Shriram Vs. the State

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Court : Rajasthan

Decided On : Dec-20-1965

Reported in : 1966CriLJ1049

Judge : V.P. Tyagi, J.

Acts : Prevention of Corruption Act, 1947 - Sections 6; Indian Penal Code (IPC) - Sections 409

Appeal No. : Criminal Appeal Nos. 739 and 740 of 1964

Appellant : Shriram

Respondent : The State

Advocate for Def. : Raj Narain, Deputy Govt. Adv.

Advocate for Pet/Ap. : M.L. Joshi and; O.P. Chhangani, Advs.

Disposition : Appeals allowed

Judgement :

V.P. Tyagi, J.

1. These are two appeals filed by Shriram appellant impugning the two judgments of the Special Judge No 2 of Jaipur City both dated 17th November. 1964. convicting the appellant for offenees under Section 5(1) (c) read with Section 5 (2)

of the Prevention of Corruption Act No. 2 of 1047 (herein-after to be referred as the Act) and under Section 409 Indian Penal Code As both the appeals are said to he suffering from a common infirmity. I propose to dispose them of by one judgment

2. The appellant was charged for mis appropriating the Government funds and for that four cases were challaned by the Special Police Establishment in the court of the learn ed Judge, but the learned Judge tried cases Nos 9 and 25 ot 1963 jointly and so also rases Nos 1 and 2 of 1964 were consolidated and thus he turned out two judgments in the afore said four eases filed against the appellant Shri ram.

3. The prosecution story in all these cases is that the appellant Shriram was in the beginning a Divisional Pay Clerk in the Bikaner Slate Railway but his services integrated with the Indian Railways when the Government of India look over the State railways and thereafter his order of appointment of his present post in the Northern Railway was issued by the General Manager of that railway. It is alleged that the accused-appellant misappropriated during the period between December. 1958 to November. 1959 a total amount of Rs 1187 87 np and it was for this misappropriation that two challans were submitted by the Special Police Establishment, Jaipur under Sections 5 (1) (c) of the Act and 409 of the Indian Penal Code Both these cases were, however, ordered to be consolidated by the Special Judge Two similar challans were also submitted against the appellant for misappropriating Rs 14,783 56 np. during March 1960 to October. 1960, but these two eases were also directed to he jointly tried and thus in the aforementioned cases two judgments of conviction were pronounced by the learned Judge. It is against these judgments that the appellant has filed these two appeals.

4. In order to appreciate the contention of the learned counsel for the appellant, it will be relevant to mention that before submitting the challans in the court, the Superintendent of Special Police Establishment obtained under Section 6 of the Act the sanction of the Deputy Chief Accounts Officer, Northern Railway, New Delhi who, in the normal course of circumstances, was the appointing authority, but later on it was discovered that the appointment of the accused was made in the Northern Railway by the General Manager and therefore in these cases

sanction for prosecuting the accused-appellant should have been obtained not from the Deputy Chief Accounts Officer but from the General Manager. In order to remove this defect the prosecution obtained another sanction from the General Manager, Northern Railways on 23rd March, 1963 to prosecute the accused-appellant in all the four cases and filed the same in the court on 30th March, 1963. But before doing so the court had already examined nine prosecution witnesses in one case and eight witnesses in the other case. The order sheet of the 30th March, 1963 when the new sanction was submitted by the prosecution, shows that the court, after receiving that sanction, asked learned counsel for the defence if he wanted to cross-examine any of the prosecution witnesses who had already been examined but the counsel for the appellant, it appears IT fused to re-cross-examine these witnesses, and the court, therefore proceeded with the trial

5. The main contention of the learned counsel for the appellant is that before 30th of March. 1963 when the proper sanction was submitted by the prosecution the court had no jurisdiction to take the cognizance of the cases against the accused and. therefore, the proceedings taken before 30th of March, 1963 were all without jurisdiction, and the evidence recorded by the court before the said date could not therefore, be read against him It was also urged that after the proper sanction was received by the court it should have started the trial afresh in both the cases, but instead of doing so it continued the same proceedings and examined the rest of the prosecution witnesses and also the defence evidence The procedure thus adopted by the trial court in all these cases has. according to the submission of Mr Joshi. vitiated the trial of the accused, and his conviction is. there fore, illegal Learned Government Advocate contested this position and submitted that the accused-appellant was also convicted in these cases for an offence under Section 409 of the Indian Penal Code for which no sanction was necessary and therefore the conviction of the accused-appellant for an offence under Section 409 cannot be said to be illegal It was, however, conceded by learned Government Advocate that the sanction to prosecute the accused for offence under Section 5 (1) (c) read with Section 5 (2) of the Act was defective before 30th March, 1963 and therefore the proceedings taken by the trial court before that date may go to vitiate the trial under Section 6 (1) (e) read with Section 5 (8) of the Act, but the conviction of the accused-appellant under Section 409 Indian Penal Code is not hit by the defective

sanction as no sanction is necessary to prosecute the appellant for an offence under Section 409 Indian Penal Code.

6. This is a well-settled rule of law that sanction in these matters is not a mere formality. Sanction accorded by an authority not competent to do so is no sanction in the eye of law and such a defect is not a mere technical defect but it goes to the very root of the matter. It is the sanction that gives jurisdiction to a court of law to take cognizance of the matter. The Federal Court in Basdeo Agarwalla v. Emperor, AIR 1945 FC 16 has laid down in clear terms that:

"The clause in question was obviously enacted for the purpose of protecting the citizen and in order to give the Provincial Government in every case a proper opportunity of considering whether a prosecution should in the circumstances of each particular case be instituted at all. Such a clause, even when it may appear that a technical offence has been committed, enables the Provincial Government, if in a particular case, it so thinks fit, to forbid any prosecution. The sanction is not intended to be and should not be an automatic formality and should not so be regarded either by police or officials. There may well be technical offences committed against the provisions of such an Order as that in question, in which the Provincial Government might have excellent reason for considering a prosecution undesirable or inexpedient But this decision must be made before a prosecution is started. A sanction after a prosecution has been started is a very different thing. The fact that a citizen is brought into Court and charged with an offence may very seriously affect his reputation and a subsequent refusal of sanction to a prosecution cannot possibly undo the harm which may have been done by the initiation of the first stages of a prosecution

IN our judgment the words of Clause 16 of this Order are plain and imperative and it is essential that the provisions should be observed with complete strictness and where prosecutions have been initiated without the requisite sanction that they should be regarded as completely null and void, and if sanction is subsequently given, that new proceedings should be commenced ab intio Only so can the protection intended for the citizen be assured '

7. In the present case, the proper sanction can be said to have been given by the General Manager on the 23rd of March, and it was submitted to the court on the 30th of March, 1963. Therefore till then the Court had no jurisdiction to take the cognizance of the case against the accused, and it was only after the proper sanction was placed before it that the court could take proceedings in such matters. In these circumstances, proceedings taken by the court before the proper sanction was filed in the court had no legal sanction behind them and the statements recorded by the learned Judge before 30th March, 1968 cannot therefore be read in evidence. If the sanction was accorded by a competent authority after the trial had started then the proper course to be adopted by the court was to scrap all the proceedings already taken and commence the trial afresh.

8. I, now, come to the next question raised by learned Government Advocate that the conviction of the appellant under Section 409 Indian Penal Code is not hit by the defect in the sanction and the composite sentence passed in this case can, therefore, be upheld by this Court as having been awarded under Section 409 alone. In support of this plea, learned Government Advocate has referred to a Supreme Court authority in State of Madhya Pradesh v. Veereshwar Rao, (S) AIR 1957 SC 592 in that case, the accused was tried by the Special Judge under Section 5 (2) of the Act and also for an offence under Section 409 Indian Penal Code, but it was discovered during the trial that an officer below the rank of a Deputy Superintendent of Police had investigated the matter without obtaining an order from the First Class Magistrate and therefore it was held that the foundation for preferring a com-plaint for an offence under the Act had not been established and this illegality affected the jurisdiction of the court to try the case for an offence under Section 5 (2) of the Act.

In these circumstances, it was urged that no formal order of acquittal could be passed against the accused by the Special Judge under Section 5 (2) of the Act. The learned Special Judge without formally acquitting the accused under Section 5 (2) of the Act, however, convicted him under Section 409 of the Indian Penal Code. An appeal was filed against that order of the Special Judge in the High Court of Madhya Bharat and the learned High Court Judges applying the doctrine

of autrefois ac quit held that when once on the same facts the trial Judge found that the respondent could not be found guilty of an offence under Section 5 (2) of the Prevention of Corruption Act, it was tantamount to an acquittal for that offence in which case no conviction could he held under Section 409 of the Indian Penal Code.

The State of Madhya Pradesh then preferred an appeal to the Supreme Court against the said judgment of the High Court. While deciding that appeal the Supreme Court held that the provisions of Article 20 of the Constitution and the doctrine of autrefois acquit wore not attracted to the facts and the circumstances of that case and therefore the conviction of the accused under Section 409 could not be affected for not convicting the accused under Section 5 (2) of the Act. It was also contended before the Supreme Court that the defect in the investigation had vitiated the trial and therefore conviction under Section 409 of the Indian Penal Code should be set aside, but their Lordships, while disposing of this contention observed that the Special Judge had jurisdiction to try the accused person under motion 7 of the Prevention of Corruption Act and hence the conviction under Section 409 of the Indian Penal Code was not affected for the defect in the investigation of the case which only vitiated the trial of the accused for an offence under Section 5 (2) of the Act.

It was under these circumstances that the Supreme Court maintained the conviction and sentence passed by the learned Judge under Section 409 of the Indian Penal Code. These observations of the Supreme Court, relied upon by the State are of little avail to the learned Government Advocate in the present case as the defect in the investigation of the case did not have any bearing on the jurisdiction of the Special Judge and on that ground it can ho distinguished from the present case.

9. In my opinion the defect regarding the sanction stands on a different footing. The defect in the investigation is a curable defect under Section 537 Criminal Procedure Code which could be removed even after the challan was put up before the Special Judge. Secondly, the defect of investigation does not relate to the jurisdiction of the Special Judge whereas the defect of sanction affects the very

competence and the jurisdiction of the court without which the court cannot take cognizance of the matter at all, In this connection, reference has been made to another Supreme Court case in E. G. Barsay v. State of Bombay, (AIR 1961 SC 1762: 1961 (2) Cri LJ 828), wherein their Lordships of the Supreme Court approved the following observations made by Jagannadhadas J in H. N. Rishbud v. State of Delhi. (S) AIR 1955 SC 196: 1955 Cri LJ 526.

'In the same decision this Court also pointed out that the illegality committed in the course of investigation did not affect the competence and jurisdiction of the court for trial and where cognizance of the case had in fad been taken and the case had proceeded to termination the invalidity of the preceding investigation did not vitiate the result unless miscarriage of justice had been caused thereby'

10. In view of these observations of the Supreme Court, the defect in the investigation, in my opinion, can vitiate the trial only if there is a miscarriage of justice and the accused has been prejudiced thereby If no miscarriage of justice has taken place and the accused has not, in any manner, been prejudiced by the defect in the investigation, the court could take cognizance of the matter and the jurisdiction of the court cannot on that account be ousted. But these considerations of miscarriage of justice and prejudice to the accused cannot be weighed to uphold the conviction if the trial had taken place without a proper sanction given by a competent authority to initiate the proceedings in the court of the Special Judge. In my opinion, the accused cannot be challaned without a proper sanction and even if he is challaned the court has no jurisdiction to take cognizance of the matter. This kind of defect goes to the very root of the matter and, therefore, the trial which proceeded without a proper sanction is vitiated in its entirety. In such circumstances, even if the accused had been tried for an offence under the I. P. C. along with an offence under the Act, it cannot be said that he has been properly tried. Mr. Vyas then urged that since the trial Judge had jurisdiction by virtue of the provisions of Section 7 of the Act to try the accused for an offence under Section 409 I. P. C., his conviction for that offence cannot be vitiated even if the trial Judge could not take cognizance for an offence under the Act for want of proper sanction. It may be noted that the jurisdiction of a Special Judge has been created under the Act to try the offences specified in the Act itself and while doing so. Section 7 (3) of

the Act does empower the learned Judge to try other offences under the Penal Code also, but if for the reason of certain fundamental defect the Special Judge is precluded to take cognizance of an offence under the Act, he cannot, in my opinion, hold a valid trial for the acts of the accused which constitute an offence under the I P C. He can try the accused for an offence under the Penal Code only if he has a jurisdiction to try the accused for offence or offences under the Act. If the Special Judge is incompetent to take cognizance of an offence under the Act, he cannot as well try the accused for any other offence under Section 7 (3) of the Act. In this view of the matter, I am definitely of opinion that the trial of the accused under Section 409 of the I. P. C. is also vitiated as the learned Judge had no jurisdiction to take the cognizance of the matter at all.

12. Learned Government Advocate has moved an application today that if the conviction of the accused under Section 409 I. P C. cannot be sustained for want of proper sanction. then only those proceedings which were taken before 30th March, 1963, when the proper sanction was submitted, be declared illegal and the entire evidence which was recorded after that date may not be directed to be recorded once again. For this prayer, learned Government Advocate has relied on the order of the Court dated 30th March, 1963, whereby the Court directed the counsel for the accused to re-cross-examine the prosecution witnesses who had already been examined prior to the receipt of the proper sanction. It may be mentioned that the learned trial Judge after receiving proper sanction in both the cases did not commence the trial ab initio. but simply directed the defence to re-cross-examine the previously examined prosecution witnesses. This procedure adopted by the trial Judge is unknown to the Code of Criminal Procedure. As laid down in AIR 1945 FC 16 the proceedings were instituted without sanction as required by the law are not capable of being severed from the proceedings taken by the Court after the sanction was obtained. The Court in my opinion, should have started fresh proceedings after a proper sanction was received by it. The trial in both the cases, in my opinion, is vitiated in its entirety and therefore the proceedings taken by the Court below after 30th March, 1966, cannot be held to be valid in law simply because the sanction was subsequently received by it

13. Both the Appeals are, therefore,allowed, the orders of convictions and sentencespassed by the trial Court in both the cases areset aside and they are remanded to the trialCourt with a direction to commence de novotrial.