

State of Madhya Pradesh Vs. Alpanarayan and ors.

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Court : Chhattisgarh

Decided On : Sep-08-2008

Reported in : 2008(5)MPHT33(CG)

Judge : T.P. Sharma, J.

Appellant : State of Madhya Pradesh

Respondent : Alpanarayan and ors.

Disposition : Revision allowed

Judgement :

ORDER

T.P. Sharma, J.

1. This criminal revision is directed against the order dated 7-5-1993 passed by Special Judge, Raipur, in Special Criminal Case No. 33/1992 discharging the respondents from the offence punishable under Sections 7, 10 and 12 of the Prevention of Corruption Act, 1988 (for short 'the Act') read with Section 116/34 of the Indian Penal Code.

2. The order is challenged on the ground that the respondents are public servants and they have tried to give bribe to the Member of Legislative Assembly who was also a public servant and their act squarely falls within the meaning of an attempt

to give bribe to a public servant which is punishable under Sections 7, 10 and 12 of the Act read with Section 116/34 of the Indian Penal Code, but the Special Judge has committed an illegality by not framing the charge against them in spite of the sufficient material collected by the prosecution to this effect.

3. Brief facts of the case are that the respondents herein extracted a sum of Rs. 1000.00 from each of the beneficiaries who were sanctioned Rs. 11,500.00 each for construction of well under the Jeevan Dhara Scheme. On this, they lodged a written complaint dated 18-4-1991 to Shri P.R. Khunte the then Member of Legislative Assembly from Palari Constituency which was forwarded by him to concerned Sub Divisional Officer (Revenue) for inquiry. Meanwhile, accused Prakash Mishra who was posted as Block Development Officer, sent accused Alpanarayan Shukla and Ravindra Singh to Shri Khunte and they tried to give Rs. 5000.00 to him as illegal gratification for withdrawing the complaint made against them. Thereafter, Shri Khunte informed the Police Station, Palari regarding the act of the accused/respondents, Police came and seized Rs. 5000.00 from the table of Shri Khunte. Accused/respondent No. 1 Alpanarayan Shukla was apprehended by the police at the residence of Shri Khunte but accused/respondent No. 2 Ravindra Singh ran away on his motorcycle. Shri Khunte along with Head Constable and accused/respondent No. 1 Alpanarayan Shukla went to the police station and lodged the report. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure and after completion of the investigation charge-sheet was filed against all the accused/respondents in the Court of Special Judge, Raipur.

4. After hearing Counsel for the parties learned Special Judge, Raipur discharged the accused/respondents by the order impugned.

5. Heard Counsel for the appellant/State and Counsel for the respondents and perused the material available on record.

6. It is argued by the Counsel for the applicant/State that the material collected by the prosecution is sufficient for framing the charge against the accused/respondents for the offence punishable under Sections 7, 10 and 12 of the Act read with Section 116/34 of the Indian Penal Code but learned Special

Judge has ignored the fact that the accused/respondents are public servants within the meaning of Section 21 of the Indian Penal Code and they tried to give bribe to the Member of Legislative Assembly who was also a public servant. He relied upon the decision of Apex Court in the matter of P.V. Narsimha Rao v. State (CBI/SPE) : 1998 CriLJ2930 , in which the Constitution Bench of the Apex Court has held that Member of Parliament and Member of Legislative Assembly are public servants. It has been further held that bribe giver can be prosecuted under the provisions of the Act.

7. On the other hand the order impugned is supported by the Counsel for the respondents/accused and it is argued that in the light of the decision in the matter of R.S. Naik v. A.R. Antulay : 1984 CriLJ613 , which was the law prevailing at the time of commission of offence, i.e., in the year 1991, the Member of Legislative Assembly was not a public servant within the meaning of Section 21 of the Indian Penal Code. Accused/respondents have not given to tried to give any gratification to any person who was public servant at the relevant time. Reliance is placed on the decision of the Apex Court in the matter of Habibulla Khan v. State of Orissa and Anr. : 1995 CriLJ2071 , in which it has been held that taking of bribe by the Minister during his tenure as Minister but after ceasing from the post of Minister no sanction is required even if he continued as Member of Legislative Assembly and after completion of tenure if again elected then he ceased to be the Ministers due to the change of the Government. Further reliance is placed on the decision of the Apex Court in the matter of Prakash Singh Badal and Anr. v. State of Punjab and Ors. (2007) 1 SCC (Cri.) 193, in which after discussing the case of R.S. Naik (supra), it has been held that there is no need to obtain sanction for prosecution of a person, alleged to have committed offence(s) in the capacity of a public servant, where cognizance of such offence(s) is taken after he had already ceased to hold the office in question, though he may continue to be a public servant in any other capacity at the time of taking cognizance.

8. In the instant case after careful examination of the record it is revealed that the accused/respondents were public servants at the relevant time. They entered into a conspiracy to offer bribe to the Member of Legislative Assembly Shri Khunte and produced the amount of bribe before him. Shri Khunte informed the police, money

was seized, sanction for prosecution was obtained and after investigation the charge-sheet was filed against the accused/respondents in the Court of Special Judge, Raipur for the offence punishable under Sections 7, 10 and 12 of the Act read with Section 116/34 of the Indian Penal Code.

9. Learned Special Judge after holding that Member of Legislative Assembly does not hold the public office and is not a public servant and any offer of bribe to a person who is not a public servant is not punishable under Sections 7, 10 and 12 of the Act, discharged the accused/respondents. Learned Special Judge also held that sanction accorded against the accused/respondents is not relating to bribe which they have allegedly taken from the beneficiaries.

10. Previously, the law was not settled on the point whether the Member of Legislature Assembly is a public servant. But in the case of R.S. Naik (supra), the Apex Court has held that the Member of Legislative Assembly does not perform public duty but he discharges constitutional functions and thus he is not a public servant. Finally the controversy was settled in the case of P.V. Narsimha Rao (supra), in which it has been held that the Member of Parliament is a public servant for the purpose of Prevention of Corruption Act, 1988. Same duties and responsibilities are attached to the Member of Legislative Assembly; therefore, the Member of Parliament and the Member of Legislative Assembly stand on the same footing. Thus the Members of Legislative Assembly are also public servants for the purpose of Prevention of Corruption Act, 1988, in terms of the law laid down by the Apex Court in the matter of P.V. Narsimha Rao (supra).

11. According to the case of the prosecution accused/respondents offered bribe to the Member of Legislative Assembly who was a public servant at the time of incident and any bribe offered by a person to the public servant squarely falls within the meaning of abetment for the offence of demand and acceptance of illegal gratification punishable under Sections 7, 10 and 12 of the Act of 1988.

12. In the instant case, the prosecution has obtained sanction for prosecution against the accused/respondents who were public servants at the time of alleged commission of offence under Sections 7, 10 and 12 of the Act but not for prosecution regarding demanding and accepting bribe from the beneficiaries of

said scheme.

13. In view of the aforesaid discussion and in the light of the law declared by the Apex Court in the matter of P.V. Narsimha Rao (supra), the order impugned is not sustainable in law.

14. Consequently, the revision is allowed.

15. The order impugned is set aside. Accused/respondents are directed to appear before the Trial Court on 26-9-2008 for further proceedings.

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