Supreme Court of India
Habibulla Khan vs State Of Orissa & Anr on 2 February, 1995
Equivalent citations: 1995 AIR 1123, 1995 SCC (2) 437
Author: P Sawant
Bench: Sawant, P.B.

PETITIONER:
HABIBULLA KHAN

Vs.

RESPONDENT:
STATE OF ORISSA & ANR.

DATE OF JUDGMENT02/02/1995

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
RAY, G.N. (J)

CITATION:
1995 AIR 1123 1995 SCC (2) 437
JT 1995 (2) 1 1995 SCALE (1)419

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted.

2. A common question of law, viz., whether sanction is required for launching a criminal prosecution against the appellants, has been raised in these appeals.

3.The Orissa Special Courts Act,1990 [hereinafter referred to as the "Special Courts Act"] which came into force on 27th July, 1992 after receiving the assent of the President, provides for constitution of special courts for the speedy trial of certain classes of offences and for the confiscation of the property involved in such offences. Section 2 [d] of that Act defines "offence" to mean an offence of criminal misconduct within the meaning of clause

(e) of sub-section [1] of Section 13 of the Prevention of Corruption Act, 1988 [hereinafter referred to as the "Act"]. Section 5 [1] of the Special Courts Act, as amended by the Amendment of 1993 reads as

follows:

> "5 [1]. If the State Government is of the opinion that there is prima facie evidence of the commission of an offence alleged to have been combined by a person who held high public or political office in the State of Orissa, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion".

4. Rule 2 (1) [f] (i) of the Orissa Special Courts Rules [hereinafter referred to as the "Rules"] reads as follows:

> "2 (1} [f]. "Person holding high political office" includes-
>
> (i) members of the Council of Ministers and the Chief Minister".

5.Clause [e] of sub-section [1] of Section 13 of the Act defines "offence of criminal misconduct" as follows:

> "13. Criminal misconduct by a public servant.
>
> - [1] A public servant is said to commit the offence of criminal misconduct -
>
> x x x x x x
>
> (e) if he or any person on his behalf, is. in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
>
> Explanation. - For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

6. It is not disputed that all the appellants were Ministers in the Council of Ministers of the respondent- State of Orissa during the period in which they were alleged to have been found in possession of pecuniary resources or property disproportionate to their known sources of income. Subsequently, they ceased to be Ministers due to the change of Government and thereafter were elected as the Members of the Legislative Assembly of the State ["MLA" for short]. They continued to be such Members till the prosecutions were launched against them for the said criminal misconduct under Section 13 [1] (e) of the Act.

7. Shri Habibulla Khan, the appellant in the appeal arising out of SLP No. 1563 of 1993 filed an application before the Special Court on 25th July, 1991 for recalling the orders of the cognisance of the offence on the ground that at the time of taking the cognisance, he was an MLA and as such a

public servant within the meaning of Section 2 [c]

(viii) of the Act and, therefore, he could not be tried for the offence under Section 13 [1] (e) of the Act without the sanction of the Governor of the State under Section 19 of the Act who according to him was competent to remove an MLA under Article 192 of the Constitution. On 18th January, 1991, the Special Court dismissed the application holding that an MLA was not a public servant and further the Governor was not competent to remove an MLA and hence no sanction was required under the said provision. This order was assailed by the appellant before the High Court under Section 482 of the Code of Criminal Procedure on 22nd January, 1993. The learned Single Judge of the High Court referred the matter to Division Bench which dismissed the matter by its impugned judgment of 5th May, 1993 holding that an MLA is a public servant within the meaning of Section 2 [c] (viii) of the Act; but the power of "removal" mentioned in Section 19 of the Act partakes the character of punishment and the Governor has no power of removal of an WA under Article 192 of the Constitution by way of punishment. There was a distinction between the concept of "removal" as used in Section 19 of the Act and that of "disqualification" as used in Article 192 of the Constitution. Since the Governor was not the authority to remove an &MA, the sanction was not necessary under Section 19 of the Act.

8. The appellant, Nagarjuna Pradhan in appeal arising out of SLP No.2261 of 1994 raised similar plea on 17th August, 1993 but a long time after the prosecution was launched against him and 31 prosecution witnesses were examined.

9. Similarly, the appellant, Rama Chandra Ulaka in appeals arising out of to SLP Nos.2259-60 of 1994 raised the same plea belatedly in the two prosecutions launched against him after 16 and 18 pros- ecution witnesses respectively were examined in those cases.

10. The appellants are being prosecuted for the criminal misconduct which they are alleged to have committed during the period they were holding high political office within the meaning of Section 5 [1] of the Special Courts Act read with Rule 2 (1) [f] (1) of the Rules made under that Act. The Special Courts Act incorporates the definition of "criminal misconduct" given in section 13 [1] (e) of the Act. The procedure for prosecution to be followed, however, is as laid down under the Special Courts Act. All that the Special Courts Act requires for launching a criminal pros- ecution against a person holding high political office is that the State Government should make a declaration under Section 5 [1] of that Act that there is prima facie evidence of the commission of an offence by a person who held high public or political office in the State. Hence the provi- sions of Section 19 of the Act do not come into the picture in the present case. That being so, no sanction of the Governor or any other authority is necessary for launching the criminal prosecutions in question.

11. Assuming, however, that the procedure to be followed before launching criminal prosecution is that under the Act, the admitted facts are that the appellants are being prosecuted for the misconduct alleged to have been committed by them during their tenure as the Members of the Council of Ministers and not in their capacity as the MLAs. Hence the provisions of Section 19 of the Act are inapplicable to the facts of the present case as held in R.S. Nayak v. A.R. Antulay [(1984) 2 SCR 495].

12. The second question is whether the appellants could be prosecuted for the offence which they are alleged to have committed during their tenure as ministers after they ceased to be the ministers. This question has also been answered by two decisions of this Court. In S.A. Venkataraman v. The State [(1958) SCR 1040], it is held while construing similar provision of Section 6 of the predecessor of the present Act which provision was similar to the provisions of Section 19 of the present Act that no sanction was necessary for the prosecution of the appellant in that case, as he was not a public servant at the time of the taking of cognizance of the offence. The Court there observed as follows:

> "In construing the provisions of a statute it is essential for a Court, in the first instance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a Court is entitled to ascertain the intention of the legislature. Where a general power to take cognizance of an offence is vested in a Court, any prohibition to the exercise of that power, by any provision of law, must be confined to the terms of the prohibition. The words in S.6 (1) of the Act are clear enough and must be given effect to. The more important words 'in cl. (c) of s. 6 (1) are "of the authority competent to remove him from his office". A public servant who has ceased to be a public servant is not a person removable from any office by competent authority. The conclusion is inevitable that at the time a Court is asked to take cognizance not only must the offence have been committed by a public servant but the person accused must still be a public servant removable from his office by a competent authority before the provisions of s.6 can apply."

13.Similarly, a Constitution Bench in Veeraswami v. Union of India and others [(1991) 3 SCC 655], while construing the provisions of the same Section 6 of the Prevention of Corruption Act, 1947 held that no sanction under Section 6 of that Act was necessary for prosecution of the appellant in that case since he had retired from service on attaining the age of superannuation and was not a public servant on the date of filing the charge sheet.

14.However, it was contended that while the Governor had given sanction to prosecute the Chief Minister when he con- tinued to be an MLA in the case of R.S. Nayak v. A.R.Antulay [supra], the question whether the sanction was necessary to prosecute an MLA as a public servant did not arise. It, was, therefore, contended that although the offence alleged to have been committed was during the appellants' tenure as ministers, the appellants continued to be MLAs and, therefore, as public servants on the day of the launching of prosecution and hence sanction of the Governor under Article 192 of the Constitution was necessary. This question has also been answered in R.S. Nayak v. A.R. Antulay [supra]. Referring to this Court's decision in The State of (S.P.E. Hyderabad) v. Air Commodore Kailash Chand [(1980) 2 SCR 697], this Court held as follows:

> "..... We would however, like to make it abundantly clear that if the two decisions purport -to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the

> sanction of authority competent to remove him from such latter office would be necessary before taking cogaizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decisions in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Sec.6 Therefore, upon a true construction of Sec. 6, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him."

15. Assuming therefore, that the MLA is a public servant within the meaning of Section 2 (c) (viii) of the Act, in view of the aforesaid proposition of law laid down in R.S. Nayak v. A.R. Antulay [supra], this contention also does not merit any consideration.

16.In view of the above, the appeals are dismissed.