

Amrit Kumar Maity Vs. State

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Court : Kolkata

Decided On : Dec-02-2003

Reported in : 2004(2)CHN663

Judge : G.C. De, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 43 and 482; ;
[Prevention of Corruption Act, 1988](#) - Sections 7 and 13

Appeal No. : C.R.R. No. 1319 of 2002

Appellant : Amrit Kumar Maity

Respondent : State

Advocate for Def. : Kazi Safiullah, Ld. P.P. and ;Minoti Gomes, Adv.

Advocate for Pet/Ap. : Milan Kumar Mukherjee, ;Kajal Roy and ;Haimanti Mukherjee, Advs.

Judgement :

G.C. De, J.

1. By this application under Section 482 of the Code of Criminal Procedure, a prayer has been made for quashing of the entire proceeding, of Raina P. S. case No. 5 of 2002 dated 7.1.2002 under Section 7 of the [Prevention of Corruption Act,](#)

[1988](#) on the basis of which Special Case No. 8 of 2002 was started and pending before the learned First Special Judge, Burdwan.

2. One Samiran Halder of Village-Vehalan, P. S.-Madhabdihi, District-Burdwan made a written complaint to the B.D.O. Raina-I Development Block alleging that the Station Super of Sahara Bazar Electric Supply Office with others were extracting money from the cultivators on threat of disconnecting their electric line from the shallow tubewell and other irrigation appliances. It is also indicated that on the basis of such threat the said Samiran Halder met the Station Super in his office when he wanted a gratification of Rs. 10,000/-. It is also indicated therein that out of total sum of Rs. 10,000/- he had already paid a sum of Rs. 5,000/-. Accordingly, he made a prayer for saving the poor fellow from the clutches of the said Senior Station Super of West Bengal State Electricity Board.

3. On receipt of such written complaint, the Joint B.D.O. of Raina-I Development Block contacted the local S.D.O. over telephone who asked him to keep a close watch in the matter. Accordingly, the Joint B.D.O. went to Khandaghosh Group Electric Supply Office and started watching outside the office of the Station Super. Sometime after the said Samiran Halder entered into the office room of the Station Super and came out of the room within few minutes. At once the Joint B.D.O. entered inside the office room of the said Station Super along with public witnesses and police officials and recovered Rs. 5,000/- in cash, from the table drawer of the Station Super Amrit Kumar Maity, on which he put his signature on three notes. Accordingly, the said Amrit Kumar Maity was produced before the Officer-in-Charge of Raina P. S. along with the written complaint and the seizure list. On the basis of such written complaint Raina P. S. case No. 5 of 2002 was started and the second seizure list was prepared on the basis of which the seized money along with the seizure list prepared by the Joint B.D.O. was taken charge of. Subsequently, the case was investigated by an Inspector of Police and sanction to prosecute the present petitioner was obtained from the West Bengal State Electricity Board. But subsequently the Deputy Superintendent of D.E.B., Burdwan was authorised to investigate the case and he after investigation submitted chargesheet on 20.10.2002.

4. Thereafter the case was placed before the learned Special Judge who on perusal of the materials on record framed charge against the present petitioner under Section 7 as well as under Section 13 of the [Prevention of Corruption Act, 1988](#) on 13.2.2003 and fixed few dates for trial.

5. The petitioner challenged the entire proceeding before this Court, mainly pointing out the illegality in the manner of investigation and obtaining sanction, and this Court accepted the application for final disposal and issued an interim order of stay. So, the question is whether the entire proceeding can be quashed at this stage of trial.

6. Mr. Milan Mukherjee, learned Counsel appearing on behalf of the petitioner made a forceful argument in favour of quashing of the proceeding pointing out that the Joint B.D.O. had no power to arrest or to investigate the case. It is further submitted that the investigation of the case was not properly done in accordance with law and that the sanction of the proceeding was not correctly obtained. So, his argument is that the entire proceeding based on illegal investigation and application of wrong procedure should be quashed.

7. Mr. Safiullah, learned P.P. appearing on behalf of the State along with Ms. Gomes, also made a forceful argument pointing out that the technicality in the proceeding cannot be taken into consideration in a case of this nature and for such technicality the entire proceeding cannot be quashed. It is also pointed out that the Joint B.D.O. was not only a Gazetted Officer but also an ordinary member of the public and he can arrest and produce a person, committing a cognizable non-bailable offence, before the police station under Section 43 of the Code of Criminal Procedure. It is also pointed out that though the investigation was done by one Inspector of Police unauthorised by law, but subsequently the defect was cured on the basis of authorisation given to the Deputy Superintendent, D.E.B., Burdwan to investigate the case and as such there was no illegality in submitting the chargesheet. As regards sanction, it is pointed out that the term 'as desired' in the letter itself is sufficient to indicate that at the time of issuing the order of sanction there was application of mind with regard to the papers produced before the sanctioning authority. Accordingly, Mr. Safiullah contended that this application is

liable to be rejected and the case be sent back to the Court below for the regular trial.

8. After careful consideration of the materials on record, it appears that the original complainant Samiran Halder did not give any date in his complaint nor he indicated the dates on which a gratification was claimed and Rs. 5,000/- was paid. It is also not disclosed as to when the balance amount of Rs. 5,000/- was required to be paid. But on the basis of the said letter, the Joint B.D.O. informed the S.D.O. concerned who asked him to keep a close watch in the matter. But the complaint dated 7.1.2002 of the Joint B.D.O. indicates that without keeping an watch, he directly went to the office of the Station Superintendent and as soon as the said complainant came out of the room of the Station Superintendent, he along with his men and police personnel entered inside the chamber and Rs. 5,000/- was recovered from the table drawer of the Station Superintendent Amrit Kumar Maity. It is also indicated that the Joint B.D.O. put his signature on three of such notes and seized the said bundle of Rs. 5,000/- on the basis of seizure list in presence of the witnesses. It is to be noted that none of the police personnel present took any action in this matter nor they put their signature at the time of the alleged seizure. It is also to be noted that the procedure of search and seizure was not followed.

9. But immediately on getting the written complaint from the Joint B.D.O., the Officer-in-Charge of the concerned police station on 7.1.2002 at 17.55 hours started Raina P. S. Case No. 5/2002 under Section 7 of the [Prevention of Corruption Act, 1988](#). The F.I.R. indicates that he took up investigation of the case as well as he directed the Deputy S.P. D.E.B., Burdwan for its investigation, C. D. produced on behalf of the State indicates that major part of the investigation including the examination of the witnesses was done by one Inspector of D.E.B., Burdwan during the month of January and February, 2002. The said Inspector Manabendra Mukherjee, D.E.B., Burdwan also wrote to the W.B.S.E.B. for according sanction under Section 19 of the [Prevention of Corruption Act, 1988](#) for prosecution against the present petitioner Amrit Kumar Maity by a letter dated 1.4.2002 and he obtained such sanction on the basis of a letter dated 5.7.2002 written to the S.P. D.E.B., Burdwan by the disciplinary authority and the Secretary of W.B.S.E.B. In the said sanction letter, it is also indicated that 'As desired by Sri

Manabendra Mukherjee, Inspector of Police, D.E.B., Burdwan in his memo No. 1119/DEB/BDN dated 1.4.2002, I hereby communicate the sanction under Section 19 of the [Prevention of Corruption Act, 1988](#) for prosecution of Sri Amrit Kumar Maity, Sr. Station Superintendent (under suspension), Khandaghoosh Gr. E/S in the Raina P. S. Case No. 5/2002 dated 7.1.2002 under Section 7 of the said Act.....'

10. Documents are also produced on behalf of the present petitioner, claiming those papers being supplied after filing of the chargesheet, to show that before filing of the chargesheet opinion of the learned P.P. was sought for and he by his note dt. 27.8.2002, clarified that 'As per provision of Section 17 of the Prevention of Corruption Act, no police officer below the rank of D.S.P. or of the equivalent post can investigate such case unless the Inspector of Police is authorised to investigate such case by general or special order by the State Government. So, the continuance of investigation of this case by the present Inspector of Police is not legal and proper'.

11. It appears that on getting such opinion, D.S.P. D.E.B., Burdwan took up the case for further investigation in terms of the order dated 12.9.2002 passed by the S. P., Burdwan and he took charge of the case from the earlier Investigating Officer viz. the Inspector of D.E.B., Burdwan. Thereafter he submitted a chargesheet pointing out that a prima facie case has been well established against the accused/petitioner. It is interesting to note from 'the chargesheet as submitted in the Court that the D.S.P. fully relied on the investigation done by the said Inspector of Police upto 12.9.2002 and he simply added that he also visited the place of occurrence and examined the witnesses further who made same statement for which a prima facie case was well established against the accused Amrit Kumar Maity. C. D. produced in this case indicates that no further examination of witnesses was done by the said authorised Investigating Officer after 12.9.2002 and he fully relied on the materials collected by the Inspector of D.E.B., Burdwan and signed the chargesheet on 20.10.2002.

12. As regards production of the present petitioner before the police station by the Joint B.D.O. as pointed out by the learned Public Prosecutor, cannot be construed to be altogether illegal in view of the provision of Section 43 of the Code of

Criminal Procedure. The question is whether the Inspector of Police had any authority to investigate the case in the manner done in this case.

13. In Chapter IV of the [Prevention of Corruption Act, 1988](#) manner of investigation has been indicated and it is specifically stated in Section 17 of the Act that no police officer below the rank of certain categories was authorised to investigate the case without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant. Of course, a police officer not below the rank of Inspector of Police can investigate the case without such order of the Metropolitan Magistrate or of a Magistrate of the first class, if he is authorised by the State Government in that behalf by a general or special order, issued by the State Government in this behalf. So, initial investigation done upto 12.9.2002 by the Inspector of Police D.E.B., Burdwan was unauthorised and no action can be taken on such investigation.

14. In this case, it is also interesting to note that the Joint B.D.O. in his written complaint did not indicate that before the alleged recovery of the cash amount from the table drawer of the present petitioner, he in presence of the original complainant Samiran Halder and/or before any other witnesses put his initial/signature on the three notes and thereafter handed over the cash amount with those signed notes to the said complainant Samiran Halder for handing over the same to the present petitioner as claimed by him towards gratification. But surprisingly enough the Investigating Officer having vast experience filled up this lacuna in the evidence of the Joint B.D.O. as well as of the other witnesses thereby indicating that the Joint B.D.O. put his signature on three notes before the said bunch of notes was handed over to the present petitioner by the original complainant Samiran Halder. It is true that the complaint which is treated as F.I.R. cannot be considered to be an encyclopedia, but it is a settled principle of law that the alleged offence is to be disclosed to enable the police authority to start a case under Section 154 of Cr. P. C. In the present case, as already indicated hereinabove, the original complainant Samiran Halder did not give any date as regards demand of gratification or prior handing over of Rs. 5,000/- towards the total claim of Rs. 10,000/-, nor it is indicated as to on which date he was asked to hand over the balance amount of Rs. 5,000/-. But the Investigating Officer in his

usual wisdom also filled up that lacuna in his investigation done in this case.

15. It is also to be noted that though the cognizable offence like the present case was committed in presence of the police personnel accompanying the Joint B.D.O., such police personnel did not take any action in the matter for reason best known to the Joint B.D.O. and the Officer-in-Charge of the police station. But the fact remains that the Joint B.D.O. on the basis of an undated letter of the complainant and without ascertaining the date of any specific incident entered inside the chamber of the present petitioner and without following the procedure of search and seizure took the present petitioner to the police station. The manner in which the present petitioner was produced before the police is sufficient to indicate that he was arrested by the Joint B.D.O. and thereafter he was produced before the police within the meaning of Section 43 of the Code of Criminal Procedure. It is true that any appropriate person in a fit and proper case has the power to arrest in respect of a cognizable and non-bailable case, but the complaint of the Joint B.D.O. does not disclose this fact. Be that as it may, it is sufficiently clarified in the chargesheet as well as in the C.D. that the major part of the investigation was unauthorised within the meaning of Section 17 of the [Prevention of Corruption Act, 1988](#). Accordingly, no Court should take into consideration such part of investigation being unauthorised in law.

16. It is also indicated hereinabove that the D.S.P. of D.E.B., Burdwan did not investigate the case at all and he simply relied on the materials collected by the unauthorised Investigating Officer. Moreover, he also placed reliance on the sanction given by the W.B.S.E.B, under Section 19 of the [Prevention of Corruption Act, 1988](#), against the present petitioner. There is nothing in the said letter dt. 5.7.2002 written by the West Bengal State Electricity Board to the Superintendent of Police, D.E.B., Burdwan to show or to indicate that any paper was produced before the sanctioning authority for taking into consideration as to whether the sanction for prosecution was to be given or not. Even if it is presumed that the materials collected by the Investigating Officer during the month of January and February, 2002 were produced before the West Bengal State Electricity Board by a letter dated 1.4.2002, no sanction could be given by the Board on the basis of such materials as those were collected unauthorisedly by one unauthorised

Investigating Officer. It is clear that the Investigating Agency was not unaware of the provision of law that the investigation could not be done by the police officer of the rank of Inspector inasmuch as it is indicated in the formal F.I.R. that the Officer-in-Charge of the police station was aware of the provision of Section 17 of the Act for which he directed the Deputy Superintendent of Police, D.E.B., Burdwan for arranging its investigation. So, it is not clear as to what prompted the Inspector of D.E.B., Burdwan to investigate the case in the manner indicated hereinabove. He had also no authority to pray for sanction on the basis of such unauthorised investigation. The action of the Investigating Officer was also declared to be illegal by the learned Public Prosecutor. So, sanction of prosecution as given by the West Bengal State Electricity Board on the basis of the materials, if any, produced before it on 1.4.2002 was unauthorised and illegal and no prosecution can be initiated on the basis of such sanction. It is to be noted that the Second Investigating Officer viz. the D.S.P. D.E., Burdwan did not take any step for obtaining sanction of prosecution before or after filing of the chargesheet in this case.

17. Sanction to prosecute is not a formal technicality and since the decision of the Privy Council in *Gokulchand Dwarkddas Morarka v. King*, , it is a settled principle of law that sanction to prosecution is an important matter, I deem it proper to quote the relevant portion from the said judgment:

'..... The sanction to prosecute is an important matter, it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not as the High Court seem to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient. Looked at as a matter of substance it is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold a sanction without a knowledge of the facts of the case'.

18. It is also a settled principle of law that the validity of the sanction depends upon the materials placed before the sanctioning authority, and the sanctioning authority is in duty bound to look into all the relevant facts, materials and evidence collected before according sanction to prosecution, The Apex Court in several judgments starting from Mohd. Iqbal Ahmed v. State of A. P., : 1979 CriLJ633 , repeatedly viewed that the sanction lifts the bar for prosecution and the grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecution. In Mansukhlal Vithaldas Chauhan v. State of Gujarat, reported in 1997 Supreme Court Cases (Cri) 1120, the Apex Court after analysing all the relevant decisions settled the law on this point. Judging from this standpoint and keeping in view the nature of sanction in this case, I hold and conclude that no case can be allowed to be prosecuted on the basis of such a sanction accorded on the basis of unauthorised materials. From this point alone the entire proceeding is liable to be quashed.

19. At the close, I like to recollect the decision of this Court in the case of Md. Salauddin v. State of West Bengal, 2002 C Cr LR (Cal) 816 in which it is clarified as to how cognizance of an offence under Section 7 of the [Prevention of Corruption Act, 1988](#) can be taken. Mere allegation of demanding gratification cannot be construed to be an offence. Similarly, the claim of giving gratification on the basis of oral evidence cannot be construed to be a good ground for starting a prosecution under the Prevention of Corruption Act unless and until some reliable corroborating materials are collected thereby giving a direct indication of the involvement of a public servant for the offence under Section 7 of the [Prevention of Corruption Act, 1988](#). In the prevailing system of administration, there may be instances betraying suspicious deals and transactions between the public servants and the public at large. Sometimes, the public indulged in illegal activities use the public machineries unlawfully for their goal. Similarly public officials also sometimes use their power and privilege in a suspicious manner without recourse to law for some reason or other. So, the allegation of illegal gratification is very common in the present state of affairs, and for the purpose of starting a case against a public servant, it is incumbent upon the complainant as well as the person taking cognizance to be very cautious in finding out the materials.

Sometimes traps are laid for detecting such illegal gratification cases. But in the present case no such plan was hatched up nor any trap was laid earlier. On the other hand, mere allegation was converted into a case under Section 7 of the Act and the investigation was illegally made, may be with the idea that the alleged crime can never be punished. Be that as it may, without making any further comment on the nature of investigation required in such cases, I am convinced from the materials on record that neither any prima facie case was made out at the time of taking cognizance nor the investigation was lawfully done, and sanction of prosecution was not lawfully obtained. All such illegalities and lacunae make the entire case unworthy of credence for which such a case cannot be allowed to be prosecuted any further. True it is that the charge was framed by the learned Special Judge. But from the materials indicated hereinabove I hold and conclude that no charge can be framed on the materials collected in this case and practically, there was no investigation in this case. It is also to be mentioned that the Joint B.D.O. and concerned officials also did not take appropriate steps for detecting an important allegation of illegal gratification against a very senior officer and took a wrong action for starting the case. So, starting of the case itself is bad in law.

20. The learned P. P. of course, urged that another opportunity is required to be given for further investigation of this case lawfully. But it is already indicated hereinabove that starting of the case itself was bad in law and as such the question of further investigation of the case cannot and should not arise.

21. With all these comments, I deem it proper to quash the entire proceeding. Accordingly, the proceeding of Special Case No. 8 of 2002 arising out of Raina P. S. Case No. 5 of 2002 is hereby quashed and the accused person be discharged and he also be discharged from his bail bond.

22. Let a copy of this order along with the lower Court records be sent down to the Court below forthwith.

23. Criminal Department is directed to supply urgent xeroxed certified copies of this order to the parties on usual terms and conditions.

