

State Vs. Hiranand

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Court : Madhya Pradesh

Decided On : Apr-20-1957

Reported in : AIR1958MP2; 1958CriLJ41

Judge : Samvatsar, J.

Acts : [Cantonments Act, 1924](#) - Sections 22 and 42; [Prevention of Corruption Act, 1947](#) - Sections 6; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197; Cantonment Board Rules - Rule 7

Appeal No. : Criminal Revn. No. 71 of 1955

Appellant : State

Respondent : Hiranand

Advocate for Def. : D.P. Bhargava, Adv.

Advocate for Pet/Ap. : J.D. Patel, Dy. Govt. Adv.

Disposition : Revision allowed

Judgement :

ORDER

Samvatsar, J.

1. The opponent in this case is one Hiranand s/o Hotchand, an employee of the Cantonment Board at Mhow. During the year 1953-54 he was Office Superintendent in the office of the Board. He has a son by name Gurubux, who carried on business as an insurance agent.

2. Sometime in the year 1953 there were rumours that Hiranand coerced his subordinates in taking policies of the insurance company which was represented by his son and also received illegal gratifications. There were also anonymous letters received by the authorities complaining against Hiranand for mal-practices. Ramkishan, the Vice-President of the Cantonment Board and certain other persons requested the Executive Officer of the Cantonment Board by a letter dated 20-8-1953 to inquire into the conduct of Hiranand. No definite action was however taken by the Executive Officer on this letter.

3. It seems that complaints against Hiranand were also received by the Anti-Corruption Police, and after making some kind of inquiry, the police approached the Cantonment Board for sanction to prosecute Hiranand on certain specific charges. The Board by its resolution dated 15-7-1954 accorded sanction with respect to four specified cases. Copy of the sanction is produced in this case at Ex. P/14.

4. The police wanted to prosecute Hiranand for certain other acts also which were specified by them in their report, copy of which is produced at Ex. P/II-A in this case and requested the Board, vide Ex P/12, to consider the matter again and to accord sanction to prosecute Hiranand on all other charges referred in that report. The Board reconsidered the question in the meeting held on 24-8-1954 and accorded sanction to prosecute Hiranand for ten out of twelve charges levelled against him. The resolution of the Board is produced in this case at Ex P/13 and the sanction based thereon is produced at Ex. P/15. After obtaining this sanction the Anti-Corruption Branch of the Police Department launched a prosecution against Hiranand under Section 5 (2) of the Prevention of Corruption Act before the Special Judge at Indore.

5. On 9-5-1955 when the case was fixed for prosecution evidence, an application was submitted by Mr. Bhargava, learned Counsel for the accused, complaining

that the sanction to prosecute given by the Cantonment Board was invalid. The validity of the sanction was challenged on two grounds which are set forth below :

(1) The resolution passed by the Cantonment Board and a perusal of lines 4 and 5 of Paragraph 2 of the copy of the said resolution will show that even prima facie, the sanctioning authority was never of a clear mind whether any substantive offences had been committed regarding the matters mentioned therein.

(2) The sanction itself has been signed (as the copy in the Court shows) by only one member (Vice-President) who by himself is not the sanctioning authority.

6. The learned Counsel therefore prayed that the point, whether the sanction is valid one or not, may be decided as a preliminary point and such evidence as can throw light on it may be taken first.

7. The learned Special Judge heard the parties on this application and by his order dated 14-5-1955 directed the prosecution to produce evidence which may facilitate the disposal of the objections raised to the validity of the sanction.

8. The prosecution thereupon produced certain documents from the record of the Cantonment Board and examined one Ram Kishan, Vice President of the Cantonment Board. The prosecution also produced the report of the Anti-Corruption Officer and the resolution of the meeting of the Board in which the sanction was accorded. On considering this evidence, the learned Special Judge held as follows :

'This result is that so called sanction in this case is not worth its name. It is a hollow document steeped in prejudice and a product of legal ignorance. In according it the Board has consciously or unconsciously followed the dictates of the Anti-Corruption Authorities and has not applied its unbiased mind. It has all the formal appearance of a valid sanction but there is no substance behind it. Such sanction cannot confer jurisdiction on this Court to try the accused. As a result the accused is discharged due to lack of valid sanction.'

9. Aggrieved by the aforesaid order by which the accused was discharged, the State has filed this revision application.

10. The finding of the trial Court that the sanction accorded by the Cantonment Board to prosecute the accused is on the face of it a valid sanction, has not been disputed before me by the learned Advocate for the opponent Hiranand. Both the documents P/14 and P/15 contain facts with reference to which Hiranand is being prosecuted. The arguments at the Bar were mainly confined to two aspects only; (1) whether the sanctioning authority had applied unbiased mind to the facts placed before it before according the sanction; and (ii) whether the sanction is vitiated by the failure of the Cantonment Board to comply strictly with certain provisions of the Cantonments Act and the Rules framed thereunder.

11. Mr. Patel, learned Deputy Government Advocate emphatically denied that the Board had sanctioned prosecution of Hiranand under the dictates of the Police. He referred to the various documents produced by the prosecution and submitted that it was on considering the material contained in them that the Board gave the requisite sanction. He also denied that the Board or any member thereof was prejudiced against Hiranand or that the sanction was 'product of legal ignorance' as held by the lower Court. His further submission was that the alleged breach of the provisions of the Cantonments Act, to which reference has been made by the lower Court did not render the sanction void. The failure to comply strictly with these provisions was according to the learned Counsel, at the highest only an irregularity.

12. On these contentions, two points arise for consideration : (i) whether the sanctioning authority had applied its mind to the material facts before sanctioning the prosecution of the accused; and (ii) Whether the sanction is vitiated by reason of the failure of the Board to strictly comply with certain provisions of the Cantonment Board Act and the Rules framed thereunder. I shall deal with the second point first.

13. According to the lower Court, the Board acted illegally in respect of the following matters :

(1) The meeting of the Board dated 24-8-1954 was held in camera and that this was a violation of Section 42 of the Cantonments Act.

(2) The minutes of the meeting were recorded on loose papers and not in minute-book; and that this was contrary to the requirements of Rule No. 7 of the Cantonment Board Rules.

(3) The document Ex. P/15 which is the sanction accorded by the Board is not signed by the President, but is signed by the Vice-President without having been expressly authorized in writing to do so.

14. In my opinion, all these defects can at the best be held to be irregularities and in any event, they do not vitiate the decision arrived at in the meeting of the Board.

15. Ramkishan, the Vice-President of the Cantonment Board, has admitted that the meeting held on 24-8-1954 was held in camera. A meeting of the Cantonment Board is usually open to the Public, but the Act provides for holding it in camera if the President thinks it desirable to do so and records his reasons for doing so. All that can be said in this case is that the President had not recorded his reasons for holding a meeting in camera but this is mere irregularity and cannot vitiate the proceedings of that date. The same may be said as regards the alleged breach of Rule No. 7.

16. As regards the signature on the sanction, it was contended that the President alone should have signed it. I do not think this contention is well founded. Signing the sanction is not a statutory duty conferred on the President and the provisions of Section 22 have no application to this case. The resolution was passed by the meeting which was presided over by Ramkishan and the signature put by him cannot therefore be considered to be something unauthorized.

17. The result is that I do not agree with the view taken by the lower Court that the sanction is invalid because of the failure of the Board to comply with certain provisions of the Cantonments Act and the Rules framed thereunder.

18. The next question to be determined is, whether the Board had not applied its mind to the case before according the sanction. Before dealing with the evidence discussed by the learned Special Judge, I think it will be useful to note the authorities bearing on the requirement of a valid sanction.

19. It cannot be disputed that in view of the provisions of Section 6 of the Prevention of Corruption Act, the Special Judge could not take cognizance of the offence unless there was a valid sanction obtained from the Cantonment Board. A valid sanction is regarded as a condition precedent to a valid prosecution. The burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the prosecution was to be based. All these facts must appear on the face of the sanction or might be proved by extraneous evidence. See *Gokulchand Dwarkadas v. The King*, AIR 1948 PC 82 (A) and *Madan Mohan Singh v. State of Uttar Pradesh*, AIR 1954 SC 637 at P. 641 (B).

20. It is plain that the sanction must be co-related to the facts on which the prosecution is to be launched. The facts upon which the accused is to be prosecuted must appear on the face of the sanction and if they do not, it must be proved by the prosecution by examining evidence 'aliunde' that the necessary facts were placed before the sanctioning authority and that the sanction was given to the authority concerned on consideration of these facts.

21. Mr. Patel, learned Counsel for the petitioner, submitted the two sanctions Exts. P/14 and P/15 fully satisfy the test laid down by the Privy Council and were not at all defective. He further stated that by examining Ramkishan, the Vice-president of the Board, the prosecution had further proved that all the relevant facts and documents were before the Cantonment Board and the sanction was given by the Board after considering them. He also submitted that the sanction was an administrative action of the Board and that if on the material before it, the Board was satisfied and sanctioned the prosecution, it was not open to the Court to enquire into the sufficiency of the material or to examine the propriety of the sanction.

22. It is true, as observed by the Privy Council in *Gokulchand Dwarkadas (A)*, that the sanctioning authority has an absolute discretion to grant or to withhold its sanction and it is not concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. It can refuse sanction on

any ground which commends itself to it, for example that on political or economic grounds, it regards a prosecution as inexpedient. But it cannot be forgotten that the sanction is intended to safe-guard against the vexatious proceedings. It is meant for the protection of the public servants who in the strict and impartial discharge of their duties may offend persons and create enemies. The Court must therefore be satisfied that the sanctioning authority had before according the sanction, applied its mind to the facts of the case. As observed by the Calcutta High Court in *Indu Bhushan Chatterjee v. The State*, (S) AIR 1955 Cal 430 (C) :

'The provision of sanction is a most salutary safeguard. The sanctioning authority is placed somewhat in the position of a sentinel at the door of the criminal Courts in order that no irresponsible or malicious prosecution can pass the portals of the Court of Justice. It is therefore essential that persons charged 'with the responsible duty of granting sanction which is a duty of deciding whether or not the credit and reputation of another citizen should be put in peril by means of a criminal prosecution, should bring to the discharge of their duty a sense of responsibility and the industry required to examine the relevant material.'

23. The same view is expressed by Jagan-nadhadas J. in *Biswabhusan v. State*, AIR 1952 Orissa 289 (D), on which reliance is placed by Mr. Bhargava, learned Counsel for the opponent. At page 306 the learned Judge observed:

'But the safeguard is one for the judgment and responsibility of the authority concerned and is not open to the scrutiny of the Courts on its merits, except to the extent of showing that there is no deliberate determination or is patently mala fide or amounts to delegation'.

24. The learned Judge has summed up the position in the following words :

'To sum up, the requirement of law, as I understand it, is that co-relation between the sanction and the offence to be taken cognizance of, in respect of essential facts of the offence, has to be made out. It is not necessary that the particulars of the offence, have to be made out. It is not necessary that the particulars of the offence or the essentials of the evidence relating thereto should be set out in the sanction or should be proved to have been placed before the sanctioning

authority. It is sufficient that the sanction sets out the offence and the essential factual ingredients thereof in such manner as to indicate that taking cognizance of the charge which is before the Court is authorized'.

25. The sanction Ex. P/14 is signed by Col. Mehta the Chairman of the Board. This is with respect to four cases. Subsequently 'another sanction was given as per resolution of the Board dated 24-8-1954. It is produced at Ex. P/15 and is signed by Ramkishan, the Vice-president. Both the sanctions are duly proved.

26. It appears from the documents produced in this case that Mr. M.K. Tiwari, the Anti-Corruption Officer, submitted a report to the Cantonment Board regarding cases of illegal gratification received by Hiranand and requested it to give a sanction to prosecute him. The report was considered in the meeting of the Board dated 10th July, 1954 which was presided by Col. Mehta, Chairman of the Board. Copy of the resolution passed in that meeting is produced at Ex. D/5. It appears from D/5 that the Chairman explained the whole case from the beginning as dealt from the stage to stage and his contacts with the Anti Corruption Authorities. On a consideration of it, an ad hoc Committee consisting of five persons was appointed to go into the cases in detail and put up recommendations to the Board in due course. The Committee made its recommendations which were considered in the meeting of the Board dated 12th July, 1954. In that meeting it was resolved to accord sanction to prosecute Hiranand with respect to four cases. Eleven members voted in favour of the resolution whereas one member voted against it. The sanction given on the basis of this resolution is produced in this case at Ex. P/14.

27. It appears that after the sanction accorded, vide P/14, was received by the Anti Corruption Officer, he wrote to the Cantonment Board a letter on 30th July, 1954 requesting the Board to accord sanction to the prosecution of Hiranand with respect to the remaining cases as well. This letter of the Anti Corruption Officer along with the report Ex. P/11-A and the report of the ad hoc Committee were again considered by the Board in the meeting of 24th August, 1954 in which it was resolved to sanction the prosecution of Hiranand for all the cases excepting Cases Nos. 5 and 12 mentioned in the report P/11-A. The Board however definitely

refused to sanction prosecution with respect to Cases Nos. 5 and 12 as according to it not even a prima facie case was made out for prosecuting Hiranand for those cases. Copy of this resolution is P/13 and the sanction Ex, P/15 was issued on the authority of this resolution.

28. These documents disclose that the Cantonment Board had not acted on the report of the police alone but had obtained independent material by appointing a special committee to examine the matter. The proceedings of the meeting further show that in spite of the request of the police, it refused to sanction prosecution with respect to Cases Nos. 5 and 12.

29. P. W. Ramkishan has also stated in his evidence that the report of the special (ad hoc) Committee and the report of the Anti Corruption Officer 'were placed before the Board when it considered the question of giving sanction. He has also stated that the Board gave the requisite sanction after considering the material produced in the meeting. Exts. P/14 and P/15 ex facie support the statement.

30. From a perusal of the documents produced in this case and the statement of Ramkishan, it cannot be said that the Board consciously or unconsciously followed the dictates of the police and did not apply its mind to the case.

31. The learned Special Judge has placed reliance on the statement made by Ramkishan in his cross-examination which is to the effect that the meeting in which the resolution P/13 was passed, lasted for about 15-20 minutes; that in that meeting the report of the ad hoc Committee was read over and the resolution was passed on its basis; that on that day the police report Ex. P/II-A was not read and the papers relating to those cases were also neither read nor explained: that members other than members of the ad hoc Committee were in his opinion unaware of the report.

32. The question of sanctioning the prosecution of Hiranand with respect to the cases laid against him by the police was considered by the meeting of the Board at least twice before 24-8-1954 and the impression of Ramkishan that members other than members of the ad hoc Committee did not know about the police report is obviously mistaken. In any event it is plain from his statement that the report of

the ad hoc Committee was read and explained in that meeting and the sanction was given on considering its contents. It cannot therefore be held that the sanction was given by the Board without considering the facts of the case or it merely followed the dictates of the Anti Corruption Authorities.

33. The sanction has also been criticised as 'a hollow document steeped in prejudice and product of a legal ignorance.' The evidence on record is not sufficient to justify this criticism. P. w. Ramkishan has been subjected to a very lengthy cross-examination on questions of law and facts. Whatever else may be said against this witness, it was admitted by the learned Counsel for both the parties that he was a truthful witness. The witness has admitted in his cross-examination that he did not know under what law the accused was to be prosecuted and what was the punishment prescribed for the alleged offence. He has however maintained that the sanction was given with respect to acts, some of which constituted receipt of illegal gratification.

34. The witness is a layman and has confessed his ignorance about the technical aspects. But his statement reveals that he knew the main incidents of the case against the accused. In view of this, I am of opinion that the learned Judge was not justified in describing the sanction as the product of legal ignorance. It is not necessary that sanctions should contain particulars of the offence or essential evidence on which the accused is to be prosecuted. I also do not think that there is sufficient material to hold the sanction defective as being steeped with prejudice.

35. Ramkishan is alleged to be one of those persons who demanded an inquiry into the conduct of the accused and was one of the members of the ad hoc Committee appointed for the purpose of enquiring into the matter. There is however nothing in the cross-examination to show that he was really prejudiced against the accused or he wanted to harass him. The meeting of the Board in which the sanction of the Board was accorded was attended by other members also and there is nothing on record to show that any of these persons had carried any prejudices against the accused.

36. I am satisfied on going through the evidence of Ramkishan and the documents on record that the sanction is a valid sanction and could be the basis of a valid

prosecution of the accused,

37. Apart from Ex. P/15, which according to me is a valid sanction, the order of the learned Special Judge discharging the accused cannot be supported for another reason also. Prior to the sanction P/15, which was given by the Cantonment Board on 24-8-1953, there was another sanction given which is produced at Ex. P/14. The sanction P/14 is signed by the Chairman of the Board, Col. Mehta, and its validity has not been assailed before me in any manner. On the face of it the sanction contains the facts on which the prosecution is launched. Even if therefore, the learned Special Judge felt some difficulty in holding the sanction P/15 to be a valid sanction, he could still have continued the trial of the accused on the basis of the sanction Ex. P/14. The order of discharge passed by the learned Special Judge is liable to be reversed even on this ground.

38. I allow the revision application, set aside the order passed by the learned Special Judge and holding that both the sanctions P/14 and P/15 are valid sanctions, I remand the case to him for trial and disposal according to law.

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