

Profulla Roy Vs. State

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Court : Delhi

Decided On : Oct-13-1972

Reported in : ILR1973Delhi532

Judge : V.D. Misra, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 8(2)

Appeal No. : Criminal Revision Appeal No. 405 of 1971

Appellant : Profulla Roy

Respondent : State

Advocate for Pet/Ap. : B.R. Saini and; R.L. Mehta, Advs

Judgement :

V.D. Misra, J.

(1) Whether a public servant can be prosecuted under Section 5(3) of the [Prevention of Corruption Act, 1947](#) (hereinafter referred to as the Act) without being prosecuted under Section 5(2) where the facts constitute offences punishable under sub-sections (2) and (3) of Section 5 of the Act ?'. is the question which has come up for decision in this revision.

(2) The relevant facts in brief are thus : Profulla Roy, petitioner No. 1, is a private person, whereas Saroj Mohan Bhattacharya, petitioner No. 2, is working as an Assistant in the Ministry of Foreign Trade. They are alleged to have entered into a criminal conspiracy to obtain for themselves and/or for other public servants, gratification from various firms and others as a motive or reward for inducing by corrupt or illegal means or by exercising personal influence on public servants to do or to forbear to do official acts or to render or attempt to render service or dis-service to such firms through the concerned public servants in the office of the Chief Controller of Imports & exports, New Delhi. They are alleged to have given false assurances to various persons that they would get a favorable decision from Shri S. B. Gulati and Shri B. D. Bhattacharya, Officers of the office of Chief Controller of Imports and Exports by exercising their personal influence and obtained various amounts from them. Case against them was registered on the complaint that the petitioners had obtained illegal pecuniary advantages from certain firms on the pretext of arranging disposal of their applications pending in the office of the Chief Controller of Imports and Exports.

(3) They were challaned under Sections 120B read with Sections 162/163, Indian Penal Code, and Section 5 (3) of the Act, as well as under Sections 162/163, Indian Penal Code, read with Section 5(3) of the Act. Necessary consent under sub-section (2) of Section 196-A of the Code of Criminal Procedure for the initiation of the Criminal proceedings against the petitioners for offences under Section 120B, Indian Penal Code, read with Sections 162/163, Indian Penal Code, and under Section 5(3) of the Act, was obtained.

(4) The Special Judge found a prima facie case and framed charges under Section 120B, read with Section 162/163 Indian Penal Code, and Section 5(3) of the Act & Section 162/163, Indian Penal Code, and Section 5(3) of the Act.

(5) Mr. B. R. Saini, learned counsel for the petitioners, contends that petitioner No. 2, who is a public servant, cannot be proceeded against since the facts disclose an offence punishable under Section 5(2) of the Act for which a sanction under Section 6 of the Act is required; and that by proceeding against him under Section 5(3) of the Act the prosecution is acting mala fide in order to circumvent the

provisions of Section 6 of the Act requiring sanction to proceed against the petitioner.

(6) Mr. R.L. Mehta, learned counsel for the State, contends that an offence under Section 5(3) of the Act is distinct from the offence under Section 5(2) of the Act and so it is not necessary to prosecute petitioner No. 2 under Section 5(2) also. He further contends that in any case no sanction is required when a public servant is charged with the offence of committing criminal conspiracy along with other offences. He further submits that at the time the offences were committed petitioner No. 2 was under suspension and so it was doubtful whether he was a public servant, and so was not prosecuted under section 5(2) of the Act.

(7) Mr. Saini concedes that petitioner No. 2 was a public servant at the time the alleged offences were committed. Indeed, it is on this basis that Mr. Saini has raised the contention of petitioner No. 2 being liable to be prosecuted under Section 5(2) of the Act. According to him, the facts disclose an offence either under clause (a) or under clause (d) of sub-section (1) of Section 5 of the Act.

(8) There is no doubt that the facts constitute an offence under sub-section (d) of Section 5 of the Act in view of the Supreme Court decision in *Dhaneshwar Narain Saxena v. The Delhi Administration.*, A.I.R. 1952S.C. 195(1) where the accused was Upper Division Clerk in the office of the Chief Commissioner of Delhi and had demanded money from the complainant for getting his gun license restored from the office of the Deputy Commissioner, Delhi, because of his influence, though he had nothing to do with the issuing of licenses for firearms. The facts thus constitute an offence punishable under Section 5(2) of the Act. Somewhat similar is the case of *Dalpat Singh and another v. State of Rajasthan*, Air 1969 S.C. 170. Just as the amplitude of clause (a) of Section 5(1) is wider and not narrower than the offence of bribery as defined in Section 161, Indian Penal Code (See the case of *Dhaneshwar Narain Saxena v. The Delhi Administration* (supra), similarly the amplitude of clause (d) of Section 5(1) of the Act is wider than Sections 162 or 163, Indian Penal Code. Whereas under Section 162, Indian Penal Code, the gratification is accepted or obtained 'as a motive or reward for inducing by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in

the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person', no such requirement is necessary under Section 5(1) (d) of the Act. Under Section 163, Indian Penal Code, the gratification is accepted for the same purpose but for the exercise of personal influence with public servant.

(9) Mr. Mehta's contention that wherever a public servant has been charged of the offence of criminal conspiracy along with other offences no sanction under Section 6 of the Act is required, is not well-founded and cannot be accepted. If the offences with which a public servant is charged are those which require sanction under Section 6 of the Act, he cannot be proceeded against without sanction irrespective of the fact that he is charged of the offence of criminal conspiracy also. Mr. Mehta cites *Ronald Wood Mathams and others v. State of West Bengal*, A.I.R. 1954 S.C. 455. In this case the question which arose for the determination of the Supreme Court was : whether any sanction under Section 197, Criminal Procedure Code, was required for instituting proceedings against a public servant on charges of conspiracy and of bribery. It was observed that no sanction under Section 197, Criminal Procedure Code, was necessary since that: section relates to offences alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duties, and that while accepting bribes a public servant cannot be said to be acting in the discharge of his official duties. This has no relevance to the instant case inasmuch as Section 6 of the Act is materially different and provides 'No court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code, or under sub-section (2) of sub-section (3A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction.....'. This section shows that whenever a public servant commits the offences mentioned in this section irrespective of the fact whether they are in the discharge of his official duties or not, the previous sanction is necessary for prosecution.

(10) It is true that Section 26 of the General Clauses Act provides that 'where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either .or any of those enactments.....', but it does not lay down that a prosecution can be had

without a sanction where the law requires such sanction. The decisions of the Supreme Court in *Om Prakash v. State of U.P.*, : 1957 CriLJ575 , and *Chandrika Suo v. State of Bihar*. Air 1967 S.C. 170(5), cannot be of any help since they lay down that where facts constitute two offences out of which one is graver for which no sanction is required, whereas sanction is required for the lesser offence, then a person can be prosecuted for a graver offence without sanction and without being prosecuted for the lesser offence.

(11) The Supreme Court in *Durgacharan Naik and others v. State of Orissa*, : 1966 CriLJ1491 , while discussing about the bar created by Section 195, Criminal Procedure Code, for the prosecution of a person of offences mentioned therein observed as under : -

'We have expressed the view that S. 195, Criminal Procedure Code . does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of S. 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code ., though in truth and substance the offence falls in the category of sections mentioned in S. 195, Criminal Procedure Code . Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of S. 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.'

(12) The question now arises is whether the prosecution in the instant case has tried to circumvent the provisions of Section 6 by not prosecuting petitioner No. 2 under Section 5(2) of the Act. It may be noted that the punishment under sub-sections (2) and (3) of Section 5 of the Act is the same. It is not disputed that the offences under Sections 162 and 163 of the Indian Penal Code (can be committed by a public servant as well as by a private person. Thus, offence under Section

5(3) of the Act can be committed both by a public servant as well as by private person. The provisions of Section,6 which have been reproduced above, show that previous sanction is necessary for prosecution of a public servant committing the offences mentioned in the section. It does not mention any of the offences under section 5(3) of the Act. The legislature knew that these offences could be committed by a public servant also and by not providing for the same in section 6 the intention of the legislature was that a public servant committing offences under section 5(3) of the Act can be prosecuted without previous sanction. As I have already discussed that the ambit of Sections 162 and 163 of the Indian Penal Code is not the same as of section 5(1)(d) but is narrower, it cannot be said that the prosecution by not proceeding against petitioner No.2 under Section 5(2) has tried to circumvent the provision of Section 6 of the Act. It was open to the prosecution to proceed against petitioner No. 2 under Section 5(2) of the Act also if they so desired. But their failure to do so cannot affect the prosecution under Section 5(3) of the Act.

(13) The petition fails and is dismissed.

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