

Suraj Narain Vs. the State

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Court : Rajasthan

Decided On : May-27-1998

Reported in : 1998CriLJ3519

Judge : Ashok Parihar, J.

Acts : [Press Council Act, 1978](#) - Sections 19; Code of Criminal Procedure (CrPC) , 1974 - Sections 197; Indian Penal Code (IPC) - Sections 120B, 420, 471 and 474

Appeal No. : Criminal Misc. Petn. No. 210 of 1998

Appellant : Suraj Narain

Respondent : The State

Advocate for Def. : S.K. Vyas, Public Prosecutor

Advocate for Pet/Ap. : M.D. Purohit, Sr. Adv. assisted by; T.R. Singh Sodha, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ashok Parihar, J.

1. The petitioner while working as Dy. Director, Industries Department, Pali is alleged to have committed forgery and interpolation in the Government record with a view to give benefit to a private firm in the year 1979. A challan was filed against two persons including the petitioner on 4-1 -1993 in the Court of Special Judge, A.C.D. Cases, Jodhpur for offences under Sections 420, 471, 474 read with Section 120B I.P.C. Petitioner had already retired in the year 1983.
2. Before arguments on framing on charges could be heard, the co-accused Inder Mai also died around Sept. 1994.
3. The petitioner filed an application under Section 197, Cr.P.C. and Section 19, P.C. Act on 5-10-1996 before the trial Court. After hearing both the sides, the trial Court dismissed the application vide order dated 24-7-1997. The trial Court has held that sanction for prosecution was not required in the present case because the challan was filed after retirement of the petitioner. Petitioner has challenged the order dated 24-7-1997 in the present petition with the prayer for quashing the charges on the ground of want of sanction and also delay.
4. The only question which is to be determined in the present petition as to whether sanction for prosecution is required for retired Government servants also.
5. After hearing counsel for the parties and perusing the material on record and also the judgments cited at the Bar. I am of the view of that the trial Court has committed a serious error of law in the facts and circumstances of the present case. A bare reading of Section 197, Cr.P.C. and Section 19, P.C. Act clearly shows that proper sanction for prosecution is necessary even in case of retired Government servants. The point of taking cognizance is of no relevance as to whether it is taken prior to retirement or after retirement.
6. The Apex Court in case of R. Balkrishna Pillai v. State of Kerala, AIR 1996 SC 901 while referring to the report of Law Commission has observed that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by this section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position and then to lodge a complaint.

The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant. The Court observed that the expression 'was' came to be employed in (Section) 197 after expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.

7. In the present case the matter relates to the year 1979, petitioner having retired in the year 1983 and further co-accused having died, apart from delay and fair play the proceedings are liable to be quashed on the ground of want of proper, sanction by the concerning authorities.

8. Accordingly, the petition is allowed. The order dated 24-7-1997 passed by the lower Court is set aside and further proceedings against the petitioner in the present case are quashed.

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