

Rakesh Kumar Jain Vs. State Through Cbi

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Court : Delhi

Decided On : Apr-17-1998

Reported in : 1998VAD(Delhi)1; 75(1998)DLT141

Judge : A.K. Srivastava, J.

Acts : [Official Secrets Act, 1923](#) - Sections 13(3) and (5); [General Clauses Act, 1897](#) - Sections 3 and 3(8); Constitution (Seventh Amendment) Act, 1956; [Constitution of India](#) - Article 239; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 468(2) and 470(3)

Appeal No. : Crl. R. No. 104/95

Appellant : Rakesh Kumar Jain

Respondent : State Through Cbi

Advocate for Def. : Mr. R.S. Jamuar, Adv.

Advocate for Pet/Ap. : Mr. P. Nagaratnam, Adv

Judgement :

A.K. Srivastava, J.

1. The Revisionist, Rakesh Kumar Jain is facing prosecution for contravention of the provisions of Sections 5(2) and 5(3) of [Official Secrets Act, 1923](#) in Criminal

Case No. 317/94, Union of India through Deputy Superintendent of Police , C.B.I., Special Police Establishment v. Rakesh Kumar Jain, Joint Managing Director of M/s. Jain Sudh Vanaspati Limited. He moved an application under Section 245(2) of the Code of Criminal Procedure (hereinafter called the code) before the trial court for his discharge from the case on two grounds, namely that the order of his prosecution had not been passed by a proper authority and that cognizance could not have been taken as the complaint was barred by limitation. By the impugned order dated 17.3.1995 passed by Shri A.K. Garg, Additional Chief Metropolitan Magistrate the aforesaid application has been dismissed. Hence this criminal revision.

2. Heard learned counsel for the revisionist and the respondent. It was urged on behalf of the respondent that he ought to have been discharged on the following two grounds, namely; (1) that the complaint against the revisionist was filed beyond the period of limitation prescribed in Section 468(2)(c) of the Code of Criminal Procedure and (2) that the order to file the complaint ought to have been given by Government of National Capital Territory of Delhi i.e. the Lt. Government of Delhi and, thereforee, the order actually given by the Central Government in the name of the President of India was invalid.

3. Thus it is to be seen that the pleas taken here for discharge of the revisionist from prosecution are the same which were before the trial court.

4. I have gone through the impugned order and I may say that it is a well written and well discussed order.

5. The complaint was filed by Deputy Superintendent of Police, CBI, Special Police Establishment after it received the order dated 21.4.1988 of Government of India, Ministry of Home Affairs. The order portion thereof reads as follows:

'Now, thereforee, the Central Government in pursuing of sub-section (3) of Section 13 of the [Official Secrets Act, 1923](#) (19 of 1923) hereby orders that the said Shri Rakesh Kumar Jain should be prosecuted in a court of competent jurisdiction for the offence punishable under the said Act and authorise Shri K.N. Tiwari, Deputy Superintendent of Police, Central Bureau of Investigation, New Delhi to lodge a

complaint against the said Shri Rakesh Kumar Jain for the acts aforesaid in the court of competent jurisdiction.'

6. Learned counsel for revisionist says that the proper authority as envisaged under sub-section (3) of Section 13 of the [Official Secrets Act, 1923](#) in this case was Lt. Governor and not the President of India. That sub-Section reads as follows:-

'13(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the appropriate Government or some officer empowered by the appropriate Government in this behalf.'

7. From the above provisions, it is clear that a Court can-not take cognizance of any offence under the official Secrets Act unless there is a complaint made by Order of, or under authority from, the appropriate Government or some officer empowered by the appropriate Government in this behalf. The question for consideration in this case is which shall have been the appropriate Government. The Central Government in the name of the President of India or the Lt. Governor of the Union Territory of Delhi

8. The term 'appropriate Government' has been defined in sub-section (5) of Section 13 of the Official Secrets Act. According to that definition, it shall, in relation to any offences under Section 5 not connected with a prohibited place or with a foreign power, be the State Government and in relation to any other offence, the Central Government. Since the offence under question is under Section 5 not connected with a prohibited place or with a foreign power the appropriate Government in this case shall be the State Government.

9. In the Official Secrets Act, the term 'State Government' has not been defined and, therefore, recourse will have to be taken to its definition in the [General Clauses Act, 1897](#). According to Clause (60) of Section 3 of the General Clauses Act, as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, 'State Government' shall mean, in a State, the Governor, and a Union Territory, the Central Government. Admittedly, Delhi is a Union Territory and, therefore, State Government in respect of the

Union Territory of Delhi shall be the Central Government.

10. The General Clauses Act, defines Central Government in its Section 3(8)(b), which says that Central Government shall, in relation to anything done or to be done after the commencement of the Constitution, mean the President and shall include, in relation to the administration of a Union Territory the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution. This definition is an inclusive definition and, therefore, the Central Government in respect of the Union Territory of Delhi shall be the President as well as the administrator thereof acting within the scope of the authority given to it under Article 239 of the Constitution. By no stretch of interpretation it can be said that the President of India ceases to be Central Government in respect of Union Territory of Delhi only because the Central Government includes the administrator. Moreover, the offence allegedly committed by the revisionist under the Official Secrets act related to certain leakages in a Ministry of the Central Government and, therefore, for the alleged offence the appropriate Government under Section 13(3) of the Official Secrets Act would be the President of India and not the Lt. Governor, who has nothing to do with the affair of a Ministry of the Central Government. Thus, in my view, the complaint was lodged by the order and authorisation of the competent authority as envisaged under Section 13(3) of the Official Secrets Act.

11. Regarding the plea of limitation, the contention of learned counsel for the respondents is that no doubt, the limitation prescribed under Section 468(2)(c) of the Code for the offence in question was three years and the complaint was lodged beyond three years from the date of knowledge of the offence i.e. 28.4.1985 but as per the provisions of Section 470(3) of the Code, the period of 76 days taken by the Central Government to authorise the Deputy Superintendent of Police, CBI, Special Police Establishment to lodge complaint against the revisionist would be excluded and thus if the complaint was filed on 19.5.1988, it cannot be said that it was barred by limitation.

12. The undisputed facts are that the alleged offence was committed on 24.4.1985. It came to the notice of the Government of India on 28.4.1985. The

Central Bureau of Investigation was, on 9.7.1986, asked to investigate the offence and the FIR was registered by CBI on 10.7.1986. After investigation of the offence, the CBI sought sanction from the Central Government on 5.2.1988 and the same was accorded on 21.4.1988.

13. Learned counsel for revisionist contended that the benefit of Section 470(3) of the Code is not available in this case but conceded that if the benefit is available then the complaint is within period of limitation.

14. Thus the only question for consideration is whether the benefit of Section 470(3) is available in the present case or not. That sub-section reads as follows:-

'(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.'

15. Learned counsel for the revisionist contended that the words ' unless upon complaint made by order or under authority from, the appropriate Government' in sub-Section (3) of Section 13 of the Official Secrets Act would not be covered by the words ' the previous consent or sanction of the Government or any other authority' in sub-Section (3) of Section 470 of the Code. His contention is that under Section 13(3) of the Official Secrets Act neither any previous consent of the Government nor any sanction of the Government is required and that under that sub-section the only requirement is that the Court shall not take cognizance of an offence under the said Act unless there is a complaint made by order of, or under authority from, the appropriate Government. On the other hand, Mr. R.S. Jamuar, learned counsel for CBI vehemently contended that the CBI could not have lodged the complaint in question unless the appropriate Government (being the Central Government) through President of India would have authorised the said Officer of the CBI to launch the prosecution and, therefore, the same amounted to taking of previous consent or sanction of the appropriate Government.

16. I have given my careful consideration to the respective contentions and, I am of the view, that the requirement in Section 13(3) of the Official Secrets Act amounts to taking of previous consent or sanction of the appropriate Government. One should not go by the actual words used. What should be seen is the intention of the legislature. The purpose of providing for previous consent, sanction or authorisation from the appropriate Government or other authority before launching prosecution is for the protection of the alleged offender so that irresponsible prosecution is not launched. However, in seeking such previous consent, sanction or authorisation some ministerial acts are involved which may take some time. That is why, in computing period of limitation under the Code, Section 470(3) of the Code provides for exclusion of the time required for obtaining such consent or sanction.

17. The provisions of Section 13(3) of the Official Secrets Act are also of the same nature and they act as a protection to the person against whom any prosecution is sought to be launched under that Act so that irresponsible prosecution is not launched. thereforee, no logical interpretation, on the basis of the scheme of the provisions in Section 13(3) of the said Act, the words 'upon complaint made by order of, or under authority from' therein would be covered under the words ' the previous consent or sanction of the Government' used in Section 470(3) of the Code and thus the time taken for obtaining such order or authorisation from appropriate Government shall be excluded. It is an accepted principle of interpretation that there should be strict interpretation of the penal laws as the penal laws are not of the kind of beneficial legislation where interpretation should be liberal.

18. In view of the above discussion, there is no force in this criminal revision and I do not consider it a fit case for interference.

19. Accordingly, the revision is dismissed. Crl. M.No. 2148/95 stands disposed of.