

In Re: K. Jayarama Iyer

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Court : Andhra Pradesh

Decided On : Jul-31-1957

Reported in : 1958CriLJ1290

Judge : Kumarayya, J.

Appellant : In Re: K. Jayarama Iyer

Judgement :

ORDER

Kumarayya, J.

1. This is a petition to revise the order of the District Magistrate, Hyderabad City dated 22-12-1955. The short point for determination is, whether the learned Magistrate was right in holding that the sanction purporting to have been given by the Central Government on 19-11-1951 signed by the Secretary to the Government of India in Ministry of Communication, is a legal, valid and proper sanction sufficient in law to give jurisdiction to the Magistrate to try the accused-petitioner for the offence as alleged in the charge sheet filed on 13-10-1952.

2. To appreciate the argument advanced it is necessary to state the facts as mentioned in the challan which reads as follows:

1. The accused Major K. Jayaram Iyer, a public servant in the employ of the Central Government, just after Police Action, took over the administration of the

Post Offices at Hyderabad in the capacity of a Liaison Officer on 18-9-1948 and assumed charge as the Post-Master General of the Hyderabad State Postal Services on 27-10-1948 and worked as such till he relinquished his said office and proceeded on leave with effect from 1-4-1950.

2. Property as per list 'A' attached was purchased at the instance of the accused during the tenure of his office out of Government funds for Government purposes.

3. Accused had entrustment of and dominion over the set of Government property mentioned in List 'A' as a public servant and dishonestly misappropriated and converted the same to his private use, thus committing criminal breach of trust punishable under Section 409, Indian Penal Code (342 Hyderabad Penal Code) at Hyderabad-Deccan.

4. Property with respect to which criminal breach of trust was committed and was seized from the custody of the accused is listed in list 'D' annexed.

These paragraphs bring out the substance of the offence and the circumstances under which it is committed. The prosecution obtained sanction as required under Section 197, Criminal P. C, both from the Central Government and the State Government in identical terms. The language in which the first mentioned sanction which is material for our purpose is couched, is as below:

Whereas it has been made to appear that Sri K. Jayaram Iyer, has, between 1-4-1950 and 30-4-1950, committed criminal breach of trust in respect of various Government articles described in the schedule below over which he had dominion in his capacity of a public servant, by dishonestly misappropriating and converting them to his own use.

The Central Government hereby sanctions under Section 197, Criminal P. C, (Act V of 1898), the institution of criminal proceedings against the said Shri K. Jayaram Iyer for offences punishable under Section 342 of the Hyderabad Penal Code and or other appropriate provisions of law.

Then follows the schedule of property in respect of which offences are said to have been committed and which is in complete accord with schedule B attached to

the challan. The sanction thus accorded is signed by Sri A. V. Pai as Secretary to the Government of India, Ministry of Communications.

3. On the facts of the case, the trial Magistrate found that the sanction for prosecution was necessary and that the sanction obtained is valid & sufficient in law.

4. The challenge in this revision mainly lies to the last mentioned finding. It is argued that the sanction purporting to be given by the Central Government is neither in fact given by the said Government nor is it expressed in the form prescribed by law. Section 197, Criminal P. C, reads thus:

1) When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central 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 cognizance of such offence except with the previous sanction

a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

b) in the case of a person employed in connection with the affairs of a State, of the State Government.

2. ...

That if sanction was necessary for the prosecution of the accused, it must necessarily be of the Central Govt. admits of no doubt. The prosecution has in fact by way of abundant caution obtained the sanction of both the Govts. The accused belongs to the India Postal Service, Class I. The Government of India in the Ministry of Communications placed his services at the disposal of the Government of Hyderabad and the Government of Hyderabad then appointed him as the Postmaster General of Hyderabad. This post he held only upto 31-3-1950.

He then proceeded on leave and on the date of sanction he had already reverted to his former post. under Section 197, Criminal P. C, the permission of the Central Government was thus necessary to give jurisdiction to the Magistrate to try him for the offence alleged to have been committed as a public servant and this was obtained as stated above.

The language is clear that the Central Government has sanctioned the institution of proceedings against the accused for the offence with which he is charged. But the form in which it is expressed has been seriously commented upon by the learned Counsel. It is argued that the sanction should have been expressed in the name of the President after it is granted by the President himself.

The expression 'Central Government' is not defined in the Code. This term, according to Section 8(b) of the General Clauses Act (Act X of 1897) shall, in relation to anything done or to be done after the commencement of the Constitution, mean 'The President'. Even Article 367 of the Constitution provides that

unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 373, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

Thus, what is meant by the expression 'Central Government' is the President himself. The granting of sanction is, of course, purely an executive act, By virtue of Article 53 of the Constitution of India, the executive power of the Union is vested in the President and is exercised by him directly or through the officers subordinate to him. Article 73 lays down the extent of executive power of the Union. Though the Executive power is vested in the President,, the Council of Ministers collectively are made responsible to the House of People for the acts of the Government. Article 74 which relates to the Council of Ministers reads thus:

1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

2. The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

The expression 'aid and advise' in Article 74 may apparently suggest that it is left to the President to accept the advice or ignore the same and thus the decision on all matters will be of the President himself. But on a true interpretation of the expression in the context of the relevant provisions of the Constitution, it becomes abundantly clear that the function of Ministers or Council of Ministers is not merely giving advice; they can take decisions which must take effect.

If final authority of deciding matters is not intended to be conferred on the Council of Ministers, they could not, on principle, be held responsible to the House of the People. Evidently, Article 75(3) renders the Council of Ministers as mentioned above, collectively responsible to the House of the People and there is nothing in the Constitution which makes the President responsible for the acts of the Government.

It is significant that Article 78(a) refers to the decisions of the Council of Ministers and Article 77(3) to the allocation of the business of Government of India among ministers. Thus the Ministers or Council of Ministers do take binding decisions and the President acts according to the advice thus given. Being the executive head, of course, all executive action shall be only expressed in the name of the President. Article 77 reads thus:

1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

2. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

3. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the

said business.

5. There can be thus no doubt that the Ministers concerned can lawfully take decisions with regard to the business allocated and the validity of such decisions cannot be disputed on the ground that the decision is not taken by the President himself, Nevertheless as the executive power vests In the President, all executive action of the Government must be formally expressed to be taken in his name.

Article 77 (2) provides for the authentication of all orders and instruments made and executed in the name of the President. It is a formal manner of promulgation to the public of all executive action of the Government of India. Thus it will not be open to anybody to challenge the order if it is expressed in the manner provided and authenticated as in Article 77.

It is further significant that Cls, (1) and (2) of Article 77 refer only to the form of the order and has no reference to the validity thereof. In the instant case, Sri A. V. Pai has in his answer to question No. 4 stated that according to the rules framed under Article 77(3) the business pertaining to the Posts and Telegraphs Department is allotted to the charge of the Minister for Communications.

Under these rules of business and also constitutional practice, such business, namely, according sanction, is to be disposed of by or under the direction of the said Minister and it was under the authority of such Minister he signed and issued the order of sanction. In reply to other questions, he also stated that the order for the sanction of the prosecution was passed in the interests of justice after necessary consideration of the facts of the case and that the concerned papers relating to the offence of criminal breach of trust against the accused were actually placed before the Minister in charge of the Ministry of Communications and under his authority the sanction was given.

He says that he is authorised to sign the sanction for prosecution given by the Minister and also under notification S. R. O. No. 167 dated 19-6-1950, Gazette of India, Part 2, Section 3 dated 24-6-1950 at page 174 which embodies the rules made by the President under Article 77(3). It would appear that the trial Magistrate on the basis of this statement held that the sanction accorded is legal, valid and

proper.

But the learned Counsel for the petitioner contends that the form in which it is expressed being not in compliance with the provisions of Article 77(1), the authentication of the same even though it may be according to S. R. O. No. 167 cannot raise a presumption as to the validity of the sanction expressed and since it appears from the statement of Sri A. V. Pai that the papers were not placed before the President the sanction accorded is invalid.

It is no doubt true that the formal expression of sanction is not in strict compliance with the provisions of Article 77(1) but it cannot be said that the sanction otherwise valid becomes invalid on account of the same. In *Dattatreya Moreshwar v. State of Bombay* : 1952 CriLJ955 , the decision of the Government confirming the detention of Dattatreya Moreshwar was communicated to the District Magistrate by a confidential letter signed by one Mr. Kharkar for Secretary to the Government of Bombay, Home Department.

Mr. G. K. Kharkar who had thus signed the letter was at that time Assistant Secretary, and as such authorised to sign the same under Rule 12 of the rules of business made by the Government of Bombay under Article 166 of the Constitution. It was urged on behalf of the detenu that the executive action of the State Government ought to be expressed in the form mentioned in Article 166(1) i.e., in the name of the Government and since it has not been so done the order of confirmation being not in proper legal form at all is invalid and it cannot be regarded as an order under Section 11 (1) of the Preventive Detention Act.

The Attorney-General argued that an omission to make an authenticated and executive decision in the form mentioned in Article 166 does not make the decision itself illegal as there was a distinction between the taking of an executive decision and giving formal expression to the decision so taken. Their Lordships agreed with the Attorney General that non-compliance with the provisions of Article 166 (1) and (2) would lead to this result that the order in question would lose the protection which it would otherwise enjoy had the proper mode for expression and authentication been accepted.

It can then be challenged in any court of law that it was not made by the Government of the State and in case of such a challenge the onus would be upon the State authorities to show affirmatively that the order was in fact made by the Governor in accordance with the rules framed under Article 166 of the Constitution. The same view was taken in *State of Bombay v. Purushottam Jog Naik* : 1952 CriLJ1269 .

Thus it is plain that the provisions of Article 166 (1) and (2) are merely directory and not mandatory and that substantial compliance with the same may be sufficient. It is also manifest that both clauses (1) and (2) of Article 166 are inter-dependant and not independent of each other. If both these forms are- complied with, the order would be immune from challenge in a court of law on the ground that it has not been made by the Governor of the State. The same applies to Article 77 (1) and (2).

Thus no doubt, the sanction does not conform with the provisions of Article 77(1) inasmuch as it is not expressed in the name of the President, but having regard to the statement of Shri A. V. Pai, there can be no doubt that it was a sanction validly given in accordance with Article 77(3) read with rt. 53 and it is legal, valid and sufficient to give jurisdiction to the trial Magistrate. The plea therefore that the papers were not placed before the President himself is void of force, in view of the rules of business framed under Article 77(3).

6. It is next argued that the sanction obtained does not cover the offences committed during the period mentioned in F. I. R. or charge sheet and hence it is of no avail for the prosecution. It will be noticed that in column 2 of the F. I. R. the period mentioned is 17-9-1948 to 31-3-1950, but in column 7 where the details are mentioned, it has been expressly stated in relation to each article that the accused did not return the articles either at the time he handed over charge or thereafter before he left the place.

Neither the F. I. R. nor the charge-sheet does bear the date on which the accused left the place. Paragraph 1 of the charge-sheet merely mentions that the accused relinquished his office and proceeded on leave with effect from 1-4-1950. Thus if only the period during which he as the Postmaster General had entrustment or

dominion over the property is taken into consideration for the purpose of this case, there is no doubt that the period for which there is sanction is not covered by the same.

But as deposed to by the Investigating Officer, though the accused had handed over charge on or about 31-3-1950, he did not return the property on that date or before he left the place and misappropriated the same when he booked all these 'articles to Madras from 31-3-1950 to 6-4-1950. Thus the date of misappropriation seems to fall within the period covered by the sanction. In this way, evidently, the offences which took place between 1-4-1950 upto 6-4-1950 can be enquired into.

7. One further significant feature of the case is that though the prosecution has obtained sanction as referred to above, the learned Counsel for the prosecution has argued that this is a case where sanction itself was not necessary for the act of misappropriation cannot be said to be an official act and the accused in fact was not acting or purporting to act in the discharge of his official duty when he misappropriated the same.

In cases of misappropriation by a public servant, the question whether sanction is required will depend upon the facts of each case. As observed in *Ramayya Munipalli v. State of Bombay* : 1955 CriLJ857 , if the acts complained of are inseparably connected with the duties attached to his office, sanction would be necessary. But if there is no necessary connection between them the official status furnishing only the occasion or the opportunity for the acts, then no sanction will be required.

Had the wording of the charge sheet conformed with the deposition of the Investigating Officer that at the time the accused had misappropriated the property he had already relinquished the office and had not the dominion over the property as the public servant, perhaps sanction would not have been necessary. But the accusation in the charge-sheet against the petitioner is that he committed the offence as a public servant.

The trial Magistrate held that the sanction was necessary. However, as the sanction has been obtained and it is valid, I see no reason to allow this revision

petition. It is dismissed.

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