Ayyasamy and Another Vs. State Through the Inspector of Police Vigilance and Anti-corruption, Erode

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Court : Chennai

Decided On : Aug-02-1995

Reported in : 1996CriLJ119

Judge : N. Arumugham, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 161; Code of Criminal Procedure (CrPC) , 1973 - Sections 313; Prevention of Corruption Act - Sections 5(2), 6 and 19

Appeal No. : Crl. Appeal Nos. 326 and 329/90

Appellant : Ayyasamy and Another

Respondent : State Through the Inspector of Police Vigilance and Anti-corruption, Erode

Advocate for Def. : A.N. Rajan, Govt. Adv.

Advocate for Pet/Ap. : G. Pandarasamy and ;G. Krishnan, Advs.

Judgement :
ORDER

:

Whereas Tvl. M. A. Ayyaswami and P. Krishnaswamy, Public Servants were functioning as Sub-Inspector of Police, Law and Order and Grade A.P.C./Station Writer respectively as Kundadam Police Station during August, 1986.

Whereas it is alleged that on 23-8-86 Thiru Thiruvengadaswamy presented a petition before the said Thiru Krishnaswamy, regarding the assault of his'servant Thiru Sooradevan, by Annadurai and 12 others on 22-8-86, as the said Thiru Ayyaswamy was not in the station then and that Thiru Krishnaswamy gave receipt No. 41/86 to Thiru Thiruvengadaswamy and asked him to wait for Tr. Ayyaswamy and that Thiru Ayyaswamy came at about 3 A.M. and asked Thiru Thiruvengadeswamy to meet him on the next day.

Whereas, it is further alleged that on 24-8-86 Thiru Thiruvengadaswamy met Thiru Ayyaswamy at Kundadam Police Station at about 11.00 A.M. and that at that time Tr. Ayyaswamy demanded a sum of Rs. 300/- as gratification other than legal remuneration from the said Thiruvengadaswamy as a motive or reward for taking action on the petition given by Tr. Thiruvengadaswamy on 23-8-86 and directed him to amount on the next day i.e. 25-8-86 and that as he came out of the Police Station on 24-8-86, Thiru Krishnaswamy also came out of the Police Station and demanded a sum of Rs. 200/- from, Thiruvengadaswamy as a reward for having registered his petition on 23-8-86.

Whereas, it is further alleged that in furtherance of the said demand, on 25-8-86, between 12.10 P.M. and 12.25 P.M. at Kundadam Police Station, the said Tvl. Ayyaswamy and Krishnaswamy, demanded and accepted a sum of Rs. 300/- and Rs. 200/- respectively from Thiruvengadaswamy as gratification other than legal remuneration for the purpose mentioned above.

Whereas it is further alleged that, in the course of the same transaction, on 25-8-86, at Kundadam Police Station. Tvl. Ayyaswamy and Krishnaswamy, being Public Servants, by corrupt or illegal means or otherwise abusing their official position obtained for themselves pecuniary advantage to the extent of Rs. 300/- and Rs. 200/- respectively.

Whereas, the above said acts constitute offences punishable under S. 161, I. P. C. and 5(11)(d) r/w. 5(2) of the Prevention of Corruption Act, 1947.

Whereas, I, Tr. V. Chandrakishore, Dy. Inspector General of Police, being the authority competent to remove the said Tvl. Ayyaswamy and Krishnaswamy from office, am satisfied after fully and carefully perusing the materials placed before me in regard to the said allegations against Tvl. Ayyaswamy and Krishnaswamy, that the said Tvl. Ayyaswamy and Krishnaswamy should be prosecuted before a Court of Law for the said offences.

Now therefore, I, V. Chandrakishore, Deputy Inspector General of Police, Coimbatore Range, do hereby accord sanction under S. 6(1)(c) of the Prevention of Corruption Act, 1947, to prosecute the said Tvl. Ayyaswamy and Krishnaswamy, before a Court of Law for offence under S. 161, I. P. C. and 5(1)(d) r/w. 5(2) of Prevention of Corruption Act, 1947 and for the Court to take cognizance of the said offences. (Sd/-) ....15-5-87Deputy Inspector General of Police, Coimbatore Range.

It is seen from the above contents of Ex. P. 17 that the sanctioning authority, namely, the Deputy Inspector General of Police, Coimbatore Range has merely narrated the abstract of the allegations made against the accused but not with reference to any of the materials, namely F. I. R. or recovery mahazars or complaint or the proceedings with regard to the trap nor any statement of the witnesses or the Chemical Examiner's report but only appears to have perused the Report of the Director of Vigilance and Anti Corruption, Madras. A mere reference of 'Report on the report of the Director, Vigilance and Anti Corruption, Madras in R.C. No. 69/86/Pol/PD Dated 25-3-87 and connected materials' does not show or imply what are all the documents, which have been perused by him to ascertain the prima facie nature of the case against the accused in order to accord sanction or the evidence aliunde. It is therefore clear under the circumstances that the sanctioning authority has not at all applied its mind nor followed the procedures laid down by the case laws in many number of cases by this Court as well as by the Apex Court.

17. It is also noted that the case on hand comes under the purview of S. 6 of the Prevention of Corruption Act, 1947 and not the present Act in which the concept of according sanction has been changed to a considerable extent. Dealing with the scope of S. 6 of the Old Act, I had an occasion while dealing with the said concept in Charles Waker Devadas v. State by the Inspector of Police, LTC., 1993 Mad LW (Crl) 346 and held that the sanctioning authority had not applied its mind but accorded the sanction so casually in a very fascinating manner by referring the allegations only and certainly not with reference to any of the materials relied on or materials placed before him. While doing the said exercise, I have considered and referred the case laws held in Suraj Mal v. State (Delhi Administration) : 1979 CriLJ1087 ; Anand Sarup v. State 1988 Crl LJ 756 Delhi; Mohd. Iqbal Ahmed v. State of A. P. : 1979 CriLJ633 ; Periyasamy v. Inspector, Vigilance and Anti Corruption, Tiruchirapalli 1992 Mad LW (Crl) 582; Har Bharosey Lal v. State of U.P. 1988 Crl LJ 1122 All; Indu Bhusan Chatterjee v. The State of W. B. : 1958 CriLJ279 ; State of Rajasthan v. Tarachand : 1973 CriLJ1396 and State of Tamil Nadu v. Damodaran : 1992 CriLJ522 . Following the ratios held in the above case laws to the facts of the instant case, I am constrained to hold that the Court cannot act on surmises or conjectures nor will have to be guided by extraneous considerations or matters which are not on record. The grant of sanction is not an idle formality but a solemn and sacrosanct act which provided protection to Public Servants against frivolous prosecutions. This requirement of law has not been complied with before launching prosecution against the appellants. It is thus seen that in according sanction to a prosecution as contemplated under S. 6 of the Prevention of Corruption Act, the sanctioning authority should necessarily apply its mind and get itself satisfied that a case for sanction has been made out, constituting the offences. The prosecution has to prove this in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that facts placed before the Sanctioning Authority and the satisfaction arrived at by it. A case instituted without adopting the above referred legal concept and ingredients must necessarily fall because this being a defect manifest in the prosecution and as such, the entire proceedings are rendered void ab initio. Section 6 of the Prevention of Corruption Act applicable to the facts of the instant

case provides that the sanctioning authority must accord the sanction only after identifying the grounds so multifarious or one and if not the evidence aliunde made available or the material to accord sanction, which would necessarily involve to go through all the materials placed before him and not the mere report or mere allegations. It is the well settled principle that the Apex Court as well as the Higher Judicial forum of our country have repeatedly but however very often emphasised the need to follow such procedural mandate provided by the legislature for the reason to give protection to the public servants from frivolous or nefarious transactions and such exercise is seen clearly to be mandated in the Section itself. Therefore, the sanctioning authority has to and must follow the procedure in according the sanction to prosecute the Public Servants. The infraction of the said legal exercise to any extent though may not halt the prosecution at any stage but one cannot deny that it goes to the very root of the prosecution at its very base, which would mean that once the defect is found out, namely, the sanction without application of mind, it is not difficult to say that the prosecution stumbled down to the ground and cannot at all be redeemed. Therefore, it is quite obvious in this case that Ex. P. 17 has been given by the sanctioning authority only by narrating the substratum of the allegations without applying its mind nor even referring any materials or documents placed before it. The evidence of P. W. 7 would not render any help to improve the case of the prosecution. He has not even referred to what are all the documents in detail that have been perused by the sanctioning authority in order to arrive at the satisfaction to accord the sanction. If the matter is viewed and considered, for the above said reasons, in the context that the accused were the Police Officers incharge of a Police Officer, then it has become very imperative and important duty to the sanctioning authority to look into all aspects as provided by law and then only he has to give his findings and a mere reference of a report and repeating all the substratum of the allegations would not in any way, in my respectful view, constitute a valid sanction given in this case. Therefore, I have no hesitation to accept the contentions raised on behalf of the appellants that the sanction accorded in this case is void ab initio and invalid, granted by not following the procedural mandate held by the Courts of law in this country. On this ground alone the whole prosecution case must fail. It is seen that this aspect has been totally overlooked by the trial Magistrate, perhaps for the reason that no plea regarding the said aspect was taken before him. But as was stipulated in the amended Act, particularly in S. 19, S. 6 of the Old Act was not up to the Court namely, that the plea regarding the validity of the sanction is to be taken at the inspection itself but it cannot be allowed to be raised after the trial was over. It is therefore, under the circumstances, having considered the gamut of the case, I am of the firm view for all the reasonings and considerations given above, that the impugned judgment rendered by the trial Court cannot be held as a valid one for the overlooking of the abovesaid aspects and ignoring the basic fabric of the criminal jurisprudence, namely, that the prosecution and the prosecution alone must establish the guilt of the accused beyond all reasonable doubt as provided by the provisions of the previous Act. No other point has been raised before me.

18. In the result, for all the reasonings given above, the appeals stand allowed. Accordingly, the conviction and sentence recorded by the learned Chief Judicial Magistrate, Periyar District at Erode in Spl. C.C. No. 252 of 1987 dated 19-4-1990 is set aside and the appellants are acquitted of all the charges.

Fine amount, if any, paid by the appellants is directed to be refunded to them immediately.

19. Appeal allowed.