would be held to have been rendered illegally and without jurisdiction.

The learned counsel for the Respondent next contended that having regard to the fact that the Respondents herein have faced ordeal of trial for a long time, it would not be in the interest of justice to put them on trial once over. In this behalf he relied on the decision of this Court in State of Madhya Pradesh Vs. Bhooraji and Ors. [JT 2001 (7) SC 55] wherein it is observed that fresh trial should be ordered only in exceptional cases of 'failure of justice'. In Bhooraji (supra), the specified court being a Sessions Court took cognizance of the offence under the SC & ST (Prevention of Atrocities) Act without the case being committed to it. It convicted and sentenced the accused. During pendency of appeal by the accused before High Court, this court took the view that committal proceedings are necessary for a specified court, to take cognizance of offences to be tried under the Act. The High Court, therefore, quashed the entire proceedings and directed trial de novo. In that context this Court held that ordering de novo trial was not justified and as the trial was conducted by a 'competent court', the same cannot be erased merely on account of a procedural lapse. We may notice that in a case where the trial was conducted by a court of competent jurisdiction ending in conviction or acquittal, a retrial may not be directed. Interpreting Section 465 of the Code, this Court in Bhooraji (supra) held:

> "22. The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the court concerned is "a court of competent jurisdiction", e.g. courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a court took cognizance of such offences, which were later found to be without valid sanction, it would not become the test or standard for deciding whether that court was "a court of competent jurisdiction".

It is now well settled that if the question of sanction was not raised at the earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the court concerned is "a court of competent jurisdiction".

However, the learned counsel appearing on behalf of the Respondents may be right in his submissions as regards the right of an accused for a speedy trial having regard to the provisions contained in Article 21 of the Constitution of India that a person's fate may not be kept hanging for a long time.

In Mahendra Lal Das Vs. State of Bihar and Others [(2002) 1 SCC 149], this Court opined:

> "5. It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in Abdul Rehman Antulay v. R.S. Nayak while interpreting the scope of Article 21 of the Constitution held that every citizen has a right to speedy trial of the case pending against him. The speedy trial was considered also in public interest as it

> serves the social interest also. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice."

In that case, however, the prosecution had miserably failed to explain the delay of more than 13 years in granting the sanction for prosecution of the Appellant therein of possessing disproportionate wealth of about Rs. 50,600/-. The State was also not satisfied about the merit of the case and the authorities were convinced that despite granting of sanction the trial would be a mere formality and an exercise in futility.

Yet again in P. Ramachandra Rao Vs. State of Karnataka [(2002) 4 SCC 578] this Court while categorically holding that no period of limitation can be prescribed on which the trial of a criminal case or criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused observed:

> "(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.

The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-

limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused."

Keeping in view of the aforementioned principles and having regard to the facts and circumstances of this case, however, we are of the opinion that the interest of justice shall be sub-served if while allowing these appeals and setting aside the judgments of the High Court, the trial court is requested to dispose of the matters at an early date preferably within six months from the date of

communication of this order, subject, of course, to rendition of all cooperation of the Respondents herein. In the event, the trial is not completed within the aforementioned period, it would be open to the Respondents to approach the High Court again. These appeals are disposed of with the aforementioned directions. No costs.