Supreme Court of India
Mohd. Iqbal, Ahmad vs State Of Andhra Pradesh on 18 January, 1979
Equivalent citations: 1979 AIR 677, 1979 SCR (2)1007
Author: S M Fazalali
Bench: Fazalali, Syed Murtaza

PETITIONER:
MOHD. IQBAL, AHMAD

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT18/01/1979

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KOSHAL, A.D.

CITATION:
1979 AIR 677 1979 SCR (2)1007
1979 SCC (4) 172
CITATOR INFO :
R 1984 SC 684 (19,23)
F 1991 SC 279 (6)

ACT:
Prevention of Corruption Act ,s. 5(2) read with s. 5(1)(d)-Case instituties without proper sanction-Effect of-Proof of valid sanction-How could be established-Sanction-Its importance in prosecutions-Facts coming into existence subsequently-If could be relevant-Presumption that sanctioning authority was satisfied that the accused received bribe-When could arise-If prosecution could be given a chance at appellate stage to prove that the sanctioning authority had applied its mind before giving the sanction.

HEADNOTE:
The appellant who was charged with an offence under s. 5(2) read with s.5(1)(d) of the Prevention of Corruption Act was acquitted by the Special Judge. But the High Court on appeal by the State, reversed the judgment of he Special Judge and convicted him.

In appeal to this Court it was contended on behalf of the appellant that there was no evidence to show on what materials the sanctioning authority applied its mind before

granting the sanction under s.6 of the Act. The entire proceedings are void ab initio.

Allowing the appeal.

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HELD: 1 (a). The prosecution of the appellant was without valid sanction and, therefore, cognizance taken by the Special Judge was without jurisdiction. [1011 G]

(b) Any case instituted without proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. It is incumbent on the prosecution to prove that a valid sanction had been granted by the sanctioning authority after it was satisfied that a case had been made out constituting the offence. This should be done in two ways: either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of sutisfaction or (ii) by adducing evidence aliunde showing the facts placed before the authority and the satisfaction arrived at by it. [1010 B-D]

In the present case no evidence, either primay or secondary, had been led to prove the contents of the note placed before the sanctioning authority nor were the witnesses examined in a position to state the contents of the note.

2(a). The grant of sanction is not an idle formality but a solemn and sacrosanct act which affords protection to government servanats against frivolous prosecutions and must therefore be strictly complied with before any prosecution could be launched against public servants. [1010G]

(b) There is no force in the argument of the State that the Court should presume the facts on the basis of evidence given by one of the witnesses and the order implementing the sanction mentioning those facts. What the Court

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has to see is whether or not the sanctioning authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same. Any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. [1010 F]

(c) There is equally no force in the State's contention that even if no facts were mentioned in the resolution it must be presumed that the sanctioning authority was satisfied that the accused had received a bribe. There is no question of a presumption being available .o the sactioning authority because at that stage the occasion for drawing a presumption never arises since there is no case in the Court. [1011 B]

(d) The presumption does not arise automatically but only on proof of certain circumstances that is to say, where it is proved by evidence in 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. The question of sanction arises before the proceedings come to the Court and the question of drawing a presumption does not arise at this stage. [1011 C]

(e) The prosecution cannot be given a chance to produce any material before the court at the appellate stage to satisfy that the sanctioninf authority had duly applied its mind before giving the sanction. The prosecution had been afforded a full and complete opportunity at the trial stage to produce whatever material it liked and it had chosen to examine two witnesses; but for reasons best known to it, it did not produce the note which formed the subject matter of resolution of the sanctioning authority. [1011 E]

(f) In a criminal case this Court would not ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution. The liberty of the subject was in jeopardy and it cannot be allowed to put in jeopardy again at the instance of the prosecution which failed to avail of the opportunity afforded to it. [1011 J]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 194 of 1973.

Appeal by Special Leave from the Judgment and Order dated 3-4-1973 of the Andhra Pradesh High Court in Criminal Appeal No. 703/71.

.A. N. Mulla and A. Subba Rao for the Appellant. G. Narayana Rao for the Respondent.

The Judgment of the Court was delivered by FAZAL ALL, J.-In this appeal by special leave the appellant has been convicted under section 161 I.P.C. and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act and sentenced to rigorous imprisonment for one year and a fine of Rs. 250/- on each count.

The appellant had been convicted by Special Judge but on appeal by the State to the High Court the High Court reversed the judgment of acquittal and convicted the appellant as indicated above. According to the prosecution the appellant is said to have struck a bargain for taking a bribe of Rs. 125/- which he received on the 15th of July, 1968 in the presence of P.Ws. 1 and 3. On receiving the signal the raiding party appeared on the scene and the hand of the accused was dipped in water containing phenopthelien solution which showed that he touched the notes. The defence of the appellant was that he never demanded any bribe and that the notes were thrust into his pocket. It is not necessary for us to dwell on the merits of the case because, in our opinion, the appeal must succeed on a short point of law, raised by Mr. A. N. Mulla, learned counsel for the appellant. It was argued that the sanction under section 6 of the Prevention of Corruption Act produced in this case does not reveal the facts constituting the offence and, therefore, there is no evidence to show on what materials the sanctioning authority applied its mind and granted the sanction. The Resolution of the Standing Committee granting the sanction is Exh. P-16 and is dated 31-3-1969, and runs as

follows:

> "As per note of the Commissioner, M.C.H. the Standing Committee unanimously accords sanction for prosecution of Sri Mohd. Iqbal Ahmed (in the scale of 110-180) Section Officer of Town Planning Section (Under suspensions) in a competent Court for the offence mentioned in the note of the Commissioner M.C.H., dated 18-1-1969 so as to enable the Commissioner to sign the prosecution order and send it to the Director, Anti-Corruption Bureau for taking further action at the earliest".

A perusal of the Resolution of the Sanctioning Authority clearly shows that no facts on the basis of which the prosecution was to be sanctioned against the appellant are mentioned in the sanction nor does this document contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied. This document merely mentions that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation which appears to have been placed before the Committee. It is obvious, therefore, that this note, if any, must have come into existence either on 31-3-1969 or at any date prior to this. The prosecution could have proved the facts constituting the offence which were placed before the Sanctioning Authority by producing the note at the trial. But no such thing has been done. What the prosecution did was merely to examine two witnesses P.Ws. 2 and 7. P.W. 2 has produced the order implementing the Resolution of the Sanction ing Authority which is Exhibit P- 10 and is dated 21st April, 1969, that is to say after the sanction was given. This document no doubt contains the facts constituting the offence but that does not solve the legal issues that arise in this case. It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio. In the instant case no evidence has been led either primary or secondary to prove as to what were the contents of the note mentioned in Exhibit P-16 which was placed before the Sanctioning Authority. The evidence of P.W. 2 or P.W. 7 is wholly irrelevant because they were not in a position to say as to what were the contents of the note which formed the subject matter of the sanction by the Standing Committee of the Corporation. The note referred to above was the only primary evidence for this purpose. Mr. Rao vehemently argued that although the Resolution, Exh. P-16 does not mention the facts, the Court should presume the facts on the basis of the evidence given by P.W. 2 and the order implementing sanction which mentions these facts. This argument is wholly untenable because what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

It was next contended by Mr. Rao that in view of the presumption which is to be drawn under section 4 of the Prevention of Corruption Act, even if, no facts are mentioned in the Resolution of the Sanctioning Authority it must be presumed that the Sanctioning Authority was satisfied that the prosecution against the appellant should be launched on the basis of the presumpion that the accused had received a bribe. With due respects to the learned counsel, this argument seems to be wholly mis-conceived. 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. Lastly, it was submitted by Mr. Rao that he should be given a chance to produce the materials before the Court to satisfy that the Sanctioning Authority had duly applied its mind to the facts constituting the offence. We are, however, unable to accede to this prayer which has been made at a very late stage. The prosecution had been afforded a full and complete opportunity at the trial stage to produce whatever material it liked and it had chosen to examine two witnesses but for reasons best known to it did not produce the note which formed the subject matter of the Resolution of the Sanctioning Authority-Exh. P-16. It is well settled that in a criminal case this Court or for that matter any court should not ordinarily direct fresh evidence to fill up a lacuna delibrately left by the prosecution. The liberty of the subject was put in jeopardy and it cannot be allowed to put in jeopardy again at the instance of the prosecution which failed to avail of the opportunity afforded to it.

For these reasons, therefore, we are satisfied that the present prosecution was launched without any valid sanction and, therefore, the cognizance taken by the Special Judge was completely without jurisdiction. The appeal is accordingly allowed. The judgment of the High Court is set aside and convictions and sentences passed on the appellant are quashed. The appellant will now be discharged from his bail bonds.

P.B.R. Appeal allowed.