

Yeshwant Kumar Mehta Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-25-2002

Reported in : 2002(4)MPHT377

Judge : S.L. Kochar, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 300; [Prevention of Corruption Act, 1988](#) - Sections 7, 13(1) and 13(2)

Appeal No. : Criminal Revision No. 588/2002

Appellant : Yeshwant Kumar Mehta

Respondent : State of M.P.

Advocate for Def. : Upadyaya, Dy. Govt. Adv.

Advocate for Pet/Ap. : H.S. Oberoi, Sr. Adv. and ;P. Prasad, Addv.

Disposition : Revision dismissed

Judgement :

ORDER

S.L. Kochar, J.

1. This revision is filed by the applicant against the order of framing of charge under Sections 13(1)(d) and 13(1)(2) of the Prevention of Corruption Act and

directing trial passed in Special Case No. 2/2002 by the learned Special Judge, Mandsaur on 12-8-2002 and 27-6-2002 respectively.

2. Brief facts required to be mentioned for disposal of this revision are that the non-applicant/State filed a charge-sheet against the applicant for commission of offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act. It was alleged against the applicant that he being a Junior Engineer as Public Servant in M.P. Electricity Board, Centre Afzalpur, accepted illegal gratification of Rs. 1,800/- for granting electric connection to the complainant. The applicant was tried by the First Addl. District & Sessions Judge, Mandsaur in Sessions Trial No. 1/2000.

3. The learned Trial Court vide its judgment dated 10-10-2000 acquitted the applicant on the ground that alongwith the charge-sheet, the legal sanction, as required by law to prosecute the applicant, was not filed. The learned Trial Court has held in para 20 of the judgment that the cognizance could have not been taken because, there was no legal, proper and valid sanction and on the basis of invalid sanction the applicant could not be convicted. Since the sanction was held improper, the prosecution after obtaining valid and proper sanction from the sanctioning authority, again filed the charge-sheet against the applicant. On the basis of this, by the impugned order, charges have been framed by the Court below.

4. I have heard Shri H.S. Oberoi, learned Counsel assisted by Shri P. Prasad for the applicant and Shri Mayank Upadhyaya, learned Deputy Govt. Advocate appearing for the State.

5. The contention of the learned Counsel for the applicant is that as per provision of Section 300 of the Cr.PC, the applicant, once tried and acquitted, cannot be tried again. Therefore, filing of the charge-sheet and framing of charge is wholly illegal and without jurisdiction. He relied on a judgment passed by Karnataka High Court in Subbe Gowda and Ors. v. I.S. Saldana [1996 (4) Crimes 228], and the judgment rendered by Punjab High Court in State v. Kuldeepsingh (AIR 1960 Punjab 149).

6. On the other hand, the submission of the learned Dy. Govt. Advocate, Shri Upadhyaya is that since the acquittal was not recorded by the Court of competent jurisdiction, therefore, the provisions under Section 300, Cr.PC will not come to rescue the applicant from the present prosecution which has been launched after taking valid sanction from the competent authority. In support of this, he placed reliance on a judgment of the Supreme Court passed in *Bajinathprasad Tripathi v. State of Bhopal* (AIR 1957 SC 494), *Nagraj v. State of Mysore* (AIR 1964 SC 269) and *N.R. Ghose v. State of West Bengal* (AIR 1960 SC 239).

7. Having heard learned Counsel for the parties and having perused the record, this Court is of the opinion that in the present case, the applicant was not acquitted by the Court of competent jurisdiction as per provision under Section 300(1) of the Code of Criminal Procedure, because in Special Case No. 1/2000 the judgment dated 10-10-2000 was passed by the First Addl. Sessions Judge, Mandsaur, the acquittal was recorded on the ground of illegal sanction. The learned Trial Court in para 20 has held that on the basis of invalid sanction, the Court could not take cognizance, and therefore, it had no power to convict the applicant. Therefore, the learned Trial Court acquitted the applicant giving positive finding that, that Court was not competent and having jurisdiction for trying the applicant.

8. The Supreme Court in the cases of *Bajinathprasad Tripathi*, *Nagraj* and *N.R. Ghose* (supra) has specifically held that the bar of Section 300 (In old Cr.PC equivalent Section 403) is no bar to subsequent trial. In the case of *Bajinathprasad Tripathi*, the Supreme Court held as under :--

'The whole basis of Section 403(1) is that the first trial should have been before a Court of competent to hear and determine the case and to record a verdict of conviction or acquittal, if the Court is not so competent, as where the required sanction under Section 6, Prevention of Corruption Act for the prosecution was not obtained, the whole trial is null and void and it cannot be said that there was any conviction or acquittal in force within the meaning of Section 403(1), Cr.PC such a trial does not bar a subsequent trial of the accused under Prevention of Corruption Act read with Section 161, IPC after obtaining the proper sanction.'

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9. Similar view has been taken in the abovementioned subsequent Supreme Court judgments.

10. In the judgment passed by the Punjab High Court as well as the Karnataka High Court, this legal question was not involved that whether the acquittal of the accused was recorded by a Court of competent jurisdiction or not. Therefore, the same has no relevance in the facts and circumstances of the present case and both these decisions are distinguishable.

11. Consequently, this revision fails and is hereby dismissed.

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