Romesh Sharma Vs. the State

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Court : Delhi

Decided On : Oct-30-2001

Reported in : 95(2002)DLT267; 2002(61)DRJ553

Judge : S.K. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) , 1908 - Sections 397, 401 and 465; Arms Act, 1959 - Sections 3, 25 and 39; Prevention of Corruption Act - Sections 6

Appeal No. : Crl. R. No. 51/99

Appellant : Romesh Sharma

Respondent : The State

Advocate for Def. : Richa Kapur, Adv.

Advocate for Pet/Ap. : S.K. Sharma and; Jaswinder, Advs

Disposition : Petition dismissed

Judgement :

S.K.Agarwal, J.

1. This revision petition under Section 397 read with Section 401 Cr.P.C. is directed against the order dated 30th January, 1999 framing charge against the petitioner in the case FIR No. 803/98 under Section 25 Arms Act, 1959 P.S.Hauz

Khas and rejecting his application for discharge.

2. Briefly the allegations are: that on 20th October, 1998 police officials searched the premises C-30, Mayfair Gardens, New Delhi and found fourteen live cartridges of 32 bore revolver in unlawful possession of the petitioner. Case was registered and after investigations charge-sheet was filed on 18th December, 1998, without any sanction or ballistic expert report. Accused/petitioner was produced in custody before the duty magistrate and was supplied documents. Thereafter, supplementary charge-sheet was filed on 7th January, 1999 after ballistic expert report and sanction for prosecution was obtained under Section 39 of the Arms Act. Cognizance was taken on the basis of the supplementary charge-sheet, documents etc. was supplied to him. The petitioner sought discharge and dropping of the proceedings against him on the ground that on the date of filing of the first charge-sheet there was no sanction by the competent authority (DCP-Licencing) for prosecution; that only conditional sanction was accorded on 23rd December, 1998 and complete sanction was granted only on 4th January, 1999 and that cognizance of an offence can be taken only once; which was taken on the filing of the first charge-sheet when the documents were supplied. The court of Sh. J.P. Narain by the impugned order dated 30th January, 1999 rejected the contention and framed charge against the petitioner. This order is under challenge.

3. I have heard the learned counsel for the petitioner and learned APP for the State. The question which arises for consideration is: Whether valid cognizance could be taken on the basis of supplementary challan filed on 7th January, 1999 subsequent to the grant of sanction on 4th January, 1999? The answer is in the affirmative.

4. Learned counsel for the petitioner argued that the cognizance can be taken only once, was taken on 18th December, 1998 and since there was no sanction under Section 39 of Arms Act on that date, thereforee, the petitioner is entitled to be discharged. In support of his submission, reliance was placed on the decision of this court in Om Prakash v. State 1980 R L R 649. Learned APP for the State argued that the prosecution could be instituted, only after sanction was granted. Filing of the charge-sheet without sanction was meaningless and no cognizance

on the same could be taken. Referring to Section 465 Cr.P.C. it was argued that any error, omission or irregularity in the grant of sanction unless it occasions failure of justice cannot be fatal to the prosecution case. In order to appreciate the rival contentions, it is necessary to refer Section 39 of the Arms Act. It reads as under:-

'No prosecution shall be instituted against any person in respect of any offence Under Section 3 without the previous sanction of the Distt. Magistrate'.

5. Section 39 prohibits 'institution' of the prosecution itself without a valid sanction. There is no dispute that possession of live cartridges without license is an offence defined under Section 3 of the Arms Act. The expression 'institution' is not defined in the Act. It would mean to set-up, to originate, to start, to introduce. The meaning of the word 'institution' would depend upon the context in which it is used. Since the institution itself was prohibited. The institution of the charge-sheet on 18th December, 1998 within Section 39 was not permissible. Thus, no cognizance on such a charge-sheet could be taken. On 7th January, 1999 the matter was adjourned to 12th January, 1999 on which date cognizance was taken and detailed order was passed.

6. It has been held by several authoritative pronouncement of Apex Court that taking of cognizance is not mechanical process. Law requires there must be some application of judicial mind in order to come to prima facie findings that the offence was committed. It appears that on 18.12.1998 there was no application of mind by the Magistrate and cognizance was not taken.

7. However, assuming in favor of the petitioner that on the first charge-sheet dated 18th December, 1998 cognizance of the offence was taken when there was no valid sanction under Section 39 of the Arms Act, the prosecution on the basis of such a charge-sheet would be a nullity. The court would not be competent to hear and determine the prosecution the institution of which is prohibited by law in the absence of the proper sanction. In such a case, the court has only jurisdiction to decide whether it can exercise jurisdiction, and for that purpose to determine whether there was any valid sanction or not; but as soon as it decides there was no valid sanction, the court becomes incompetent to proceed with the matter and

has to discharge or acquit the accused. The acquittal or discharge in such a case would be without jurisdiction and would not bar second trial of the same accused on the same facts. In this regard, it would be useful to refer to the following authoritative pronouncements on the subject:

8. (1) The Yusofalli Mulla v. The King prosecution instituted without valid sanction was held to be nullity but fresh institution after valid sanction was held permissible. It was held:

'(16) The next contention was that the failure to obtain a sanction at the most prevented the valid institution of a prosecution, but did not affect the competency of the Court to hear and determine a prosecution which in fact was brought before it. This suggested distinction between the validity of the prosecution and the competence of the Court was pressed strenuously by Mr. Page, but seems to rest on no foundation. A Court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law and S. 14 prohibits the institution of a prosecution in the absence of a proper sanction. The learned Magistrate was not doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decide that no valid sanction had been given, the Court became incompetent no proceed with the matter. Their Lordship agree with the view expressed by the Federal Court in Agarwalla's case: that a prosecution launched without a valid sanction is a nullity

(emphasis supplied)

It was further held:

'Under the Common Law, a plea of autre fois acquit or autre fois convict can only be raised where the first trial was before a Court competent to pass a valid order of acquittal or conviction.'

9. (2). Similarly, in L.D. Healy v. State of Uttar Pradesh : [1969]2SCR948 . Fresh trial of the same accused on the same set of facts was held to be not barred, when the earlier order of acquittal was passed for want of proper sanction. It was held:-

'The Court may taken cognizance of an offence against a public servant for the offences set out in Section 6 of the Prevention of Corruption Act only after the previous sanction of the specified authority is obtained. The Special Judge who had taken cognizance of the case on sanction given by the Deputy Chief Commercial Superintendent was incompetent to try the case, and an order of acquittal passed by a Court which had no jurisdiction does not bar a retrial for the same offence. It is unnecessary, thereforee, to consider whether the order quashing the proceeding amounted to an order of acquittal.'

(emphasis supplied)

10. In this case, admittedly, after the ballistic export report was received sanction was granted on 4th January, 1999 and supplementary charge-sheet was filed on 7th January, 1999 on which cognizance was taken and the charge was framed. In view of the settled proposition of law noticed above, I find no infirmity in the impugned order. There was no prohibition in law in filing fresh/supplementary charge-sheet after obtaining sanction in accordance with law. This view also find support form the decision of this court in Javitry Devi v. State . The facts of the case relied by the learned counsel for the petitioner were different and the ratio of the observations made therein are not applicable to the facts of this case.

11. For the forgoing reasons, I find up merits in this petition. Dismissed.