

Supreme Court of India

Lakshmi Shankar Srivastava vs State (Delhi Administration) on 21 November, 1978

Equivalent citations: 1979 AIR 451, 1979 SCR (2) 348

Author: D Desai

Bench: Desai, D.A.

PETITIONER:

LAKSHMI SHANKAR SRIVASTAVA

Vs.

RESPONDENT:

STATE (DELHI ADMINISTRATION)

DATE OF JUDGMENT 21/11/1978

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

KAILASAM, P.S.

KOSHAL, A.D.

CITATION:

1979 AIR 451

1979 SCR (2) 348

1979 SCC (1) 229

ACT:

Appeal, abatement of-An appeal does not abate on the death of the accused when leave is granted to the near relative to continue the appeal Criminal Procedure Code 1973 (Act II of 1974), Section 394(2) r/w sec. 8(3) and 9 of the Criminal Law Amendment Act.

Sanction for prosecution Effect of the order issued by S.R.O. 631 by the president of India in exercise of the power conferred by sub rule (2) of rule 1, Clause (b) of sub rule (2) of rule 14 and sub rule (1) of rule 23 of the Central Civil Services (Classification,, Control and Appeal) Rules 1957.

HEADNOTE:

The appellant who was working as an investigator in the office of the Chief Controller of Imports and Exports was charged, found guilty and convicted and sentenced to suffer rigorous imprisonment for 18 months on each count for an offence under Sections 5(1) (d) and 5(2) of the Prevention OF Corruption Act, 1947 and section 161 I.P.C. and a fine of Rs. 200/- or in default to undergo further rigorous imprisonment under section 5(2) of the Act. His appeal to the High Court was dismissed and the conviction and sentence

were confirmed. Special leave was granted by the Supreme Court limited to the question. Of validity of sanction accord under section 6 of the Prevention of Corruption Act, 1947. The appellant died during the pendency of the appeal and his near relatives were granted permission to continue the appeal.

Dismissing the appeal, the Court

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HELD 1. The preliminary objection of the State as to the abatement of the appeal because of the death of the appellant taking into account preparedness to conclude that the sentence might be set aside must be negatived. [352D]

(a) As per the proviso to section 394(2) of the Criminal Procedure Code, 1973, where the appeal is against the conviction and sentence of imprisonment and the appellant dies during the pendency of the appeal, any of his near relatives may, within the time prescribed therein, apply to the appellate Court before which the appeal is pending for leave to continue the appeal and if the leave is granted the appeal shall not abate. [352A-B]

(b) The appellant, in the, instant case, has preferred the appeal against his conviction and sentence of imprisonment and also sentence of fine. After his death his near relatives as contemplated in the Explanation to sub section (2) of section 394 Crl. P.C., applied to continue the appeal and were granted leave to continue the appeal. Therefore, the near relations of the deceased can continue the appeal and even if the respondent State concedes that the sentence of fine be set aside yet the appeal would not abate if leave is granted to the near relation of the deceased to continue the appeal. [352C-D]

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2. 'The sanction accorded, for prosecution of the appellant under section 6 of the Prevention of Corruption Act, 1947 by the Joint Chief Controller of Imports and Exports is valid in law: [355H, 356A]

(a) The instant case is governed by Central Civil Services (Classification, Control & Appeal) Rules, 1965 and in view of S.R.O.. 631 issued by the President, in exercise of the power conferred by sub rule (2) of rule 11, clause (b) of sub rule (2) of rule 14, and sub rule (2) of rules 23 of the Central Civil Services (Classification, Control & Appeal) Rules, 1957, which order was saved by rule 34 of the 1965 Rules. [353C-D]

(b) Rule 12(1) and (2) of 1965 Rules is in pari materia with rule 14 of 1957 Rules. Rule 2 of 1965 Rules confers power on the President to impose any of the penalties specified in rule 11 on any Government servant. Sub rule (2) (b) provides that any person appointed to a Central Civil Post included in the General Central Service by the authority specified in this behalf by a general or special order of the President or where no such order has been issued, by the appointing authority specified in the

Schedule in this behalf, may impose any of the penalties specified in rule 11 which includes the penalty of removal from service. Therefore, the President has the power to issue any general or special order to confer power to impose penalties as specified in rule 11 on any authority other than the one specified in the Schedule in this behalf. If the order issued by the President. S.R.O.. 631 under corresponding rule 11 and the relevant rules bearing on the subject of 1957 Rules is not shown to be inconsistent with any of the Rules included in 1965 Rules, obviously such order would be saved under rule 34. There being no inconsistency as contemplated by Rule 34, indisputably the order issued by the President S.R.O. 631 along with the schedule would be saved. Once S.R.O. 631 is saved, the relevant entry in the schedule in respect of the origination of C.C.I.E. would be saved. Accordingly the entry in the order issued by the President would supplant the corresponding entry in 1965 Rules and would have to be substituted for the entries in the relevant item in the Schedule. The necessary consequence would be that in the case of the organization of The C.C.I.E. for all posts in Headquarters office, Lt. C.C.I.E. would be both the appointing and the disciplinary authority having the power to remove from service such persons belonging to Class III services. Now, the appellant was indisputably holding a post in Class III service in the Headquarters office of the organisation of C.C.I.E. He was at the relevant time holding the post of Investigator which is admittedly a Civil Post in Class III service in the office of C.C.I.E. Indisputably, therefore, Lt. C.C.I.E. would be both the appointing and disciplinary authority with power to remove him from service. Therefore, Lt. C.C.I.E. would be competent to accord sanction as envisaged by s. 6(1)(c) of the Act. [355B-H]

The fact that the administrative department in respect of the office of C.C.I.E. is the Ministry of Foreign Trade & Supply does not make any difference because C.C.I.E. is a separate office with its own establishment.[1354A]

R. J. Singh Ahluwalia v. State of Delhi, A.L.R. 1971 S.C. 1552; distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 124 of 1972 Appeal by Special Leave from the Judgment and order dated 24-11-1971 of the Delhi High Court in Criminal Appeal No.54 of 1971.C. P. Lal for the Appellant.

H. R. Khanna and M. N. Shroff for the Respondent. The Judgment of the Court was delivered by DESAI, J.-The; appellant in this appeal by special leave limited to the determination of the question: whether the sanction is valid in law or not, has been convicted for offences under section 5(2) read

with section S(1) (d) of the Prevention of Corruption Act, 1947 ('Act' for short), and section 161 of the Indian Penal Code, and was sentenced to suffer rigorous imprisonment for 18 months on each count and a fine of Rs. 2000/-, in default to suffer further rigorous imprisonment for a period of two months, for an offence under s. 5(2) of the Act. His appeal being Criminal Appeal No. 54 of 1971 was dismissed by the High Court of Delhi and the conviction and sentence were confirmed.

As the leave is limited to the question of the validity of sanction accorded under s. 6 of the Act, it is not necessary to set out in detail the prosecution case. Briefly stated, the prosecution case is that the appellant who was employed at the relevant time as Investigator in the office of the Chief Controller of Imports & Exports (C.C.I.E. for short), accepted from one P.T. Toprani an amount of Rs. 250/- by way of illegal gratification which was not his legal remuneration in presence of witnesses on 18th June 1969 at about 5.30 p.m. near Gujarati Samaj; Sabha, Delhi. D. S. P. Badri Sharma appeared as soon as the trap arranged by him materialised and recovered the amount of Rs. 2501/- from the appellant. After completing the investigation the appellant was charge-sheeted for the offences hereinabove mentioned.

Section 6 of the Act forbids the Court from taking cognizance, inter alia, of offences punishable under s. 161, IPC and under sub-s. (2) of s 5 of the Act except with the previous sanction of the authority therein set out. Necessary sanction was accorded by the Jt. C.C.I.E. On 26th November 1969. The relevant portion of the sanction reads as under:

"Now, therefore, I, S. P. Chablani, being the authority competent to remove the said Shri L. S. Srivastava, from office do hereby accord sanction under section 6(1) (c) of the prevention of Corruption Act, 1947 for the prosecution of the said Shri L. S. Srivastava, for the said offences under section 161, I.P.C. and 5(2) read with 5(1)(d) of Act II of 1947 and in any other offence punishable under the provisions of law, in respect of the facts aforesaid and for the taking of cognizance of the said offences by a court of competent jurisdiction".

Mr. H. R. Khanna, learned counsel who appeared for the respondent raised a preliminary objection. It was urged that the appellant died during the pendency of this appeal and, therefore, the appeal abates and cannot be proceeded with. Simultaneously it was urged that if the appeal were not to abate on the only ground that the appellant was also sentenced to pay a fine of Rs. 200/- and, therefore, it may be said that right to property of the legal representatives may be adversely affected and, therefore, they would be entitled to continue the appeal, the respondent State is prepared to concede that the sentence of fine may be set aside.

Section 394 of the Criminal Procedure Code which provides for abatement of appeals reads as under:

"394. (1) Every appeal under section 377 or section 378, shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except all appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal any of his near relatives may, within thirty days of the (death of the appellant, apply to the Appellate Court for leave to continue to the appeal; and if Leave is granted, the appeal shall not abate. Explanation-In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister".

The appeal by the appellant is not one under s. 377 or s. 378 or the Cr. P.C. and, therefore, sub-s. (1) of s. 394 will not be attracted. The trial for an offence under s. 161 IPC and s. 5(2) of the Act would be governed by the provisions of Criminal Law Amendment Act, 1952. It envisages setting up of Court of special Judge. Section 8(3) of the Criminal Law Amendment Act provides that the Court of Special Judge shall be deemed to be a Court of Sessions. Section 9 confers power upon the High Court to exercise all powers of appellate Court as if the Court of Special Judge were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

The present case would, therefore, be governed by sub- s. (2) of s.394, Cr.P.C. It becomes clear from the proviso to s. 394(2), Cr.P.C. that where the appeal is against the conviction and sentence of imprisonment and the appellant dies during the pendency of the appeal, any of his near relatives may, within the time prescribed therein, apply to the appellate court before which the appeal is pending for leave to continue the appeal and if the leave is granted the appeal shall not abate. The appellant has preferred the appeal against his conviction and sentence of imprisonment as also sentence of fine. After his death his near relations as contemplated in the Explanation to sub-s. (2) of s. 394, Cr. P.C. applied by Criminal Miscellaneous Petition No. 559 of 1978 to continue the appeal and this Court granted substitution of such near relations by its order dated 28th March 1978 and thereby granted leave to continue the appeal. Therefore, the near relations of the deceased can continue the appeal and even if the respondent State concedes that the sentence of fine be set aside yet the appeal would not abate because the appeal against conviction and sentence of imprisonment would not abate if leave is granted to the near relations of the deceased to continue the appeal. Such Leaving having been granted, the appeal would not abate. There is thus no merit in the preliminary objection and it must be negatived.

Section 6 of the Act which provides for necessity of previous sanction for prosecution for any of the offences under the Act reads as. under:

"6. (1) No court shall take cognizance of an offence punishable under section 161 (or section 164) or section 1165 of the Indian Penal Code, or under sub- section (2) or Sub section (3A) 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 State

Government, 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 his office save by or with the sanction of the Central Government, of the State Government.

(c) in the case of any other person, of the authority competent to remove him from his office. (2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed".

Mr. Lal for the appellant contended that as the appellant was an Investigator in the office of the C.C.I.E. which at best was a Department under the over all control of the Ministry of Foreign Trade and Supply. Government of India, the sanction to prosecute him could only be given by the Government of India. In the alternative it was contended that as the C.C.I.E. is head of the office, he alone could accord sanction for prosecution as contemplated by s. 6 and, therefore, the sanction accorded by Jt. C.C.I.E., an officer subordinate to C.C.I.E. was ab initio void and the Court could not have taken cognizance of the offence. Mr. Khanna for the respondent on the other hand contended that this case would be governed by Central Civil Services (Classification, Control and Appeal Rules, 1965 ('1965 Rules' for short), and in view of S.R.O.. 631 issued by the President in exercise of the powers conferred by sub-rule (2) of rule 11, clause (b) of sub-rule (2) of rule 14, and sub-rule (2) of rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 ('1957 Rules' for short), which order was saved by rule 34 of the 1965 Rules and, therefore, the Jt. C.C.I.E. was both the appointing and disciplinary authority including the authority competent to remove the appellant from service and was accordingly competent to accord sanction under s. 6(1)(c) of the Act. Rule 11(2) of 1957 Rules provides that all appointments to Central Civil Posts, classes II, III and IV, included in the General Central Service shall be made by the authorities specified in that behalf by a general or special order of the President, or, where no such order has been made, by the authorities specified in the Schedule appended to the Rules. Similarly, rule 14(1) provides that the President may impose any of the penalties including one of removal or dismissal from service as envisaged by rule 13 on any Government servant. Sub-rule (2) of rule 14 provides that without prejudice to the provisions of sub-rule (1), any of the penalties specified in rule 1 may be imposed under sub-clause (b) in respect of person appointed to a Central Civil post included in the General Central Services by the authority specified in this behalf by a general or special order of the President or where no such order has been made by the appointing authority or the authority specified in the Schedule in this behalf. The entry at p. 38 provides that the appointing and disciplinary authority in respect of posts in non-Secretariat offices other than posts in respect of which specific provision has been made by a general or special order of the President, the head of office would be both the appointing and the removing authority. Now, undoubtedly in respect of the office of the C.C.I.E., the C.C.I.E. would be the head of office. The office of the C.C.I.E. is a non- Secretariat office. May be, the administrative department in respect of this office would be the Ministry of Foreign Trade and Supply. But C.C.I.E.

is a separate office with its own establishment and undoubtedly head of office would be the C.C.I.E. The President in exercise of the power conferred by sub-rule (2) of rule 11 and clause (b) of sub-Rule (2) of rule 14 of the 1957 Rules has made a special order as contemplated by rule 11(2) and rule 14(2)(b) as under:

"S.R.O. 631-In exercise of the powers conferred by sub rule (2) of rule 11, clause (b) of sub-rule (2) of rule 14 and sub-rule (1) of rule 23 of the Central Civil Services Classification, Control and Appeal) Rules, 1957, The President hereby directs that- (1) in respect of the posts in the General Central Service, Class II specified in column 1 of Part I of the Schedule to this order, the authority specified in column 2 shall be the Appointing Authority and the authority specified in column 3 shall be the Disciplinary Authority in regard to the penalties specified in column 4, (2) in respect of the posts in the General Central Service, Class III and the General Central Service, Class II specified in column 1 of Parts II and III of the said Schedule, the authority specified in column 2 shall be the Appointing Authority ! and the authority specified in column 3 and 5 shall be the Disciplinary Authority and Appellate Authority respectively in regard to the penalties specified in column 4".

A comprehensive Schedule is annexed to this order. "The relevant entry is as under:

Description of Post Appointing Authority competent Appellate authority to impose penalties authority penalties which it may impose (with reference to item numbers in rule 13) Authority Penalties

1 2 3 4 5

----- Organisation of the Chief Controller of Imports and Exports All posts in-

Headquarters office Joint Chief Joint Chief All Chief Controller of Controller of Controller of Imports & Imports & Imports & Exports Exports Exports

The entries in the Schedule appended to 1957 Rules will be effective and operative subject of course to any general or special order made by the President in this behalf. It was, however, contended that by rule 34 of 1965 Rules, 1957 Rules were repealed and, therefore, the order issued by the President in exercise of the powers conferred by sub-rule (2) of rule 11 and various other rules bearing on the point would stand repealed and the order of the President would not be effective unless a similar order is issued by the President under the corresponding rule 12 of 1965 Rules. Rule 12(1) and (2) of 1965 Rules is in pari materia with rule 14 of 1957 Rules. Rule 12 of 1965 Rules confers power on the President to impose any of the penalties specified in rule 11 on any Government servant. Sub-rule

(2)(b) provides that any person appointed to a Central Civil Post included in the General Central Service by the authority specified in this behalf by a general or special order of the President or where no such order has been issued, by the appointing authority specified in the Schedule in this behalf, may impose any of the penalties specified in rule 11 which includes the penalty or removal from service. Therefore, the President has the power to issue any general or special order to confer power to impose penalties as specified in rule II on any authority other than the one specified in the Schedule in this behalf. Now, if the order issued by the President, S.R.O.. 631 under corresponding rule 11 and the relevant rules bearing on the subject of 1957 Rules is not shown to be inconsistent with any of the Rules included in 1965 Rules. obviously such order would be saved Tender rule

34. No inconsistency was shown to us as contemplated by rule

34. Therefore, indisputably the order issued by the President, S.R.O.. 631 along with the Schedule would be saved. Once S.R.O.. 631 is saved, the relevant entry hereinabove quoted in respect of the organisation of C.C.I.E. would be saved. Accordingly the entry in the order issued by the President would supplant the corresponding entry in 1965 Rules and would have to be substituted for the entries in the relevant item in the Schedule. The necessary consequence would be that in the case of the organisation of the C.C.I.E. for all posts in Headquarters office, Jt. C.C.I.E. would be both the appointing and the disciplinary authority having the power to remove from service such persons belonging to Class III services. Now, the appellant was indisputably holding a post in Class III service in the Headquarters office of the organisation of C.C.I.E. He was at the relevant time holding, the post of Investigator which was admittedly a Civil post in Class III service in the office of C.C.I.E. Indisputably, therefore, Jt. C.C.I.E. would be both the appointing and disciplinary authority with power to remove him from service. Therefore, Jt. C.C.I.E. would be competent to accord sanction as envisaged by s. 6(1)(c) of the Act. Sanction in this case having been granted by the Jt. C.C.I.E., it was valid. There is thus no substance in the contention of Mr. Lal.

Mr. Lal in this connection drew our attention to a decision in *R. J. Singh Ahluwalia v. The State of Delhi*(1) The appellant in that case was at the relevant time working as Assistant in Co-ordination III of D.G.T.D. at Udyog Bhavan, New Delhi. His contention was that sanction accorded by Shri K. Rajaram, Deputy Secretary to Government of India in the Ministry of Industrial Development and Company Affairs (Department of Industrial Development) was not valid and that he could only have been prosecuted under a sanction that may be accorded by the Home Ministry. In respect of this contention it was conceded on behalf of the State that in the absence of such sanction the prosecution must fail. The judgment proceeds on concession and not on any analysis or examination of the relevant provisions. Therefore it in no way helps the appellant in this case.

This being the only point that could be raised in this appeal by limited leave and such contention being without merit, the appeal fails. and is dismissed. As the appellant is dead there is no question of his surrendering to Bail.

S.R.

(1) A.I.R. 1971 S.C. 1552.

Appeal dismissed.

