

Sudhendra Kumar Bhattacharjee Vs. State

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Court : Guwahati

Decided On : Mar-14-1986

Judge : B.L. Hansaria, J.

Appellant : Sudhendra Kumar Bhattacharjee

Respondent : State

Advocate for Pet/Ap. : Shri. Bhattacharjee

Judgement :

B.L. Hansaria, J.

1. A prosecution was launched against the appellant under Section 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947, for short the Act, and Section 409 of the Indian Penalcode. The gravamen of the charge against the appellant was that while employed as a public servant in the capacity of a V.P. Letter Clerk in Sub-Post Office at Digboi he had dishonestly or fraudulently inisappropriated or otherwise converted for his own use a total sum of Rs. 2,281.82 which had been entrusted to him during the period from 1-4-68 to 26-4-68. In the trial which commenced, the prosecution examined as many as 26 witnesses and on conclusion of the same, the learned Special Judge, Assam; found the appellant guilty under the aforesaid sections of law and awarded different terms of imprisonment as mentioned in para 17 of the impugned judgment.

2. The conviction has been ultimately assailed by Shri Bhattacharjee only on the ground that the sanction accorded in the present case for prosecuting the appellant under Section 5(2) read with Section 5(1)(c) of the Act was invalid inasmuch as it had not been granted by a person competent to remove the appellant from the office he was holding at the relevant time. A reference to the Posts and Telegraphs Manual, Volume-III, which has been produced by the learned Special Public Prosecutor shows that the proper authority to remove a person like the appellant is the Senior Superintendent. This is admitted by the learned Public Prosecutor in view of what has been mentioned at page 281 of the Manual. In the present case, the sanction was, however, accorded by PW. 15, Shri R. Sarma who was the Superintendent of Post Office. Though the Superintendent of Post offices has been recognised as the appointing authority of all ministerial staff under clerical grades, to which grade the appellant belongs, he is not the removing authority. Section 6 of the Act, however, requires previous sanction of the authority competent to remove the person concerned from the office. The sanction was, therefore, not valid in the eye of law. This vitiated the trial for alleged commission of offence under Section 5(2) read with Section 5(1)(c) of the Act. This is fairly conceded by the learned Special Public Prosecutor.

3. This, however, is not the end of the matter inasmuch as the appellant was also prosecuted and found guilty under Section 409 of the Indian Penal Code. It has, therefore, to be seen whether the infirmity in the sanction affected the trial and conviction of the appellant under Section 409 of the Indian Penal Code. The learned Special Public Prosecutor has submitted in this connection that the provisions of the Act have not repealed Section 409 of the Penal Code, and for prosecution under this section, no sanction is necessary. In support of this submission, the learned Counsel has referred to a Full Bench decision of the Allahabad High Court in *Om Prakash v. State* : AIR1955 All275 . My attention has also been invited to *Hori Ram v. Emperor* AIR 1939 FC 43 : 40 Cri LJ 468, which has laid down that no consent is necessary to prosecute a public servant under Section 409 of the Penal Code.

4. The above, however, does not answer the questions with which we are concerned. The first point for consideration in the case at hand is if an offence falls

under the provisions of the Act for which previous sanction is necessary, and also attracts the mischief of some of the provisions of the Penal Code for which no sanction is necessary, whether an accused can be put up for trial for the offence under the Penal Code only. The second and the related question is as to whether the conviction under the Penal Code would be sustainable, if the accused was tried only for the offence under the Code in the aforesaid situation.

5. According to Shri Bhattacharjee, learned Counsel for the appellant, the infirmity in the sanction rendered the entire trial as without jurisdiction in the present case, and as such the appellant could not have been found guilty even under Section 409. In support of this submission, learned Counsel has first referred to K.P. Sinha v. Aftabuddin AIR 1955 Pat 453 : 1955 Cri LJ 1382, where it has been held that where the offence disclosed in the complaint is in truth and substance an offence under Section 161 of the Penal Code or Section 5(1)(d) of the Act which may also come under Section 384 of the Penal Code, and the prosecution under the first two sections require sanction under Section 6 of the Act, while the offence under Section 384 does not require any such sanction, the law relating to sanction cannot be evaded by proceeding against the accused under Section 384. Cognizance of the case under Section 384 only in such a situation would be without jurisdiction as per this decision. (See paras 4 and 6). I have been then referred by Shri Bhattacharjee to A. Veeraiah v. State AIR 1957 Andhra Pradesh 663 : 1957 Cri LJ 1078, in which Subba Rao, C.J. (as his Lordship then was) stated that if the facts constitute an offence requiring either the sanction of a superior authority or the filing of a complaint by a Court, it cannot be evaded by adopting the device of omitting one of the ingredients of the offence and prosecuting him under some other section. This was illustrated by saying that if a public servant received an amount on behalf of the State and dishonestly misappropriated the same, the offence directly fell under Section 5(1)(c) of the Act and he could be prosecuted only with the previous sanction of the authority; and the prosecution could not, by adopting the device of ignoring the fact that the accused was a public servant, evade the requirement of previous sanction by filing a complaint under Section 408 of the Penal Code.

6. While respectfully agreeing with the aforesaid decision, I say that the salutary requirement of obtaining previous sanction as required by Section 6 of the Act cannot be set at naught by prosecuting a public servant for an offence under the Penal Code for which no sanction is necessary, though the offence attracts the mischief of the provision (s) of law mentioned in Section 6 of the Act. Such a course would really frustrate the purpose for which previous sanction has been deemed necessary by the Legislature.

7. The above being the legal position and the allegations in the present case admittedly falling within the mischief of Section 5(2) of the Act and Section 409 of the Penal Code, no prosecution could have been launched against the appellant only under Section 409 of the Penal Code. Now, if he could not have been put up for trial under Section 409, there can be no dispute that he could not have been found guilty under Section 409 at the conclusion of the trial. The conviction of the appellant under Section 409 cannot, therefore, be maintained, as the trial for this offence alone has to be regarded as without jurisdiction, and as such non est in the eye of law.

8. In the result, the conviction of the appellant under Section 5(2) read with Section 5(1)(c) of the Act, as well as under Section 409 of the Penal Code, is set aside, and the appeal is allowed by acquitting him. The bail bonds of the appellant stand cancelled.