

Pradeep Kumar Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jun-21-2002

Reported in : 2002CriLJ3796

Judge : Deoki Nandan Prasad, J.

Acts : Prevention of Corruption Act - Sections 7B(2), 13(1) and 19; Code of Criminal Procedure (CrPC) , 1974 - Sections 482

Appeal No. : Cr. M.P. No. 286 of 2002

Appellant : Pradeep Kumar

Respondent : State of Jharkhand

Advocate for Def. : A.K. Kashyap, Adv.

Advocate for Pet/Ap. : Nilesh Kumar Agarwal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Deoki Nandan Prasad, J.

1. This application has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 19-7-2001, whereby and whereunder the

learned Special Judge, Vigilance took cognizance for the offence under Section 7-B(2) read with Section 13(1)(d) of the Prevention of Corruption Act in connection with Ranchi Sadar Vigilance PS Case No. 7 of 2001 (Special Case No. 11 of 2001).

2. The prosecution case in brief as stated that one Md. Taslim made an allegation against the petitioner to the effect that the petitioner being a Motor Vehicle Inspector as making illegal demand of Rs. 5000/- for giving report of the vehicle in his favour but later on he agreed to give the report only on receipt of Rs. 2000/-. Thereafter the informant made a complaint in Vigilance Department against the petitioner with regard to his illegal demand and accordingly a raiding party was organised and thereafter the petitioner was apprehended as well as currency of note was also recovered from the pocket of the petitioner. Accordingly, the case was registered.

3. After investigation, charge-sheet was submitted in the case and the Special Judge after perusing the case diary and other documents including the sanction took cognizance for the offence by order dated 19-7-2001. Hence, this application.

The learned counsel appearing on behalf of the petitioner mainly advanced his argument on the point of sanction and it is submitted that in the present case no proper sanction order has been issued by the authority concerned and the learned Court below took cognizance mechanically without appreciating the legal position of sanction order. It is further submitted that the sanction order has been issued by the sanctioning authority only on the basis of the request letter of the prosecution but the prosecution has never sent the entire materials and statement collected/recorded during the investigation to the sanctioning authority and the sanctioning authority without applying his mind granted sanction, which is not in accordance with law. It is also submitted that the petitioner is a Gazetted Officer and his appointing authority is the Hon'ble Governor of the State and so the sanction obtained from the Secretary Transport Department of Jharkhand is not proper and valid.

The learned counsel also relied upon a case reported in 1998 SCC (Cr) 1000 (State of Tamil Nadu v. M.M. Rajendran).

4. On the other hand, the learned Special P.P. contended before me that there is no illegality in the order impugned as the learned Court below has rightly took cognizance after finding prima facie case as well as sanction for prosecution was also made by the Secretary Transport Department, which is proper and legal. It is further submitted that the sanctioning authority after going through the record found the prima facie case being made out against the petitioner and after being satisfied for proceeding with the case against the petitioner under the aforementioned provisions of the Prevention of Corruption Act and, therefore, there is no illegality for interference. The learned counsel for the Vigilance also placed his reliance to the case of State of Kerala v. V. Padmanabhan Nair 1999 Cri LJ 3696 : AIR 1999 SC 2405 and submitted that the petitioner facing prosecution for an offence under the Prevention of Corruption Act has already ceased to be a public servant on the date cognizance was taken of the said offences. It is also argued that the sanction matter can be raised before the trial Court at the final hearing of the case and that will be considered by the Court below itself.

5. From going through the FIR, it is apparent that the petitioner had demanded a sum of Rs. 5,000/- earlier for giving report of the vehicle but later on he agreed to receive a sum of Rs. 2,000/- which was paid to him and that tainted money was recovered and seized from the pocket of the petitioner by the raiding party indicating and supporting the whole prosecution case as regards to the demand and also receiving of tainted money from one Md. Taslim.

6. It is also apparent from the sanction order that the Secretary, Transport Department issued sanction order for prosecution against the petitioner as required under Section 19(i)(b) of the Prevention of Corruption Act. The Secretary, Transport Department is the controlling and appointing authority as such Secretary of the said Department is the proper authority for issuing sanction for prosecution. It is true that a request letter being memo No. 48 dated 12-6-2001 was sent to the Secretary, Transport Department for according sanction for prosecution against the petitioner and the Secretary, Transport Department accorded sanction in pursuance thereof and also as per direction and it would be seen at the time of trial during evidence as what materials or documents were considered for the said

sanction.

7. The learned counsel appearing for the petitioner relied upon the Tamil Nadu's case (1998 SCC (Cri) 1000) (supra) which was decided in the final hearing of appeal when evidence was already collected during trial but in the instant case, the evidence has not been collected and so it is a matter to be considered at the time of trial and final hearing as to what material has been looked into or considered by the sanctioning authority. Thus, the facts of the instant case is quite distinguishable from the case cited by the learned counsel for the petitioner. Moreover, it has been clearly held in the case of *State of Kerala v. V. Padmanabhan Nair* 1999 Cri LJ 3696 : AIR 1999 SC 2405 as under :

The correct legal position therefore is that an accused person facing prosecution for offences under the P.C. Act cannot claim any immunity on the ground of want of sanction if he ceases to be a public servant on the date when the Court took cognizance of the said offences. So, the High Court was at any rate wrong in quashing the prosecution proceeding in so far as they related to offence under the P.C. Act.

8. In this case, sanction has been obtained for prosecution against the petitioner from the competent authority as well as there is a prima facie case of corruption made out in the instant case and in my view, the Court below has rightly took cognizance which does not require to be interfered with.

9. In the result, I do not find any merit in this application, which is accordingly dismissed.