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Sahebkhan Umerkhan Vs. State

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Court : Gujarat

Decided On : Sep-10-1962

Reported in : 1963CriLJ556; (1963)0GLR563; (1963)IILLJ540Guj

Judge : A.R. Bakshi and; B.J. Diwan, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 409 and 477A; Prevention of Corruption Act - Sections 5(2), 6 and 6(1); Criminal Law (Amendment) Act, 1952 - Sections 6, 7, 7(3) and 8(3); Bombay Village Panchayats Act, 1958 - Sections 39, 41 and 187

Appeal No. : Criminal Appeal Nos. 433 and 456 of 1962

Appellant : Sahebkhan Umerkhan

Respondent : State

Judgement :

Divan, J.

1. The appellant, Sahebkhan Umarkhan, who was the sarpanch of Hingolgadh Panchayat, from 1 August, 1959 to 28 June, 1960, was alleged to have committed dishonest and criminal misappropriation of various amounts aggregating to Rs. 3,000 and odd. In respect of these criminal misappropriations, two separate trials were commenced against the accused before the Special Judge, Rajkot district,

Rajkot. In Special Criminal Case No. 17 of 1961, the accused was charged with having committed dishonest misappropriation of a sum of Rs. 2,506.62, during the period 1 August, 1959 to 30 July, 1960 and thereby having committed offence under S. 409, Indian Penal Code, and S. (5)(1)(c) punishable under S. 5(2) of the Prevention of Corruption Act. In Special Criminal Case No. 2 of 1962, the same accused was charged for having dishonestly misappropriated an amount of Rs. 656.97 during the period from 1 August, 1960 to 28 June, 1961 and thereby having committed offences punishable under S. 409, Indian Penal Code, and S. 5(1)(c) punishable under S. 5(2) of the Prevention of Corruption Act. Both these cases were tried by the learned Special Judge, Rajkot district, Rajkot, and in each case the accused was convicted of the aforesaid offences and sentenced to suffer rigorous imprisonment for two years and one year respectively with a direction that the sentences should run concurrently. It is against these orders of conviction and sentence in these two cases passed by the Special Judge, Rajkot district, that the accused has come in appeal and both the appeals will be disposed of by this common judgment.

2. Under S. 6 of the Prevention of Corruption Act, no Court can take cognizance of an offence punishable under S. 5(2) of the Act except with the previous sanction of the authority competent to remove the public servant from his office. Clauses (a) and (b) of Sub-section (1) of S. 6 have no application to the facts of this case and, therefore, they do not arise for consideration and it is clear from the provisions of Sub-section (1) of S. 6 of the Act that the previous sanction of the authority competent to remove the public servant from his office must have been given before the Special Judge's Court appointed to try the case can take cognizance of the offence. Under S. 6 of the Criminal Law Amendment Act. 1952, power has been given to the State Government to appoint Special Judges for the trial of offences inter alia, under S. 5(2) of the Prevention of Corruption Act. Under S. 7 of the Criminal Law Amendment Act, 1952, the offences specified in S. 6(1) can be tried only by a Special Judge, and under Sub-section (3) of S. 7, when trying any case, a Special Judge may also try any offences other than an offence specified in S. 6 with which the accused may under the Code of Criminal Procedure be charged at the same trial. It is by virtue of the operation of Sub-section (3) of S. 7 of the Criminal Law Amendment Act, 1952, that the Special Judge got jurisdiction

to try offences under S. 409, Indian Penal Code. It is provided under S. 8(3) of the Criminal Law Amendment Act that the Court of the Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and it is not necessary to have an order of commitment to the Court of a Special Judge. It is clear that Sub-section (3) of S. 7 of the Criminal Law Amendment Act is an enabling provision, which confers jurisdiction on the Special Judge to try offences which arise in the course of the same transaction, which are allied with the principal offence for the trial of which he is appointed a Special Judge. But it is clear that there must be a proper sanction to prosecute granted under the provisions of S. 6 of the Prevention of Corruption Act before a Special Judge can take cognizance of an offence punishable under S. 5(2) of the Prevention of Corruption Act. It is also clear that if the Special Judge has no jurisdiction to try an offence punishable under S. 5(2) of the Prevention of Corruption Act, he has no jurisdiction to try the other allied offences for which power has been conferred upon him under Sub-section (3) of S. 7 of the Criminal Law Amendment Act, 1952. We are supported in this conclusion by a decision of the Patna High Court in Ramautar Mahton v. State [A.I.R. 1961 Patna 203] and there it was held as follows :

'The proceeding before the Special Judge in a case relating to an offence under S. 5(2) of the Prevention of Corruption Act, 1947, is no trial at all when there is no valid sanction under S. 6 of that Act. In such a case, the Special Judge has no jurisdiction, under S. 7(3) of the Criminal Law Amendment Act, 1952, to try the offence under S. 409 of the Penal Code also. The trial for that offence, being without jurisdiction, is null and void. Thus, the trial for the other offence is without jurisdiction when the Special Judge convicts the accused for such an offence by the same judgment by which he holds that he is not competent to try the offence which he was trying under S. 7(1) of the Act of 1952.'

3. It is contended by Mr. Vakharia, appearing on behalf of the accused in both these appeals, that the sanction to prosecute which was given by the Collector, Rajkot, is invalid sanction because on the date on which the sanction was purported to have been given the Collector was not the authority competent to remove the sarpanch from his office in view of the provisions of the Bombay

Village Panchayats Act, 1958 (Bombay Act III of 1959). Under S. 39 of the Bombay Village Panchayats Act, 1958, the Panchayat mandal may, after giving due notice to the panchayat and the person concerned, and after such inquiry as it thinks fit, remove from office any member or an sarpanch or upa-sarpanch who has been guilty of misconduct, or neglect of, or incapacity to perform his duty or is persistently remiss in the discharge thereof. A sarpanch or an upa-sarpanch so removed may, at the discretion of the panchayat mandal, also be removed from the panchayat, provided that no such person shall be removed from office until he has been given a reasonable opportunity of being heard. Under S. 41 of the Act, the Collector may suspend from office any sarpanch or upa-sarpanch against whom any criminal proceedings have been instituted or who has been detained in a prison during trial under the provisions of any law for the time being in force. Therefore, the power to remove a sarpanch from office vests only in the panchayat mandal and the power to suspend a sarpanch during the pendency of criminal proceedings vests in the Collector of the district. But in this particular case, as shown by Ex. 40, in Special Case No. 2 of 1962 it was the Collector, Rajkot district, who granted the sanction to prosecute the accused under Ss. 409 and 477A, Indian Penal Code, as well as under S. 5(2) of the Prevention of Corruption Act.

4. We have carefully examined the provisions of the Bombay Village Panchayats Act, 1958, and we find that apart from S. 39 there is no other provision under this Act, which provides for removal of a sarpanch from his office and that power, as we have already pointed out above, vests in the panchayat mandal and not in the Collector. Section 187 of the Bombay Village Panchayats Act, 1958, provides that if any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order published in the official gazette, do anything not inconsistent with the provisions of this Act, which appear to it to be necessary or expedient for the purpose of removing the difficulty. It may be pointed out that the Bombay Act III of 1959 came into force with effect from 1 June, 1959 and was made applicable to the former State of Bombay, which included the district of Rajkot. Therefore, on and from 1 June, 1959, applied to the district of Rajkot where this particular village of which the accused was the sarpanch is situated and hence after 1 June, 1959, it was only the panchayat mandal for the district of

Rajkot that could remove this particular sarpanch from his office and that was the only competent authority who could remove the accused from his office as a sarpanch. But, under the powers conferred upon it by S. 187 of the Act, the Government of Bombay published a notification, dated 19 September, 1959. This notification is to be found at p. 190 of the Bombay Government Gazette, Part I-A, of 1959 and the notification after setting out various facts states as follows :

'Now, therefore, in exercise of the powers conferred by S. 187 of the said Act, the Government of Bombay, with a view to removing such difficulties, directs that until the mandals are duly constituted, the Collector shall, in addition to the duties of mandals conferred on Collectors by Government Order, Local Self-Government and Public Health Department, No. V.P.A. 1059 dated 25 May, 1959, perform the following functions and duties and exercise the

powers of the mandals and their chairmen, namely :

* * *

(5) Power under S. 39.

* * *'

5. Thereafter, by virtue of this notification, which the State Government was competent to issue, till the district village panchayat mandal for the district of Rajkot was duly constituted, the Collector, Rajkot, could exercise the powers of removing a sarpanch from his office conferred upon the panchayat mandal under S. 39 of the Bombay Act III of 1959. Mr. Vakharia contended before us that the panchayat mandal for the district of Rajkot started functioning from 2 October, 1959 and, therefore, at the date when the sanction in this particular case was given, viz., on 28 September, 1961, the Collector of Rajkot district had no power to remove the sarpanch from his office and that power could only be exercised under S. 39 of the Bombay Act III of 1959, by the panchayat mandal.

6. The learned Assistant Government Pleader was given time to ascertain whether it was a fact that the Rajkot District Village Panchayat Mandal functioning under the Bombay Act III of 1959 came into existence and began to work from 2

October, 1959 and after obtaining instructions the learned Assistant Government Pleader stated that this statement of fact, viz., that the district village panchayat mandal for the district of Rajkot st1ed functioning on 2 October, 1959, is correct. In this view of the matter, it is obvious that from 2 October, 1959 the Collector of Rajkot district had no power to remove any sarpanch of any panchayat at in the Rajkot district from his office and that with effect from 2 October, 1959 that power could only be exercised by the Rajkot District Village Panchayat Mandal and by no one else. That being the case, it is obvious that the sanction to prosecute which was given by the Collector of Rajkot on 28 September, 1961 was not a valid sanction.

7. It is clear from what we have discussed earlier that as there was no valid sanction to prosecute, the Special Judge, Rajkot district, did not get any jurisdiction to entertain the matter so far as the offence punishable under S. 5(2) of the Prevention of Corruption Act is concerned and that the learned Special Judge also had no jurisdiction to try the offence under S. 409, Indian Penal Code. Since this is a question of want of jurisdiction, it is obvious that the entire trial before the Special Judge was vitiated and, therefore, the orders of conviction and sentence passed against the accused in both these cases must be set aside. We wish to make it clear that the accused is being discharged and not acquitted as we have not gone into the facts or considered the merits of the evidence led before the trial Judge.

8. In the result, we allow both these appeals and set aside the orders of conviction and sentence passed by the trial Court. The accused is discharged and he should be set at liberty forthwith.

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