State Of Karnataka vs Ameer Jan on 18 September, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Harjit Singh Bedi

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           CASE NO.:
Appeal (crl.)  766 of 2001

PETITIONER:
State of Karnataka

RESPONDENT:
Ameer Jan

DATE OF JUDGMENT: 18/09/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
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J U D G M E N T S.B. SINHA, J :

1. Interpretation and/ or application of the provisions of Section 19 of the Prevention of Corruption Act, 1988 (for short "the Act") falls for our consideration in this appeal which arises out of a judgment and order dated 19.06.2000 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 222 of 1995.

2. Respondent herein was working as a Second Division Assistant in the Office of the Registrar of Firms and Cooperative Societies. D.V. Thrilochana (PW-3) approached him for grant of a certificate. He allegedly demanded a sum of Rs. 300/- from him. He was put to trial for alleged commission of an offence under Sections 7, 13(1)(d) read with 13(2) of the Act.

3. An order of sanction was issued by the Commissioner of Stamps solely relying on or on the basis of a purported report issued by the Inspector General of Police, Karnataka Lokayuktha. The purported order of sanction being dated 20.07.1992 reads as under:

> "In exercise of the powers conferred under Section 19(1)(c) of the Prevention of Corruption Act, 1988, I hereby accord sanction to prosecute Sri Ameerjan, Second Division Assistant in the office of the Registrar of Firms and Societies, Bangalore, Urban District, Bangalore for offences punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 in the competent court of law."

4. The sanctioning authority examined himself before the learned Trial Judge as PW-8. He, however, did not produce the report of the Inspector General of Police, Karnataka Lokayuktha. Even

otherwise the same was not brought on records. The learned Trial Judge upon considering the materials brought on records by the prosecution opined that the respondent was guilty of commission of the said offence.

By reason of the impugned judgment, the High Court, however, reversed the same opining that the order of sanction being illegal, the judgment of conviction could not be sustained.

5. Mr. Sanjay R. Hegde, learned counsel appearing on behalf of the State of Karanataka, in support of this appeal would submit that an order of sanction should not be construed in a pedantic manner. The learned counsel urged that the High Court committed a manifest error in proceeding to determine the legality or validity of the order of sanction having regard to an irrelevant factor, viz., that the offence involved only a sum of Rs. 300/-.

In particular, the following findings of the High Court was criticized submitting that the same do not lay down the correct legal position:

> "...The additional reason for this view is because there is an entirely different aspect of the law which applies to cases of this category insofar as the courts have now held that if the amount involved is relatively small if it is a single isolated instance and there is no evidence of habitual bribe taking or assets dis-proportionate to the known sources of income, that the sanctioning authority will have to carefully evaluate as to whether the interest of justice will not be adequately served by taking disciplinary action rather than by burdening the courts with full fledged prosecution in a case of relatively trivial facts. These are all areas of deep seated evaluation which can only be truly justified through a proper perusal of the records. I am unable to accept the submission put forward by the learned Public Prosecutor that the reference to the receipt of the records is sufficient to get over the basic infirmity in the sanction order wherein the authority is quick to state that he acted only on the basis of the letter from the Inspector General of Police..."

6. Mr. Sanjay Parikh, learned counsel appearing on behalf of the respondent, however, would submit that the purported order of sanction dated 20.07.1992 ex facie shows a total non-application of mind on the part of PW-8 and, thus, the impugned judgment is unassailable.

7. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

8. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the

basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.

9. The Privy Council as far back in 1948 in Gokulchand Dwarkadas Morarka v. The King [AIR 1948 PC 82] opined that the object of the provision for sanction is that the authority giving it should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden stating:

> "In Their Lordships' view, to comply with the provisions of clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction."

The said decision has been referred to by this Court, with approval, in Jaswant Singh v. State of Punjab [AIR 1958 SC 124].

10. Yet again in Mohd. Iqbal Ahmed v. State of Andhra Pradesh [(1979) 4 SCC 172], this Court opined that the sanctioning authority cannot rely on the statutory presumption contained in Section 4 of the Prevention of Corruption Act, 1947 stating:

> " In the first place there is no question of the presumption being available to the Sanctioning Authority because at that stage the occasion for drawing a presumption never arises since there is no case in the Court. Secondly, the presumption does not arise automatically but only on proof of certain circumstances, that is to say, where it is proved by evidence in the Court that the money said to have been paid to the accused was actually recovered from his possession. It is only then that the Court may presume the amount received would be deemed to be an illegal gratification. So far as the question of sanction is concerned this arises before the proceedings come to the Court and the question of drawing the presumption, therefore, does not arise at this stage "

11. In R.S. Nayak v. A.R. Antulay [(1984) 2 SCC 183] following Mohd. Iqbal Ahmed (supra), this Court held:

> " The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the Legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office."

12. In Mansukhlal Vithaldas Chauhan v. State of Gujarat [(1997) 7 SCC 622], this Court held:

> "14. From a perusal of Section 6, it would appear that the Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that "public servant" is to be prosecuted or not. Since the section clearly prohibits the courts from taking cognizance of the offences specified therein, it envisages that the Central or the State Government or the "other authority" has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction."

[See also State of T.N. v. M.M. Rajendran, (1998) 9 SCC 268]

13. Our attention, however, was drawn to a recent decision of this Court in Prakash Singh Badal and Another v. State of Punjab and Others [(2007) 1 SCC 1] by Mr. Hegde to contend that having regard to Sub-sections (3) and (4) of Section 19 of the Act, only because an order of sanction contains certain irregularities, the court would not set aside an order of conviction.

In Prakash Singh Badal (supra), the question which arose for consideration before this Court was as to whether an order of sanction is required to be passed in terms of Section 197 of the Code of Criminal Procedure in relation to an accused who has ceased to be a public servant. It was in that context a question arose before this Court as to whether the act alleged to be performed under the

colour of office is for the benefit of the officer or for his own pleasure. In the context of question as to whether the public servant concerned should receive continuous protection, it was opined:

> "29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case 2 . Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

Prakash Singh Badal (supra), therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinon that the said decision cannot be said to have any application in the instant case.

14. We may notice that in Sankaran Moitra v. Sadhna Das & Anr. [(2006) 4 SCC 584 : JT 2006 (4) SC 34], the Majority, albeit in the context of Section 197 of the Code of Criminal Procedure, opined:

> "22. Learned counsel for the complainant argued that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question."

15. In this case, the High Court called for the original records. It had gone thereinto. It was found that except the report, no other record was made available before the sanctioning authority. The order of sanction also stated so. PW-8 also did not have the occasion to consider the records except the purported report.

16. We are, therefore, of the opinion that the impugned judgment does not suffer from any legal infirmity although some observations made by the High Court, as noticed hereinbefore, do not lay down the correct legal position. The appeal is dismissed.