[2014] 4 S.C.R. 602

A STATE OF BIHAR & ORS.

v.

RAJMANGAL RAM

(Criminal Appeal No. 708 of 2014)

MARCH 31, 2014

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[P. SATHASIVAM, CJI AND RANJAN GOGOI, JJ.]

CODE OF CRIMINAL PROCEDURE 1973:

C *s. 465 r/w s. 197 Cr.P.C. and s. 19 (3) r/w s.19 (1) of PC Act - Interference with criminal prosecution on the ground of defects/omissions/errors in the order granting sanction for prosecution - Held: Both s. 465, Cr.P.C. and s. 19 (3) of PC Act make it clear that any error, omission or irregularity in the* D *grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court, a failure of justice has been occasioned - In the instant case, even assuming that Law Department was not competent to accord sanction, it was still necessary for High Court to reach the conclusion that a failure of justice had occasioned* E *-- Such a finding is conspicuously absent - Order of High Court interdicting the criminal prosecution of respondents is set aside - Prevention of Corruption Act, 1988 - s. 19 (3) r/w s. 19 (1).*

F **The instant appeals were filed by the State Government against two orders passed by the High Court holding that the Law Department of the State was not competent to accord sanction for prosecution of the respondents under the Penal Code, 1860 as well as the** G **Prevention of Corruption Act, 1988, resultantly, interdicting the criminal proceedings instituted against the respondents.**

The question for consideration before the Court

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was: whether a criminal prosecution ought to be interfered with by the High Court at the instance of an accused who sought mid-course relief from the criminal charges levelled against him on grounds of defects/ omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction.

Allowing the appeals, the Court

HELD: 1.1 Keeping in view the object behind the requirement of grant of sanction to prosecute a public servant, the provisions in this regard either under the Code of Criminal Procedure, 1973 or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is- whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in s. 19(3) of the Prevention of Corruption Act as well as in s. 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the

A **grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court, a failure of justice has been occasioned. This is how the balance is sought to be struck. [Para 5] [607-B-H]**

B **1.2 In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless** C **of course a failure of justice has occurred, at the intermediary stage a criminal prosecution cannot be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also** D **been occasioned. [Para 7] [610-F-G]**

State of Madhya Pradesh vs. Virender Kumar Tripathi **2009 (7) SCR 89 = (2009) 15 SCC 533;** *State by Police Inspector vs. T. Venkatesh Murthy* **2004 (4) Suppl. SCR 279** E **= (2004) 7 SCC 763;** *Prakash Singh Badal and Another vs. State of Punjab and Others* **2006 (10) Suppl. SCR 197 = (2007) 1 SCC 1; and** *R. Venkatkrishnan vs. Central Bureau of Investigation* **2009 (12) SCR 762 = (2009) 11 SCC 737 - relied on.**

F *State of Goa vs. Babu Thomas* **2005 (3) Suppl. SCR 712 = (2005) 8 SCC 130 - distinguished.**

1.3 In the instant cases, the High Court had interdicted the criminal proceedings on the ground that G **the Law Department was not the competent authority to accord sanction for the prosecution of the respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been** H **occasioned. Such a finding is conspicuously absent.**

Therefore, the impugned orders passed by the High Court cannot be sustained in law and, as such, are set aside. [Para 10 and 12] [612-C-D, G]

Case Law Reference:

2006 (10) Suppl. SCR 197	**relied on**	**Para 7**
2004 (4) Suppl. SCR 279	**relied on**	**Para 8**
2009 (12) SCR 762	**relied on**	**Para 8**
2009 (7) SCR 89	**relied on**	**Para 8**
2005 (3) Suppl. SCR 712	**distinguished**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 708 of 2014.

From the Judgment and Order dated 23.03.2012 of the High Court of Patna in CRLW No. 487 of 2011.

WITH

Criminal Appeal Nos. 709-710 of 2014.

Ranjit Kumar, H.P. Raval, Rajiv Dutta, Gopal Singh, Manish Kumar, Arunabh Chowdhury, Ashish Jha, Gainilung Panmei, Karma Dorjee, Jayant Mohan, Ajit Kumar, Avinash Kumar, Deepali Dwivedi, Siddharth Dutta, Dushyant Kumar for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave, as prayed for, is granted in both the matters.

2. The two appeals are by the State of Bihar against separate orders (dated 23.03.2012 and 03.03.2011) passed by the High Court of Patna, the effect of which is that the criminal proceedings instituted against the respondents under different provisions of the Indian Penal Code as well as the

A Prevention of Corruption Act, 1988 have been interdicted on the ground that sanction for prosecution of the respondents in both the cases has been granted by the Law Department of the State and not by the parent department to which the respondents belong.

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3. A short and interesting question, which is also of considerable public importance, has arisen in the appeals under consideration. Before proceeding further it will be necessary to take note of the fact that in the appeal arising out of SLP (Crl.) No. 8013 of 2012 the challenge of the respondent-writ petitioner before the High Court to the maintainability of the criminal proceeding registered against him is subtly crafted. The criminal proceeding, as such, was not challenged in the writ petition and it is only the order granting sanction to prosecute that had been impugned and interfered with by the High Court. The resultant effect, of course, is that the criminal proceeding stood interdicted. In the second case (SLP (Crl.) Nos.159-160/2013) the maintainability of the criminal case was specifically under challenge before the High Court on the ground that the order granting sanction is invalid in law. Notwithstanding the above differences in approach discernible in the proceedings instituted before the High Court, the scrutiny in the present appeals will have to be from the same standpoint, namely, the circumference of the court's power to interdict a criminal proceeding midcourse on the basis of the legitimacy or otherwise of the order of sanction to prosecute.

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4. Though learned counsels for both sides have elaborately taken us through the materials on record including the criminal complaints lodged against the respondents; the pleadings made in support of the challenge before the High Court, the respective sanction orders as well as the relevant provisions of the Rules of Executive Business, we do not consider it necessary to traverse the said facts in view of the short question of law arising which may be summed up as follows:-

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"Whether a criminal prosecution ought to be interfered with by the High Courts at the instance of an accused who seeks mid-course relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction?"

5. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is-whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck.

A 6. For clarity it is considered necessary that the provisions of Section 19 of the P.C. Act and Section 465 of the Cr.P.C. should be embodied in the present order:-

Section 19 of the PC Act

B "19. Previous sanction necessary for prosecution.-(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

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(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that
D Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that
E Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

F (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from
G his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

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(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

A Section 465 of Cr.P.C.

> **"465. Finding or sentence when reversible by reason of error, omission or irregularity.**-(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
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> (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."
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> (emphasis is ours)

7. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in *State by Police Inspector vs. T. Venkatesh Murthy*[1] wherein it has been inter alia observed that,

1. (2004) 7 SCC 763 (paras 10 and 11).

"14. .....Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice."

8. The above view also found reiteration in *Prakash Singh Badal and Another vs. State of Punjab and Others*[2] wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In *Prakash Singh Badal* (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in *R. Venkatkrishnan vs. Central Bureau of Investigation*[3]. In fact, a three Judge Bench in *State of Madhya Pradesh vs. Virender Kumar Tripathi*[4] while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19 (3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).

9. There is a contrary view of this Court in *State of Goa vs. Babu Thomas*[5] holding that an error in grant of sanction goes to the root of the prosecution. But the decision in *Babu*

2. (2007) 1 SCC 1 (para 19).
3. (2009) 11 SCC 737.
4. (2009) 15 SCC 533.
5. (2005) 8 SCC 130.

A *Thomas* (supra) has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the B position has been clarified by the larger Bench in *State of Madhya Pradesh vs. Virender Kumar Tripathi* (supra).

10. In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the C prosecution of the respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High D Court.

11. The High Court in both the cases had also come to the conclusion that the sanction orders in question were passed mechanically and without consideration of the relevant facts and records. This was treated as an additional ground for E interference with the criminal proceedings registered against the respondents. Having perused the relevant part of the orders under challenge we do not think that the High Court was justified in coming to the said findings at the stage when the same were recorded. A more appropriate stage for reaching the said F conclusion would have been only after evidence in the cases had been led on the issue in question.

12. We, therefore, hold that the orders dated 23.03.2012 and 03.03.2011 passed by the High Court cannot be sustained G in law. We, therefore, allow both the appeals; set aside the said orders and direct that the criminal proceeding against each of the respondents in the appeals under consideration shall now commence and shall be concluded as expeditiously as possible.

H R.P. Appeals allowed.