

Dr. Manmath Kumar Behera Vs. State of Orissa

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Court : Orissa

Decided On : Feb-27-2002

Reported in : 2002(I)OLR394

Judge : L. Mohapatra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197; [Prevention of Corruption Act, 1988](#) - Sections 19

Appeal No. : Crl. Misc. Case No. 2793 of 1996

Appellant : Dr. Manmath Kumar Behera

Respondent : State of Orissa

Advocate for Def. : D.K. Mohapatra, Standing Counsel (Vig.)

Advocate for Pet/Ap. : A.S. Nandy and T. Sinha

Judgement :

L. Mohapatra, J.

1. In this application under Section 482, Cr.P.C. the order dated 13.1.95 passed by the learned C.J.M., Bhubaneswar in Vigilance G.R. Case No. 4 of 1992 has been challenged.

2. It appears from the said order that after Final Form was submitted the learned Magistrate took cognizance for the offences alleged to have committed under Sections 468/471/477-A/420 and 409 of the Penal Code. From the facts of the case, it appears that the petitioner while working in Pratapur Primary Health Centre from 1.7.85 to 25.10.90 had misappropriated huge amount showing false sterilisation operation during the financial year 1990-91. Upon enquiry it was found that during the said financial year 602 family planning operations had been undertaken by the petitioner and total amount of Rs. 1,08,338/- had been spent towards wages, special diet, motivation charges and fees of the operating surgeons. Out of 602 cases during enquiry four cases were picked up for examination and in all the four cases persons supposed to have undertaken operation were examined and they stated that they had never been operated nor paid any amount for the same. Referring to the sterilisation payment register in respect of four ladies it was found that the petitioner had misappropriated Rs. 688/-. On the basis of such allegations investigation was taken up and though the Investigating Agency found the allegations to be correct, did not file charge-sheet and submitted final report stating that there was no sanction for prosecution. From the final report it appears that though the allegations were found to be correct and offence under Section 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act read with Sections 468/471/477-A/420/409/34, IPC had been made out, the Final Report was submitted because there was no sanction for prosecution.

Looking into the final report the learned Magistrate in the impugned order observed that in absence of sanction cognizance under the Prevention of Corruption Act could not be taken, but applying judicial mind in respect of other offences under the Penal Code he has taken cognizance.

3. Shri Nandy, learned counsel for the petitioner submits that the acts complained of are in discharge of official duty and in absence of sanction the learned Magistrate could not have taken cognizance. Shri Mohapatra, learned Standing Counsel (Vigilance), on the other hand, submits that making false entries in the register or misappropriating any amount by making such false entries cannot be said to be in discharge of official duty and therefore no sanction was necessary.

4. So far as the offence under the Prevention of Corruption Act is concerned, Section 19 of the said Act prescribes that no Court shall take cognizance of an offence punishable under Section 13 alleged to have committed by a public servant except with previous sanction of the State or the Central Government, as the case may be. This provision does not relate to discharge of official duty. This provision, puts a bar on Court's jurisdiction in taking cognizance without order of sanction.

So far as the offences of the Penal Code are concerned, Section 197 of the Cr.P.C. prescribes that only when act complained of is in relation to discharge of official duty, sanction will be necessary. Learned Magistrate without directing the Vigilance department to obtain sanction has refused to take cognizance under the provisions of the Prevention of Corruption Act but took cognizance in respect of the offence under the Penal Code without insisting for sanction. In my view, the learned Magistrate instead of taking cognizance should have asked the department to obtain sanction for prosecution.

5. Since the investigation clearly indicates prima facie materials in respect of offences not only under the Prevention of Corruption Act but also under the Penal Code, there was no reason for the Vigilance Department to submit Final Report without obtaining sanction from the Department.

I, therefore, quash the order dated 13.1.1995 and direct that in the event the Vigilance Department produces sanction order within a reasonable time, the learned Magistrate may proceed to take cognizance in accordance with law. The Criminal Misc. Case is accordingly disposed of.