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CHITTARANJAN DAS

v.

STATE OF ORISSA

(Criminal Appeal No. 820 of 2007)

JULY 04, 2011

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**[G.S. SINGHVI AND CHANDRAMAULI
KR. PRASAD, JJ.]**

C *Prevention of Corruption Act, 1947 – s. 19 – Previous*
D *sanction necessary for prosecution – FIR lodged against a*
E *public servant for possessing assets disproportionate to known*
F *sources of income – Vigilance Department seeking sanction*
G *for prosecution of the public servant – Refusal by State*
H *Government to grant sanction for prosecution –*
Superannuation of the public servant – Thereafter, despite
request by Vigilance Department the State Government
declined to reconsider the decision – Subsequently, charge
sheet filed u/s. 5(2) rw s. 5(1)(e) of the Act against the public
servant – Special Judge taking cognizance of the offence and
issued process – Challenge to – Held: In a case in which
sanction sought is refused by the competent authority, while
the public servant is in service, he cannot be prosecuted later
after retirement, notwithstanding the fact that no sanction for
prosecution under the Prevention of Corruption Act is
necessary after the retirement of Public Servant – Any other
view will render the protection illusory – Thus, impugned order
is set aside and the prosecution of the public servant pending
in the court of Special Judge is quashed.

G **Appellant, public servant was found in possession**
H **of disproportionate assets to the tune of Rs.5.5 lakhs. The**
Vigilance Department sought sanction for prosecution of
the appellant but the State Government declined to grant
sanction. Thereafter, the appellant superannuated from
service. The Vigilance Department requested the State

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Government for reconsideration of the earlier order refusing the sanction for prosecution of the appellant. The State Government declined to grant sanction for prosecution as no *prima facie* case of disproportionate assets was made out against the appellant. Thereafter, the Vigilance Department filed charge-sheet against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 alleging acquisition of disproportionate assets to the tune of Rs.1.4 lakhs. The Special Judge took cognizance of the said offence and issued non-bailable warrant against the appellant. Aggrieved, the appellant filed a petition under Section 482 of the Code of Criminal Procedure seeking quashing of the said order but the High Court disposed of the same. The trial court also dismissed the application for discharge filed by the appellant. The appellant then challenged the said order and the High Court dismissed the same. Therefore, the appellant filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. Sanction is a device provided by law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled prosecution but not intended to shield the guilty. In the instant case, while the appellant was in service, sanction sought for his prosecution was declined by the State Government. The Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no *prima-facie* case of

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A disproportionate assets against the appellant is made out. Notwithstanding that Vigilance Department chose to file charge-sheet after the retirement of the appellant and on that Special Judge had taken cognizance and issued process. In a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility. The submission that refusal to grant sanction under Section 19 of the Prevention of Corruption Act, 1947 while the appellant was in service is of no consequence as undisputedly charge-sheet against the appellant was filed and further the Court had taken cognizance of the offence and issued process after his retirement, cannot be accepted. [Paras 7 and 8] [842-E-G; 843-A-F]

1.2. On facts, the prosecution of the appellant shall be an abuse of the process of the Court. According to the First Information Report, appellant possessed disproportionate assets worth Rs.5.5 lakhs. However, according to the charge-sheet, the disproportionate assets were to the extent of Rs.1.44 lakhs only. The State Government while declining to grant sanction for prosecution observed that assets possessed by the appellant are not disproportionate to his known source of income. Further, no disputed question being involved, the High Court instead of making observation as to "whether in instant case sanction order is necessary and whether that was refused by the State Government and what would be the consequence thereof" to be decided

by the trial court, ought to have decided the issues itself. The facts being not in dispute the High Court erred in not deciding these issues. The order of the High Court is set aside and the appellant's prosecution is pending in the Court of Special Judge is quashed. [Para 10, 11 and 12] [844-G-H; 845-A-D]

N. Bhargavan Pillai (dead) by LRs. & Anr. vs. State of Kerala AIR 2004 SC 2317 - distinguished.

Case Law Reference:

AIR 2004 SC 2317 distinguished. Para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 820 of 2007.

From the Judgment & Order dated 11.7.2006 of the High Court of Orissa in Criminal Misc. Case No. 1499 of 2004.

Vinod Bhagat for the Appellant.

Suresh Chandra Tripathy for the Respondent.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Bereft of unnecessary details the facts giving rise to the present appeal are that the appellant, a member of the Orissa Administrative Service, at the relevant time was serving as a Deputy Secretary to the Government of Orissa in the Irrigation Department. The officers of the Vigilance Department searched his house after obtaining a search warrant from the Court, on 17th March, 1992. It led to registration of a first information report against the appellant. During the investigation, it was found that the appellant possessed disproportionate assets of Rs.5,58,752.40. As the appellant was removable from service by the State Government, the Vigilance Department sought its sanction for prosecution of the appellant. The State Government by its letter dated 13th May, 1997, declined to grant

A sanction and advised that the proposal for prosecuting the appellant be dropped. The appellant superannuated from service on 30th June, 1997. It seems that even after the retirement of the appellant, the Vigilance Department wrote on 25th of March, 1998 for reconsideration of the earlier order
B refusing the sanction for prosecution of the appellant. The State Government by its letter dated 31st July, 1998 wrote back to the Vigilance Department and declined to grant sanction for prosecution, as in its opinion there was no prima facie case against the appellant and the assets held by him were not
C disproportionate to the known sources of his income. Accordingly, the State Government reiterated that there is "no justification for reconsideration of the earlier orders refusing the sanction of prosecution" of the appellant. Notwithstanding the aforesaid refusal of the Government, the Vigilance Department
D on 10th September, 1998 filed charge-sheet against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 alleging acquisition of disproportionate assets of Rs.1.44.234.78 between 1st January, 1980 and 31st December, 1985. The charge-sheet was laid before the Special Judge (Vig.), Bhubneshwar who
E by its order dated 2nd August, 1999 took cognizance of the aforesaid offence and issued non-bailable warrant against the appellant.

2. Appellant, aggrieved by the above order taking
F Cognizance of offence and issuance of the non-bailable warrant of arrest, filed petition under Section 482 of the Code of Criminal Procedure seeking quashing of the aforesaid order inter alia on the ground that his prosecution without sanction of the State Government is bad in law but the High Court by its
G Order dated 22nd September, 2003 disposed of the application with liberty to the appellant to raise this contention before Special Judge (Vig.) at the time of the framing of the charge.

3. Appellant, thereafter filed an application for discharge
H before the trial court which dismissed the same by order dated

9th June, 2004 *inter alia* on the ground that the appellant having retired from service, prior sanction is not necessary. Appellant challenged the aforesaid order before the High Court which by the impugned order rejected the challenge and while doing so observed as follows:

"6. On a conspectus of the facts and circumstances involved in the case and the position of law in the matter of sanction vis-à-vis the impugned order, this Court does not find any illegality in that order so as to invoke the inherent power with a view to quash the impugned order. Be that as it may, it is made clear that the disputed question as to whether in the present case a sanction order is necessary and whether that was refused by the State Government and what is the consequence thereof, may be gone into at the time of trial if raised by the accused-petitioner notwithstanding rejection of his application by the impugned order inasmuch as the foregoing discussion by this Court in any manner does not interfere with that right of the accused to be pursued," if so legally advised at the time of trial."

4. Mr. Vinoo Bhagat appearing on behalf of the appellant submits that the State Government having refused to grant sanction for prosecution and thereafter declined to reconsider this decision and further having declined to grant sanction for the prosecution of the appellant his prosecution is illegal and an abuse of the process of the Court.

5. Mr. S.C. Tripathy, however, appearing on behalf of the respondents submits that the charge-sheet was filed after the retirement of the appellant and in fact on that basis cognizance of the offence was taken and process issued thereafter and hence, the appellant cannot challenge his prosecution on the ground of want of sanction. According to him, as the appellant ceased to be a public servant on the date when the Court took cognizance of the offence and issued process, sanction for his prosecution is not necessary at all.

A 6. We do not have the slightest hesitation in accepting the
broad submission of Mr. Tripathi that once the public servant
ceases to be so on the date when the Court takes cognizance
of the offence, there is no requirement of sanction under the
Prevention of Corruption Act. However, the position is different
B in a case where Section 197 of the Code of Criminal
Procedure has application. In fact, the submission advanced
finds support from the judgment of this Court in the case of *N.
Bhargavan Pillai (dead) by LRs. & Anr. vs. State of Kerala*
AIR 2004 SC 2317 where it has been held as follows :

C “8. The correct legal position, therefore, is that an accused
facing prosecution for offences under the Old Act or New
Act cannot claim any immunity on the ground of want of
sanction, if he ceased to be a public servant on the date
when the Court took cognizance of the said offences. But
D the position is different in cases where Section 197 of the
Code has application.”

7. However, in the present case, we are faced with the
situation in which Vigilance Department asked the State
E Government to grant sanction while the appellant herein was
in service which it refused. Not only that Vigilance Department
sought for reconsideration of the decision by the State
Government which prayer was also rejected. In fact the State
Government reiterated that there is no prima facie case against
F the appellant and the assets held by him were not
disproportionate to the known sources of his income. Mr.
Tripathy points out that refusal to grant sanction under Section
19 of the Prevention of corruption Act, 1947 while the appellant
was in service is of no consequence as undisputedly charge-
sheet against the appellant was filed and further the Court had
G taken cognizance of the offence and issued process after his
retirement. He points out in the case of *N. Bhargavan Pillai*
(Supra) sanction sought for was refused but this Court did not
find any illegality in that.

H 8. We do not find any substance in the submission of Mr.

Tripathy and the decision relied on is clearly distinguishable. A
Sanction is a device provided by law to safeguard public
servants from vexatious and frivolous prosecution. It is to give
them freedom and liberty to perform their duty without fear or
favour and not succumb to the pressure of unscrupulous
elements. It is a weapon at the hands of the sanctioning B
authority to protect the innocent public servants from uncalled
for prosecution but not intended to shield the guilty. Here in the
present case while the appellant was in service sanction sought
for his prosecution was declined by the State Government.
Vigilance Department did not challenge the same and allowed C
the appellant to retire from service. After the retirement,
Vigilance Department requested the State Government to
reconsider its decision, which was not only refused but the State
Government while doing so clearly observed that no prima-
facie case of disproportionate assets against the appellant is D
made out. Notwithstanding that Vigilance Department chose to
file charge-sheet after the retirement of the appellant and on
that Special Judge had taken cognizance and issued process.
We are of the opinion that in a case in which sanction sought
is refused by the competent authority, while the public servant E
is in service, he cannot be prosecuted later after retirement,
notwithstanding the fact that no sanction for prosecution under
the Prevention of Corruption Act is necessary after the
retirement of Public Servant. Any other view will render the
protection illusory. Situation may be different when sanction is F
refused by the competent authority after the retirement of the
public servant as in that case sanction is not at all necessary
and any exercise in this regard would be action in futility.

9. Now we revert to the decision of this Court in the case
of *N. Bhargavan Pillai* (Supra) relied on by the respondents. G
True, it is that in paragraph 5 of the said judgment, it has been
observed that "it is a case where the sanction which was sought
for was refused" but from this paragraph, it is not clear whether
it was sought before or after the retirement of the public servant.
However, while reading the judgment as a whole, it is apparent H

A that in this case Charge-sheet against the public servant was filed after retirement. Further, sanction for his prosecution was sought and refused thereafter. This would be evident from the following narration of facts in the said judgment:

B "3.....The managing Director of the Corporation
wrote to the Director of Vigilance (Investigation) along with
a copy of Ext.P-I report. The Director of Vigilance
(Investigation) sanctioned registration of a case. On the
C basis of the direction the then Deputy Superintendent of
Police, Vigilance, Kollam (PW-10) registered a case as
per Ext. P-39. He entrusted the investigation to Inspector
of the Kollam Vigilance Unit-I (PW-11), who conducted the
investigation and sent a report to his higher authorities. *In
D the meantime, the accused retired from service on 28-
2-1992. Since he had retired from service sanction for
prosecution became unnecessary. The case was
transferred to the newly established Pathanamthitta
Vigilance Unit. PW-12, the Deputy Superintendent of
Police, Vigilance, Pathanamthitta Unit who was put in
E charge of this case also verified the records and filed the
charge sheet."*

(underlining ours)

F Thus in the case relied on, the sanction for prosecution
was not necessary and therefore its refusal had no bearing on
the Trial of the public servant. However, in the present case
sanction was sought and refused while the appellant was in
service. Hence, this judgment does not lend any support to the
contention of the respondents and is clearly distinguishable.

G 10. Otherwise also, the facts of the case are so telling that
we are of the opinion that the prosecution of the appellant shall
be an abuse of the process of the Court. According to the First
Information Report, appellant possessed disproportionate
assets worth Rs.5.58 lakhs. However, according to the charge-
H sheet, the disproportionate assets were to the extent of Rs.1.44

lakhs only. State Government while declining to grant sanction for prosecution observed that assets possessed by the appellant are not disproportionate to his known source of income.

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11. We are further of the opinion that no disputed question being involved, the High Court instead of making observation as to "whether in present case sanction order is necessary and whether that was refused by the State Government and what would be the consequence thereof" to be decided by the trial court, ought to have decided the issues itself. The facts being not in dispute the High Court erred in not deciding these issues.

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12. In the result, we allow this appeal, set aside the order of the High Court and quash the appellant's prosecution in TR No. 113 of 1999, pending in the Court of Special Judge (Vig.) Bhubaneshwar.

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N.J.

Appeal allowed.