

Prashant Pathak Vs. the State of Madhya Pradesh

Prashant Pathak Vs. the State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/1040847

Court : Madhya Pradesh

Decided On : Jan-28-2013

Appellant : Prashant Pathak

Respondent : The State of Madhya Pradesh

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Revision No.1629/2012 Prashant Pathak.Applicant Versus The State of Madhya Pradesh..Non-applicant For the applicant : Dr.(Smt.)Rashmi Pathak, Advocate For the non-applicant: Shri Aditya Adhikari, Advocate. ***** Present: HONOURABLE SHRI JUSTICE AJIT SINGH HONOURABLE SHRI JUSTICE U. C. MAHESHWARI *****

ORDER

(28.1.2013) The following order of the Court was delivered by : Ajit Singh, J.This revision is directed against the order dated 10.7.2012 passed in Special (Criminal) Case No.15/2005 by the Special Judge (Lokayukt), Jabalpur, whereby he has dismissed the applicants application for discharge.

2. G. P. Pathak was posted as Superintending Engineer in the Public Works Department. The applicant and co-accused Pankaj Pathak are his sons On 21.1.1995 respondent, Special Police Establishment Lokayukt, filed a charge sheet against G. P. Pathak under section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act 1988 (in short, the Act.). According to the respondent,

during the check period from 1.1.1973 to 12.11.1995 G. P. Pathak accumulated wealth disproportionate to his known source of income. The respondent thereafter on 8.7.2009 filed a supplementary charge sheet against the applicant and Pankaj Pathak for offences under section 109 of the Indian Penal Code read with sections 13(1)(e) and 13(2) of the Act and section 471 of the Indian Penal Code. The respondent has alleged that applicant and 2 Pankaj Pathak not only abetted G. P. Pathak to commit the offences but also submitted in different accounts fake vouchers and receipts of agricultural produce by using them as real.

3. The trial court framed charges under sections 13(1)(e) and 13(2) of the Act against G. P. Pathak and charges under section 109 of the Indian Penal Code read with sections 13(1)(e) and 13(2) of the Act and section 471 of the Indian Penal Code against the applicant and Pankaj Pathak.

4. During trial, after recording of the evidence of 27 prosecution witnesses, G. P. Pathak died on 16.9.2010. The trial court thereafter vide order dated 18.6.2012 has closed the prosecution case against him. It is at this stage the applicant and Pankaj Pathak filed an application for their discharge on the ground that since the main accused has died they, being the alleged abettor, cannot be prosecuted and convicted. The application was opposed by the respondent. The trial court disagreed with the applicant and by the impugned order dated 10.7.2012 dismissed his application for discharge.

5. It has been argued by the learned counsel for applicant that after the death of main accused, who was being prosecuted for offences under sections 13(1)(e) and 13(2) of the Act, the applicant, as an abettor of those offences, cannot be prosecuted and convicted. In support of his submission, the learned counsel has referred the decisions *Faguna Kanta Nath v. State of Assam* AIR 195.SC 673, *Jamuna Singh v. State of Bihar* AIR 196.SC 553, *Haradhan Chakrabarty v. Union of India* AIR 199.SC 121, and *State of Maharashtra v. Eknath Yeshwant Pagar* (1981) 2 SCC 299. The learned counsel has also placed reliance on the unreported decision dated 8.7.2011 of the Jharkhand High Court rendered in *Sant Kumar Gupta v. State of Jharkhand* (Criminal Revision NO.1111/2010). The learned counsel for respondent, on the other hand, has cited the decision of P.

559. and even placed reliance on the case of Jamuna Singh (supra) cited on behalf of the applicant.

6. Under the Indian Penal Code abetment of an offence is a separate substantive offence. The Supreme Court in the case of Faguna Kanta Nath (supra) has categorically held that under the Indian Law for an offence of abetment it is not necessary that the offence should have been committed and a man may be guilty as an abettor whether the offence is committed or not. The Supreme Court later again in the case of Jamuna Singh (supra) has reiterated that it cannot be held in law that the person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The law on the point is, thus, settled that a person can very well be convicted of abetting an offence even though a person alleged to have committed that offence has been acquitted. Applying the same analogy, a person can also be convicted of abetting an offence even in the event of the death of principal accused during the trial who allegedly committed that offence.

7. In the present case, as already stated above, the allegation of respondent is that the applicant alongwith his co-accused brother Pankaj Pathak not only abetted their father G. P. Pathak (main accused) in committing the offences under sections 13(1)(e) and 13(2) of the Act, they also deposited in different accounts fake receipts and vouchers regarding agricultural produce showing them as real and for this charge under section 471 of the Indian Penal Code has been framed against them. In P. Nallammal (supra) the Supreme Court has clearly held that a non-public servant can also be tried for abetment of an offence under section 13(1)(e) of the Act. For these reasons, we are of the considered view that the above referred cases cited on behalf of the applicant do not help him. In the fact situation of the case, the trial court has rightly dismissed the applicants application for his discharge of the offences under section 109 of the Indian Penal Code read with sections 13(1)(e) 4 and 13(2) of the Act and section 471 of the Indian Penal Code. It is reported that not the evidence of 39 prosecution witnesses have been recorded. The trial court is, therefore, expected to conclude the trial expeditiously.

8. The revision has no merit and is dismissed. (AJIT SINGH) (U. C. MAHESHWARI) JUDGE JUDGE ps

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com