

M. GOPALAKRISHNAN

v.

STATE BY ADDL. S.P. CBI, B.S. & F.C., BANGALORE
(Criminal Appeal No. 505 of 2006)

FEBRUARY 11, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

CODE OF CRIMINAL PROCEDURE, 1973 :

ss. 197 and 482 – Petition for quashing of criminal prosecution against Chairman and managing director of a Banking company for lack of sanction u/s 197 – Held : Banking Regulation Act would prevail over the Nationalised Banks (Management and Miscellaneous provisions) Scheme, 1970 – In view of specific provision for removal of Chairman under the 1949 Act, prima facie, he would not come within the scope of s.197 – Besides, it is yet to be established whether the acts were committed by the accused in the position of his official duty – Judgment of High Court dismissing the petition does not suffer from any infirmity to warrant interference – Penal Code, 1860 – ss.120-B and 420 – Prevention of Corruption Act, 1988 – ss 11, 12, 13(1) and 13(2) – Banking Regulation Act, 1949 – Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970.

A case u/s 120-B read with s. 420 IPC and ss. 11, 12 and 13(2) read with ss. 13(1)(d) of the Prevention of Corruption Act, 1988 was registered by CBI against the appellant-Executive Director and Chairman and Managing Director, Indian Bank. The appellant filed a petition u/s 482 CrPC seeking to quash the proceedings. The other accused also filed similar petitions. The High Court dismissed the petitions. Aggrieved, the accused filed the appeals.

A It was contended for the appellant in CrI. A. No. 505
of 2006, that his appointment having been made by the
Central Government under the provisions of Nationalised
Banks (Management and Miscellaneous Provisions)
Scheme, 1970 and, as such, he being a public servant,
B in the absence of any sanction u/s 197(1)(a) of the Code,
C cognizance taken by the court was invalid. The stand of
the respondent was that under the Banking Regulation
Act, 1949, the Chairman of a Banking Company would be
appointed only by the Reserve Bank of India which alone
would be the authority competent to remove the
Chairman and, therefore, provisions of s. 197 of the Code
would not be attracted.

Dismissing the appeals, the Court

D HELD: Banking Regulation Act, 1949 shall prevail
over the Nationalised Banks (Management and
Miscellaneous Provisions) Scheme, 1970 which was
formulated u/s 9 of the Banking Companies (Acquisition
and Transfer of Undertakings) Act, 1970. In this view, the
E appellant cannot claim to be a 'public servant' not
removable from his office save by or with the sanction
of the Government. In view of the specific provisions
available for removal of the Chairman under the 1949 Act,
it is *prima facie* clear that the appellant will not come within
F the scope of s.197 of the Code. Besides, the High Court
has rightly held that the question whether the appellant
is removable from service by the Reserve Bank or the
Central Government is really of an academic interest
because it is yet to be established that the impugned acts
G were done by the appellant in the position of his official
duty. The order of the High Court does not suffer from
any infirmity to warrant interference. [Para 16, 19 and 20]
[159-B-C; 160-B]

P.K. Pradhan v. State of Sikkim 2001 SCC (CrI.) 1234

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M. GOPALAKRISHNAN v. STATE BY ADDL. S.P. CBI, B.S. 153
& F.C., BANGALORE

and *Parkash Singh Badal v. State of Punjab* 2007 (1) SCC 1, relied on A

Case Law Reference:

2001 SCC (Cri.) 1234 relied on para 17 B

2007 (1) SCC 1 relied on para 20 B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 505 of 2006.

From the Order dated 31.3.2004 of the High Court of
Judicature at Madras in CrI.O.P. No. 4313 of 2003. C

WITH

Criminal Appeal Nos. 274, 277, 278, 279 and 280 of 2009. D

K. Ramamoorthy, V.G. Pragasam, S.J. Aristotle, S.
Mukandan and Prabu Ramasubramanian for the Appellant.

B.B. Singh and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by E

DR. ARIJIT PASAYAT, J. 1. Leave granted in Special
Leave Petitions.

2. Challenge in all these appeals is to the order passed
by a learned Single Judge of the Madras High Court in each
case dismissing the application under Section 482 of the Code
of Criminal Procedure, 1973 (in short the 'Code'). Stand of the
appellant is that there was no sanction for prosecution as
contemplated under law. F

3. Background facts in a nutshell are as follows: G

The respondent/complainant on credible information
registered a case against the appellant and others for the
alleged commission of offences punishable under Section H

- A 120B of the Indian Penal Code, 1860 (in short the 'IPC') read with Section 420 IPC and Sections 11, 12, and 13(2) read with section 13(1)((d) of the Prevention of Corruption Act, 1988 (in short the 'PC Act'). On the basis of the First Information Report when investigation proceeded it disclosed the commission of
- B the offences, as aforementioned, resulting in filing of a final report followed by taking cognizance of the case by the court concerned.

C The respective stands of the parties before the High Court were as follows:

- D The appellant filed a petition under Section 482 of the Code to quash the proceedings since in the absence of any sanction under Section 197(1)(a) of the Code, the cognizance taken by the Court is illegal and invalid since he is a public servant. It is the further case of the appellant that though he was the Chairman and Managing Director of the Company with over all control, the sanction of credit facility was not directly connected with him and in this view he should be absolved from all the charges. It was further submitted that there is no
- E allegation that the appellant as public servant obtained pecuniary advantage while holding office as public servant and in this view the charges against him are untenable. On the above basis, it was claimed that proceedings against him should be quashed.

- F The respondent-State opposed the application contending that sanction to prosecute the appellant is not necessary under the facts and circumstances of the case and the same also could be decided even at the time of the trial.

- G The final report reads:

H "That accused M. Gopalakrishnan (A1) while functioning as the Executive Director and Chairman and Managing Director, Indian Bank connived to commit criminal misconduct by public servants by corrupt or illegal means or by abuse of

their official position as public servants or they while holding office as public servants without any public interest obtained for themselves or for any other person any valuable thing or pecuniary advantage by recommending/sanctioning credit limits without proper appraisal, ignoring banking norms, RBI guidelines, exceeding delegated powers, violating board directions despite glaring adverse features in the conduct of the account, without ensuring proper end use of funds and safeguarding the interest of the Bank by A1 to A4 the public servants, viz. M. Gopalakrishnan (A1) and N. Kumaraswamy (A2) named above to accept or obtain for themselves or for their close relatives viz. A18 to A20 named above valuable thing without consideration from persons whom they knew to have been concerned in business transacted by them or having any connection with the official functions of themselves or from any person whom they knew to be interested in or related to the person so concerned and the accused R. Ramesh (A18), T.S. Jayakumar (A19) and Kala Kumaraswamy (A20) to abet the aforesaid offences of public servants obtaining valuable thing without consideration from persons concerned in business transaction by them by accepting Rs.15 lacs and Rs.5 lacs in demand drafts and an Ambassador Nova Car, respectively. Thus the accused A1 to A20 committed offence punishable under Sections 120B read with Section 420 IPC and Sections 11, 12, 13(2) read with Section 13(1)(d) of PC Act.

4. Thus it is seen the capacity or the position of the appellant as that of public servant is an admitted position. In the ordinary course in order to take cognizance of a case against a public servant subject to certain other conditions as said in Section 197 of Code a sanction is a must as held by this Court in *Mohd. Hadi Raja v. State of Bihar* (AIR 1998 SC 1945). In the above decision it is observed as follows:

"For the purpose of requirement of sanction under Section 197 of the Code the accused will be such public servant who cannot be removed from his office except by or with

A the sanction of the Government. Further, the accused will
not only be a public servant of above description but the
offence alleged to have been committed by such officer
must have been committed while such public servant had
been acting or purporting to act in the discharge of his
B official duties."

5. As far as the second part is concerned in this petition
we are not very much concerned since on that ground
discharge or quashing of the proceedings was not urged. In this
view, High Court held that though the appellant is described as
C a public servant it has to be seen whether he comes within the
meaning of "such public servant who cannot be removed from
his office except by or with the sanction of the Government".

6. As revealed by the records the appellant was appointed
D as per the Notification dated 8.12.1988 as Managing Director
of the Indian Bank from the date of his taking the charge to be
the Chairman of the Board of Directors of the Indian Bank with
effect from the same date. This notification says that the Central
Government after consultation with the Reserve Bank of India
E had appointed the appellant. On this basis learned counsel for
the appellant submitted that the appointment of the appellant
as Managing Director-cum-the Chairman of the Board of
Directors was only by the Central Government and the Central
Government alone should have power to remove him from the
F service thereby taking the accused within the ambit of Section
197 of Code.

7. Nationalised Banks (Management and Miscellaneous
Provisions) Scheme 1970 defines "Chairman" under Rule 5(1)
as follows:

G "Chairman (1) the Central Government shall, after
consultation with the Reserve Bank appoint one of the
Directors to be the Chairman of the Board."

H 8. According to Rule 7 of the Scheme:-

"The Central Government may, after consultation with the Reserve Bank appoint the same person to hold, at the same time both the office of the Chairman and the Managing Director". A

9. When it comes to terms of office and remuneration etc. Rule 8(1)(a) reads: B

"Notwithstanding anything contained in sub-clause (1), the Central Government shall have the right to terminate the term of office of a whole time Director, including the Managing Director, at any time before the expiry of the term specified under that sub-clause by giving to him a notice of not less than three months' in writing or three months' salary and allowances in lieu of notice and the whole time Director, including the Managing Director shall also have the right to relinquish his office at any time before the expiry of the term specified under that sub-clause by giving to the Central Government notice of not less than three months in writing." C D

10. In the same manner, Section 8(4) reads:- E

"The Central Government may, if it is satisfied that it is expedient in the interests of the nationalized bank so to do, remove a whole time Director including the Managing Director from office." F

11. The above provisions are relied on to say that appellant is a public servant removable only by the Central Government.

12. The above provisions as well as the notification relied on by the appellant would indicate as if he was appointed by the Central Government, thereby impliedly saying that he could be removed only by the Central Government. If this position is correct then the sanction contemplated under Section 197 of Code should come to the aid of the appellant and if there is no sanction, taking cognizance of the case may be against the G H

A provisions of the law.

13. The learned counsel for the respondent submitted that under the Banking Regulation Act, 1949 the Chairman of a Banking Company is appointed only by the Reserve Bank of India and the Reserve Bank of India alone is the competent authority to remove the Chairman and in this view though the appellant is described as a public servant he will not come within the phrasing contemplated under Section 197 o Code requiring sanction since the Central Governmen is not concerned for his removal.

14. Section 10(bb) of the Banking Regulation Act says:

“Where the office of the Chairman of the Board of Directors appointed on a whole time basis or a Managing Director of a Banking Company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the Banking Company, appoint a person eligible under sub-section (4) of Section 10-B to be so appointed to be the Chairman of the Board of Directors appointed on a whole time basis or a Managing Director of the Banking Company, he shall so long as the person so appointed is not a Director of such Banking Company, he shall so long as he holds the office of the Chairman of the Board of Directors appointed on a whole time basis or a Managing Director, be deemed to be a Director of the Banking Company.”

15. Section 36(AA) empowers the Reserve Bank to remove Managerial and other persons from office including any Chairman and Director which reads as follows:

“Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a Banking Company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any Banking Company, it is necessary so to do, the

Reserve Bank may for reasons to be recorded in writing by order remove from office within effect from such date as may be specified in the order any Chairman, Director, Chief Executive Officer by whatever name called or other officer or employee of the Banking Company.”

16. Banking Regulation Act, 1949 shall prevail over the Scheme which was formulated under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. This Scheme cannot have the over riding effect against the Banking Regulation Act. In this view the appellant cannot claim that he is a public servant coming within the meaning of a ‘public servant’ not removable from his office, save by or with the sanction of the Government. In view of the specific provisions available for the removable of the Chairman under the Banking Regulation Act it is prima facie clear that the appellant will not come within the scope of Section 197 of Code. It was submitted by learned counsel for the respondent before the High Court the question of requirement of sanction for prosecution can be left open to be examined during the trial by giving an opportunity to the defence to prove the same.

17. Learned counsel for the respondent relied on a decision of this Court in *P.K. Pradhan v. State of Sikkim* (2001 SCC (Cri.) 1234) wherein it is observed as follows:

“Question of requirement of sanction for prosecution could be raised at any time after cognizance of the offence is taken, may be even at the time of conclusion of trial or after conviction.”

It is also observed that:

“The claim of the accused that the act alleged was done reasonably and not in pretended course of his official duty can be examined during the trial by giving an opportunity to the defence to prove it. In such cases, the question of sanction can be left open to be decided in the main

A judgment after conclusion of trial.”

18. On the basis of the above conclusions the claim of the accused that he should be discharged for want of sanction is not acceptable at present and the matter should be left open to be decided later on.

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19. The High Court held that the question whether the appellant is removable from service by the Reserve Bank or the Central Government is really an academic interest because it is yet to be established that the impugned acts were done by the appellant in position of his official duty.

C

20. In *Parkash Singh Badal v. State of Punjab* (2007 (1) SCC 1) it was noted as follows:

D

“The offence of cheating under Section 420 or for that matter offences relating to Sections 467, 468, 471 and 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

E

21. Above being the position, the High Court's view does not suffer from infirmity to warrant interference. The appeals fail and are dismissed.

F

R.P.

Appeals dismissed.