

Ghulam Rabbani Vs. State of Assam

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Court : Guwahati

Decided On : Feb-23-2001

Reported in : 2001CriLJ2331

Judge : H.K. Sema, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197, 401 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 2, 21(12), 109, 120B, 420 and 477(A); [Companies Act, 1956](#) - Sections 617; Assam Warehousing Corporation Rules, 1983; Warehousing Corporation Act, 1962 - Sections 41; [Constitution of India](#) - Article 12

Appeal No. : Criminal Revision No. 577 of 1992

Appellant : Ghulam Rabbani

Respondent : State of Assam

Advocate for Def. : Mr. D.R. Saika, PP

Advocate for Pet/Ap. : Mr. C.R. De, Adv.

Judgement :

1. The revisionist, at the relevant time, was working as Branch Manager under the Assam State Warehousing Corporation (in short "the Corporation), at Raha. A police case being G.R. No. 761/85 u/s 120B/477(A)/420/109 of the Indian Penal Code has been registered against the revisionist proceeded by a complaint filed by

the Managing Director of the Corporation dated 21.03.85 stating, inter alia, that with the purpose of making wrongful gain to himself the revisionist along with other accused entered into criminal conspiracy by fraudulently manipulating the Corporation's records and documents in issuing warehouse receipts showing shortage of warehouse items worth of Rs.76,08,527 against the Corporation's Godown at Raha whereas the actual shortage of goods worth only Rs. 7,20,518. It is further stated that in order to cause wrongful loss to the Corporation and wrongful gain to himself he obtained Bank loans pleading the above warehouse receipt with the Bank during the period from January, 1979 to January, 1982 and thereby cheated the Assam State Warehousing Corporation to the sum of Rs. 69,44,509. After completion of investigation, the police filed charge sheet under Section 120B/477A/420 IPC on 16.12.88. The learned Chief Judicial Magistrate, Nagaon by its order dated 19.10.92 after hearing the prosecution and the defence framed charges under Section 420/477A/120B IPC against the petitioner and other accused.

2. This petition under Section 482 Cr. P.C, read with section 401 Cr. P.C, has been filed with a prayer to quash the First Information Report and the charge sheet submitted pursuant to the FIR and also the order dated 19.10.92 framing charges against the revisionist along with others.

3. Before I proceed further, I may at this stage point out that another revision petition being CrI. Revision No. 533/92 filed by other accused persons who were charge sheeted along with the revisionist has been dismissed by this Court on 28.02.94. It is unfortunate that the dispute of the present case, similarly situated with the Criminal Revision No. 533/92, which has been dismissed by this Court as stated above, has been allowed to remain in cold storage since from 1992 after obtaining an interim order dated 2.4.93 suspending further proceeding before the learned Chief Judicial Magistrate, Nagaon in GR Case No. 761 /85.

4. I have heard Mr. C.R. De, learned counsel for the revisionist as well as Mr. D.R. Saikia, learned P.P, for the State.

5. Although the revision petition has been preferred on various grounds, Mr. De confines his argument only to one point that the prosecution case suffers from

want of sanction, inasmuch as, the revisionist was functioning as public servant at the relevant time in the discharge of his duties. Mr. C.R. De has strenuously urged that the revisionist was functioning as Branch Manager of Assam State Warehousing Corporation, Raha at the relevant time and therefore he was a public servant as defined under Section 21(12)(b) of the Indian Penal Code and therefore sanction for prosecution from the appropriate Government under Section 197 of the Code of Criminal Procedure is mandatory before launching prosecution case against him.

6. Section 197 of the Code provides amongst others, a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognisance of such offence except with the previous sanction of the State Government or the Central Government, as the case may be. Section 197 Cr. P.C. do not define 'public servant', but in view of the definition in Sec. 2(y) the definition of public servant as defined under sub-section (12)(b) of Section 21 IPC would be attracted. In the present case, the revisionist claim immunity of public servant as defined under Section 21(12)(b) IPC. Section 21(12)(b) IPC reads as under -

"(12)(b) In the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as defined in Section 617 of the [Companies Act, 1956](#) (1 of 1956),"

7. In the facts and circumstances aforesaid, the sole question framed to be determined in this revision petition is, whether the revisionist who was a branch Manager of the Corporation at the relevant time was a public servant within meaning of Section 21(12)(b) of the Indian Penal Code for the purpose of sanction under Section 197 Cr. P.C. Clause (12)(b) of Section 21 IPC as quoted above, will clearly show that in order to claim immunity and protection under section 197 Cr. P.C. the revisionist must be in the service or pay of a Corporation established by or under Central, provincial or State Act. At the time of hearing of this petition this Court made repeated queries to the learned counsel for the revisionist as to whether the Assam State Warehousing Corporation was a creation of the State

Legislature, but the counsel for the revisionist was unable to produce any Act to show that the Corporation was created by a statute. Learned counsel only referred to the Notification dated 9.11.1983 framing the Rules, called Assam Warehousing Corporation Rules, 1983 by the Governor of Assam in exercise of powers conferred by Section 41 of the Warehousing Corporation Act, 1962. A perusal of the Rules referred to by the learned counsel for the revisionist refers only Board of Directors, Chairman and the post of Managing Director of the Corporation appointed by the Government and shall hold office at the pleasure of the Government, but there is not even a whisper of the post of Branch Manager of the Corporation. Rules itself is not creation of statutes. It is framed by the executive for the purpose of carrying out the statutes.

8. That apart, the issues involved in this revision petition are no more *res integra*. In *Mohd. Hadi Raja v. State of Bihar*, (1998) 5 SCC 91, it has been held by the Apex Court that the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers or Government Companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government.

9. In the aforesaid *Mohd. Hadi Raja* (*supra*) the Apex Court has further pointed out that the justification for the protection under Section 197 of the Code of Criminal Procedure lies in the public policy to ensure that official acts performed by a public servant do not lead to needless and vexatious prosecution of such public the servant and it is desirable that it should be left to the Government to determine the question of expediency in prosecuting a public servant.

10. In the instant case, the Assam Warehousing Corporation is not a statutory body. It was not created by a statute. It is a body corporate created by framing of rules in accordance with the provisions of statute. Therefore, the officers working and discharging their duties under the Assam State Warehousing Corporation are not public servant within the meaning of subsection (12) Clause (b) of Section 21 of the Indian Penal Code. In the result, there is no merit in this revision petition and the same is dismissed.

11. Before parting with the record, there is one disquieting feature which has been disturbing my mind. The case, which is otherwise of serious nature of public importance has been allowed to languish in cold storage since 1992 after obtaining the interim order dated 2.4.93 from this Court thereby suspending further proceedings of the case. The revisionist has contributed the major share to the cause of delay and he should not raise any grievance for the delay of disposing the case due to his own laches. Now, the Chief Judicial Magistrate, Nagaon is directed to proceed with the trial expeditiously as possible and subject to the availability of witnesses, the trial shall commence from day-to-day proceedings and shall complete the trial as far as, practicable within 6(six) months from the date of receipt of record.

12. The Registry is directed to transmit the case record forthwith.

13. I fix March 12, 2001 for appearance of the parties. The learned counsel for the revisionist shall inform the petitioner.

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