Central Bureau Of Investigation Etc vs V.K. Sehgal And Anr on 8 October, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3706, 1999 AIR SCW 3742, 1999 (10) SRJ 136, (2000) 1 CRIMES 418, 1999 CRILR(SC MAH GUJ) 761, (2000) 1 KER LJ 14, 1999 (6) SCALE 419, 1999 (8) ADSC 581, 1999 (8) SCC 501, 1999 (3) CRIMES 165, 1999 SCC(CRI) 1494, 1999 (4) LRI 986, 1999 CRILR(SC&MP) 761, 1999 ADSC 8 581, 2000 ALL MR(CRI) 1514, (1999) 8 JT 170 (SC), 2000 (2) SERVLJ 85 SC, (1999) 3 SCJ 519, (1999) 4 ALLCRILR 408, (2000) 1 EASTCRIC 184, (2000) 1 MADLW(CRI) 306, (2000) 1 PAT LJR 9, (1999) 4 RECCRIR 615, (1999) 4 CURCRIR 109, (1999) 8 SUPREME 490, (1999) 26 ALLCRIR 2329, (1999) 6 SCALE 419, (2000) 1 BLJ 69, (1999) 3 CHANDCRIC 75, 2000 (1) ANDHLT(CRI) 1 SC, (2000) 1 ANDHLT(CRI) 1

Bench: K.T. Thomas, M.B. Shah

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           CASE NO.:
Appeal (crl.)  1059 of 1999

PETITIONER:
CENTRAL BUREAU OF INVESTIGATION ETC.

RESPONDENT:
V.K. SEHGAL AND ANR.

DATE OF JUDGMENT: 08/10/1999

BENCH:
K.T. THOMAS & M.B. SHAH

JUDGMENT:
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JUDGMENT 1999 Supp(3) SCR 570 The Judgment of the Court was delivered by THOMAS, J. Leave granted.

The High Court of Punjab and Haryana has rescued a public servant from bribery offence solely on the ground of want of valid sanction. Evidently the attention of the learned Single Judge of the High Court, who set aside the conviction and sentence, was not drawn to the intervened changes in law regarding sanction for prosecuting a public servant under Prevention of Corruption enactments. Central Bureau of Investigation (CBI for short) and the State of Haryana have filed the special leave petitions in challenge of the aforesaid judgment of the High Court.

First respondent was the accused in the case. He was working as Section Officer in the office of the Defence Pension Disbursement Section. He was challaned by the CBI on the allegation that he

demanded and collected an amount of Rs. 200 from a pensioner as reward for disbursing the arrears of pension due to him and that the accused was trapped in the process of receiving the aforesaid amount of bribery on 20.12.1984. After trial the Special Judge, Ambala (Haryana) convicted the accused by its judgment dated 30.8.1990, under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to undergo rigorous imprisonment for two years besides payment of fine.

Accused preferred an appeal before the High Court against the aforesaid judgment of conviction and sentence. He contended before the High Court, inter alia, that he was holding the post of Section Officer (Accounts) on promotion which was ordered by the Controller General of Defence Accounts and hence the competent authority to accord sanction to prosecute the accused is the said Controller General. On its basis it was further contended that the sanction accorded by the Controller of Defence Accounts (Pension and Disbursement), who is a subordinate officer of the Controller General, is invalid.

Learned Single Judge upheld the above contention and on that ground alone set aside the conviction and sentence as per the judgment which is impugned in those appeals.

On behalf of the CBI it was submitted before the High Court that it was never pointed out by the accused to any of the prosecution witnesses that sanction was not granted by the competent officer i.e., Controller General of Defence Accounts. It was also submitted that the question whether the accused was promoted by the Controller General of Defence Accounts or by the Controller of Defence Accounts, are mixed questions of law and facts and therefore at that stage such a plea raised by the accused should not be countenanced.

But the learned Single Judge repelled the aforesaid plea for which he put- forth the following reasons :

> "Problem in this case is that the appellant/accused was promoted by the Controller General of Defence Accounts and not by the Controller of Defence Accounts. This aspect, if the appellant has not been able to put before the Trial Court, then it does not mean that the appellant/accused is debarred from entertaining the same at this stage because the appeal itself is in continuation of the trial. The plea raised by him is legal and has gone deep to the root of the case of the prosecution. Resultantly, I hold that the sanction Ex.PL has not been granted by a competent authority vitiating the entire case. Learned Special Judge was not competent to take cognizance into the matter as already stated above. Consequently, the present appeal is hereby accepted and the judgment of the conviction and order of sentence passed by the learned Special Judge, Ambala is hereby set aside." Two factual positions have emerged from the above. First is that the trial court took cognisance of the offence on the strength of the sanction accorded by the Controller of Defence Accounts. Second is that the accused never raised any objection regarding sanction when his case was in the trial court. In such a situation the High Court ought not to have allowed the accused to raise the contention regarding any defect in the sanction for the first time in appeal,

according to the CBI.

An endeavour was made before us to show that the sanction ordered by the Controller of Defence Accounts is quite valid and is good enough for prosecuting the accused but we do not think it necessary to consider the merits of that aspect. In these appeals we are only deciding the question whether it was open to the court of appeal to reverse a conviction and sentence passed by the trial court on the mere premise that there was no valid sanction to prosecute. In this connection a reference to Section 465 of the Code of Criminal Procedure is appropriate. It reads thus :

"465. Finding or sentence when reversible by reason of error, omission or irregularity. - (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity; in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

(emphasis supplied) A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court. In Kalpnath Rai v. State through CBI, [1997] 8 SCC 732 this Court has observed in paragraph 29 thus :

"Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The sub- section only says that `the court shall have regard to the fact' that objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial."

In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant, because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure.

That apart, there is now another trammel on the appellate powers. It must be remembered that the need for a valid sanction for prosecution was incorporated in Section 6 of the Prevention of Corruption Act, 1947 (it will hereinafter be referred to as `the 1947 Act'). The present prosecution was launched under the said Act, but by the time the case reached final stage in the trial court, the 1947 Act was repealed by Prevention of Corruption Act, 1988 (hereinafter referred to as `the 1988 Act') which came into force on 9.9.1988. The prosecution and the trial thereafter continued by virtue of sub-section (2) of Section 30 of the 1988 Act. That section reads thus :

> "30. Repeal and saving. - The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.
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> (2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provision of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act."

Thus repeal of the 1947 Act was made without prejudice to the application of Section 6 of the General Clauses Act which Act reads thus :

> "6. Effect of repeal, - Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -
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> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
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> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
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> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or any

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) effect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed." So "unless a different intention appears" in the 1988 Act the repeal of the 1947 Act will not affect any penal liability incurred or any legal proceedings or remedy in respect of any right acquired under the 1947 Act. However, if a different intention can be discerned from the 1988 Act, such intention will have overriding effect. It is said in sub-section (2) of Section 30 of the 1988 Act that any action taken under or in pursuance of the repealed Act such action will be deemed to have been taken under the corresponding provisions of the new Act.

It is noticeable that no specific provision was incorporated in the 1947 Act regarding appeal and revision and hence the appeal and revision were entirely governed by the provisions of the Code of Criminal Procedure. However, under the 1988 Act there is a special provision regarding appeal and revision which is incorporated in Section 27. Section 27 is extracted below :

"27. Appeal and revision. - Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of session trying cases within the local limits of the High Court." Thus the powers of appeal and revision of the High Court conferred by the Code of Criminal Procedure shall be "subject to the provisions of the 1988 Act. It is worthwhile to notice that a trammel has been imposed on a court of appeal and revision under Section 19(3)(a) of the 1988 Act. It reads thus :

(only material portion is extracted) "Notwithstanding anything contained in the Code of Criminal Procedure 1973 :- no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of or any error, omission or irregularity in. the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

Explanation - for the purposes of this Section,

(a) error includes competency of the authority to grant sanction"It is a further inroad into the powers of the appellate court over and above the trammel contained in Section 465 of the Code which has been dealt with supra. Under Section 19(3) (a) no order of conviction and sentence can be reversed or altered by a court of appeal or revision even "on the ground of the absence of sanction" unless in the opinion of that court a failure of justice has been occasioned thereby. By adding the Explanation the

> said embargo is further widened to the effect that even if the sanction was granted by an authority who was not strictly competent to accord such sanction, then also the appellate as well as revisional courts are debarred from interfering with the conviction and sentence merely on that ground.

Thus the legal position to be followed, while dealing with the appeal filed against the conviction and sentence of any offence mentioned in 1947 Act, is that no such conviction and sentence shall be altered or reversed merely on the ground of absence of sanction, much less on the ground of want of competency of the authority who granted the sanction.

So from any point of view the High Court committed an error in setting aside the conviction and sentence passed on the accused, on the ground of want of a valid sanction to prosecute. Hence we quash the impugned judgment of the High Court and remit the matter to the High Court for disposal afresh of the appeal preferred by the accused before it, in accordance with law. Needless it is to say that the accused will continue to remain on bail till the disposal of the appeal for which purpose the bail bonds executed by him before the High Court shall stand revived.