In Re: P. Velan

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Court : Chennai

Decided On : Oct-23-1967

Reported in : (1968)2MLJ554

Appellant : In Re: P. Velan

Judgement :
ORDER

N. Krishnaswamy Reddy, J.

1. This revision petition has been filed against the order of the Sub-Divisional Magistrate, Tuticorin, overruling the objection raised by the petitioner that the prosecution was void under Section 403, Criminal Procedure Code.

2. To appreciate the points raised by the learned Counsel for the petitioner, it may be necessary to state the relevant facts of the case. The revision petitioner, Velan was the Executive Officer, Nazareth Panchayat Board in Tirunelveli District from 6th November, 1959 to 18th October, 1960. The Sub-Inspector of Police,. Nazareth, filed a chargesheet before the Sub-Divisional Magistrate, Tuticorin, alleging that the petitioner in his capacity as the Executive Officer of the Nazareth Panchayat Board drew the Panchayat amounts from the local Co-operative bank, Nazareth, and from the Sub-Treasury, Tiruchendur, to the extent of Rs. 1,350 by means of self-cheques and committed breach of trust of the said amounts by non-utilising the amounts for the purpose for which they were drawn, an offence

punishable under Section 409, Indian Penal Code.

3. The Sub-Divisional Magistrate took the case on file and after examining some witnesses had found that necessary sanction was not obtained under the provisions of the Madras Panchayat Act for prosecuting the petitioner and ultimately discharged the petitioner. Against the order of the Sub-Divisional Magistrate, the State filed a revision before the Sessions Judge, Tirunelveli. The Sessions Judge held that the order of discharge by the Sub-Divisional Magistrate must be deemed to be an acquittal as the case was disposed of by him after recording evidence and the statement of the petitioner and dismissed the revision petition on the ground that he had no jurisdiction to entertain the revision which was against an order of acquittal. Against the order of the Sessions Judge, the learned Public Prosecutor for Madras State filed a revision in the High Court. Anantanarayanan, J., as he then was, remitted the matter to the Sessions Judge for disposal on the merits with the following observations:

Under the circumstances, I set aside the order of the learned Sessions Judge, and remit the revision proceedings to him for disposal on the merits. It is open to the learned Sessions Judge to hold if he is of that view, that no sanction is required. But, in that case, he should really set aside the order of discharge, and direct further enquiry. Equally it is open to the learned Sessions Judge to hold that the case is bad for lack of sanction, however, viewed. In that contingency, he can dismiss the revision proceedings on the excellent ground that he agrees with the trial Court. It will then be for the State to take further proceedings to have the propriety of that view canvassad....I must make it clear that on the aspect of the prosecution being void for lack of sanction, I give entire freedom both to the State and to the accused (respondent) to advance all such arguments in law, as may be available, without this issue being clouded in any manner by prior opinions expressed by the Courts below upon this aspect.

4. The learned Sessions Judge, Tirunelveli, dismissed the revision petition after it was remitted to him on the ground that the sanction accorded under Section 106. of the Madras Village Panchayats Act, 1950, was not valid as the offence alleged to have been committed was subsequent to the Madras Panchayats Act XXXV of

1958 came into force. He further held that the sanction for prosecution should have been accorded under Section 169 of the Act XXXV of 1958. This order by the learned Sessions Judge was passed on 9th February, 1966.

5. Subsequently, on 28th September, 1966, the Collector of Tirunelveli. district accorded sanction under Section 169 of the Madras Panchayats Act, 1958 for the prosecution of the revision petitioner for the offence of criminal breach of trust. After obtaining sanction, a fresh charge sheet was filed by the Police before the Sub-Divisional Magistrate, Tuticorin, which was taken on file by the said Magistrate in C.C. No. 12 of 1967. The revision petitioner filed an objection petition stating that the prosecution was barred under Section 403 (1), Criminal Procedure Code, as the previous order by the Sub-Divisional Magistrate was also disposed of on merits and prayed that the proceedings should be dropped. The learned Sub-Divisional Magistrate overruled the objection of the petitioner holding that the prior proceedings are void in view of the fact that there was no valid sanction and that a fresh prosecution after obtaining necessary sanction would not be barred under Section 403, Criminal Procedure Code.

6. The revision petitioner reiterated the objection taken by him before the Sub-Divisional Magistrate that the prosecution was barred under Section 403, Criminal Procedure Code, and also raised a fresh point which was not urged before the Sub-Divisional Magistrate, that the sanction accorded by the Collector of Tirunelveli on 28th September, 1966, is not valid as the Government alone could accord sanction for prosecution and delegation by the Government to the Collector of its power to sanction prosecution is ultra vires. But, the learned Counsel did not press the point that the proceedings were barred under Section 403, Criminal Procedure Code.

7. On the other hand, it was contended on behalf of the State that sanction for prosecution is not at all necessary in respect of the facts of this case and assuming that the sanction is necessary, the sanction accorded by the Collector is valid as the Government had delegated the power to sanction prosecution to the Collectors and that such delegation is not ultra vires.

8. It is, therefore, necessary to consider taking into consideration the facts of this case, whether sanction for prosecution is necessary. If this point is answered in the negative, the question whether delegation by the Government of its power of sanction to prosecute is valid or not, may not arise.

9. The charge against the petitioner is, as already noted that he as the Executive Officer of the Nazareth Panchayat Board drew the Panchayat amounts from the local co-operative bank, Nazareth, and from the Sub-Treasury, Tiruchendur, to the extent of Rs. 1,350 and did not utilise the amounts for the purpose for which they were drawn and thus committed an offence punishable under Section 409, Indian Penal Code. The contention of the revision petitioner is that the amounts drawn by him as public servant were utilised for the purpose for which they were drawn and that he did not commit any breach of trust. The petitioner is undoubtedly a public servant. It appears he has got power to withdraw and utilise the moneys for the purpose for which they were drawn. It is contended on behalf of the petitioner that since the offence alleged to have been committed by the petitioner was while acting in the discharge of his official duty, sanction for prosecution is necessary under Section 169 (1) of the Madras Panchayats Act XXXV of 1958. Section 169 (1) reads as follows:

When the President or the Executive Authority or the Chairman or Vice-Chairman of a Panchayat Union Council or the Commissioner or any member is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government.

It may also be relevant to note Section 157 (1) of the Act which runs as follows:

The Government may by notification authorise any authority or officer not below the rank of a Collector to exercise in regard to any panchayat or any class of panchayats in any area or in regard to any panchayat union council or any class of panchayat union councils or all panchayat union councils in any area any of the powers vested in them by this Act except the power to make rules and may in like manner withdraw such authority.

10. In pursuance of Section 157 (1), a notification G.O. Ms. No. 500, dated 2nd March, 1965, R. D. and L. A. Department, Government of Madras, was issued by which the powers vested in the Government under Sub-sections (1) and (2) of Section 169 of the Act were delegated to the Collectors.

11. The question now to be considered is whether the revision petitioner committed breach of trust while acting or purporting to act in the discharge of his official duty as the Executive Officer of the Panchayat Board. The answer to this mainly depends-upon the fact whether the Executive Officer spent the amount drawn by him in fact for the purpose for which it was drawn and whether he was authorised to spend such amount. If he was authorised to spend and if he had spent according to the direction and authorisation, it can be said that he spent while acting in discharge of his duty. If he had not spent the amount for the purpose for which it was drawn and committed breach of trust, it cannot be said that such breach of trust was-committed while acting in discharge of his official duty.

12. The act of criminal misappropriation was not committed by the petitioner while he was acting or purporting to act in discharge of his official duties and the. offence has no direct connection with the duties of the petitioner. I consider that the official status of the petitioner as Executive Officer provided an occasion or opportunity of committing the offence of misappropriation, by not utilising the amount for the purpose for which it was drawn.

13. In Amrik Singh v. State of Pepsu : 1955 CriLJ865 , Venkatarama Ayyar, J., in dealing with Section 197 (1), Criminal Procedure Code, which is in pari materia with Section 169 (1) of the Madras Panchayats Act, on behalf of the majority, observed as follows:

It is not every offence committed by a public servant that requires sanction for prosecution under Section 197 (1), Criminal Procedure Code, nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so irrespective of whether' it was,

in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.

Even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197 (1) will depend upon the facts of each case If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197 (1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required. The result then is that whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary.

14. In a subsequent decision reported in Matajog Dobey v. H.C. Bhari : [1955]28ITR941(SC) , the observations made by Venkatarama Ayyar, J., in the above decision were quoted with approval.

15. In Om Prakash v. State of U.P. : 1957 CriLJ575 , Govinda Menon, J., observed in paragraph 30 at page 464 as follows:

Quite a large body of case law in all the High Courts has held that a public servant committing criminal breach of trust does not normally act in his capacity as a public servant.

16. In Satwant Singh v. State of Punjab : [1960]2SCR89 , it has been observed by the majority in dealing with the scope of Section 197, Criminal Procedure Code, as follows:

The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. Some offences cannot by their very nature be regarded

as having been committed by public servants while acting or purporting to act in the discharge of their official duty. Where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offence has no necessary connection between it and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offence.

17. In Baijnath v. State of M.P. : 1966 CriLJ179 , the majority doubted the correctness of the principle laid down-in Amrik Singh v. State of Pepsu : 1955 CriLJ865 , stating that they need not examine how far the decision in Amrika Singh's case'; can stand in view of the earlier decisions of the Judicial Committee and the two subsequent decisions of a larger Bench of the Supreme Court in Om Prakash v. State of U.P. : 1957 CriLJ575 , and Satwant Singh v. State of Punjab : [1960]2SCR89 . In this decision, the majority approved the principles laid down in Om Prakash v. State of U.P. : 1957 CriLJ575 , and Satwant Singh v. State of Punjab : [1960]2SCR89 , and held that the act of criminal misappropriation was not committed by the appellant while he was acting or purporting to act in the discharge of his official duty and that the offence had no direct connection with the duties of the appellant as a public servant and the official status of the appellant only furnished the appellant with an occasion or opportunity for the commission of the offence.

18. The latest decision by the Supreme Court in Arulswami v. State of Madras : 1967 CriLJ665 , arose from a Madras case under the Madras Village Panchayats Act. The Supreme Court in that case was concerned in the interpretation of Section 106 of Madras Act X of 1950 which is in pari materia with Section 169 of Act XXXV of 1958. In that case, the President of the Narinjipet Panchayat Board was prosecuted under Section 409, Indian Penal Code. It was alleged that the appellant cashed a sum of Rs. 4,000 of the Panchayat Board invested in National Plan Savings Certificates in the Bhavani Post Office and did not bring the amount into the account books of the Panchayat Board. The defence was that the appellant signed the certificates, and handed them over to the Deputy Panchayat Officer and that he did not appropriate the amount. The Supreme Court held in the

circumstances of the case that no sanction was necessary under Section 106 of the Madras Village Panchayats Act. In this decision, the principles laid down in the earlier decisions in Om Prakash v. State of U.P. : 1957 CriLJ575 , Satwant Singh v. State of Punjab : [1960]2SCR89 , and Baijnath v. State of M.P. : 1966 CriLJ179 were approved.

19. The trend of the decisions of the Supreme Court appears to be that (1) it is not every offence committed by a public servant that requires sanction for prosecution; (2) Nor even every act done by him while he is actually in the performance of his official duties; and (3) Sanction would be necessary if the act complained of is strictly concerned with his official duties, so that it could be claimed to have been done by virtue of the office.

20. Applying the principles laid down by the Supreme Court to the facts of this case, I am of the view that it cannot be said that the criminal breach of trust or misappropriation committed by the revision petitioner was while he was acting in the discharge of his official duties, and hence no sanction is necessary.

21. The next question whether the sanction accorded by the Collector was valid or not does not arise. It appears Kailasam, J., in Public Prosecutor v. Arulswami : AIR1964 Mad350 , held in dealing with the powers of delegation under Section 127 of Madras Act X of 1950 which is in pari materia with Section 157 (1) of Madras Act XXXV of 1958 that the 'Government can delegate its powers of sanction to the Collector. Prima facie, I am inclined to agree with Kailasam, J.

22. The revision petition is, therefore, dismissed. The Magistrate is directed to dispose of the case according to the law as expeditiously as possible.