STATE BY POLICE INSPECTOR

v.

T. VENKATESH MURTHY

SEPTEMBER 10, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Prevention of Corruption Act, 1988—Section 19 (3) & (4)—Karnataka Electricity Board Employees (Classification, Disciplinary Control and Appeal) Regulations, 1987—Sanction for prosecution of a public servant—Charges framed and evidence recorded—Trial court discharging the accused after finding that sanction granted was insufficient—High Court upholding same—On appeal, Held: Mere omission, error or irregularity in according sanction for prosecution could not affect validity of proceeding unless court records satisfaction that it resulted in failure of justice—Same logic applying to appellate and revisional courts also—Further, the requirement of raising the issue of sanction at the earliest opportunity has to be kept in view in deciding about failure of justice.

Words and phrases—'Failure of justice'—Meaning of in the context of Section 19 of Prevention of Corruption Act, 1988 and Sections 462 and 465 of the Code of Criminal Procedure, 1973.

Respondent-accused, a public servant, was being tried for offences under Sections 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988. After charges had been framed and evidence recorded, in view of earlier judgments of High Court, prosecution moved an application praying that question relating to sanction for prosecution was to be adjudicated first. Undisputedly, sanction was accorded. However, trial court referred to Karnataka Electricity Board Employees (Classification, Disciplinary Control and Appeal) Regulations, 1987 and held that as the sanction was not sufficient to prosecute the respondent, he was entitled to be discharged. High Court, on revision, upheld the judgment of trial court. Hence, the present appeal by State.

Appellant contended that even if it was conceded that *sanction was* defective, the respondent was not entitled to discharge since it was required to be shown as to how any prejudice or failure of justice was

A caused thereby. It was contended further that order of the High Court was indefensible as it was non-reasoned.

Respondent contended that the sanction was *sine-qua-non* for prosecution, and in absence of same, proceedings could not be continued.

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Partly allowing the appeal, the Court.

HELD : 1. Neither the Trial Court nor the High Court appear to have kept in view the requirement of sub-section 3 of section 19 of Prevention of Corruption Act, 1988 relating to 'failure of justice'. Merely because there C 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. The same logic also applies to the appellate or revisional court. The requirement of sub-section (4) about raising the issue, at the D earliest stage has also not been considered. [285-G, H]

2.1. The expression 'failure of justice' is too pliable or facile an expression, which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon. The criminal court, particularly the superior court should E make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage. [284-F]

Shamnsaheb M. Multtani v. *State of Karnataka,* [2001] 2 SCC 577, relied on.

F *State of M.P.* v. *Bhooraji and Ors.,* [2001] 7 SCC 679, referred to.

Town Investments Ltd. v. *Deptt. Of Environment,* [1977] 1 ALL E.R. 813 : (1978) AC 359, referred to.

G 2.2. Unfortunately the High Court by a practically non-reasoned order, confirmed the order passed by the trial judge. The orders are therefore, indefensible and set aside. [285-H; 286-A]

3. It would be appropriate to require the trial court to record findings in terms of clause (b) of sub-section (3) and sub-section 4 of H Section 19. [286-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 997 of 2004.

From the Judgment and Order dated 14.11.2002 of the Karnataka High Court in Crl. R.P. No. 998 of 2001.

Sanjay R. Hegde for the Appellant.

G.V. Chandrashekhara and P.P. Singh for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

The scope and ambit of Section 19 of the Prevention of Corruption Act, 1988 (in short the 'Act') falls for consideration in this appeal. State of Karnataka calls in question legality of the judgment rendered by a learned Single judge of the Karnataka High Court. The High Court upheld the order of discharge passed by the Trial Court. The respondent-accused was discharged in a criminal trial by the said order.

Background facts necessary for disposal of the appeal in a nutshell are as follows :

A charge-sheet was filed against the respondent (hereinafter referred to as the 'Accused') for commission of offences relatable under Sections 7, 13 (1) (d) read with Section 13(2) of the Act. Charges were framed by the Trial Court under the aforesaid provisions. Evidence of witnesses had also been recorded. At that stage the public prosecutor filed an application stating that in view of some earlier judgments of the High Court, question relating to validating a sanction for prosecution was to be adjudicated first. The accused had no objection to it. Undisputedly, the sanction was accorded by the Superintending Engineer of the Karnataka Electricity Board (hereinafter referred to as the 'Board'). The Trial Court referred to the Karnataka Electricity Board Employees (Classification, Disciplinary Control and Appeal) Regulations, 1987 (in short the 'Regulations') and held that the sanction accorded by the Superintending Engineer was not sufficient to prosecute the accused. Consequently it was held that the accused was entitled to discharge for the time being for the grant of invalid sanction. However, liberty was given to the prosecution to obtain fresh sanction and to file a fresh charge

A sheet. The order was assailed before the Karnataka High Court on the ground that even if it is conceded that the sanction was defective, that did not entitle the accused to an order of discharge. By the impugned order the revision application filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code'), was dismissed.

B In support of the appeal learned counsel for the State submitted that even if it is conceded for the sake of arguments that the sanction was defective that did not entitle the accused to an order of discharge. It was required to be shown by the accused as to how any prejudice was caused or there was failure of justice. It was also pointed out that the order of the High Court C is practically non-reasoned and no reason was assigned for accepting the view of the trial court.

Per contra, learned counsel for the respondent accused submitted that the sanction was *sine-qua-non* for prosecution. In the absence of a valid D sanction the proceedings could not be continued and therefore the trial court was right in its conclusion.

Section 19 is a part of Chapter 5 of the Act which deals with "Sanction For Prosecution and Other Miscellaneous Provisions". This Section has four sub- sections which read as follows :

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> *"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,-
>
> F (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 Government;
>
> G (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 sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent H to remove him from his office.

(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 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),-

(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

A of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

A combined reading of sub-sections (3) and (4) make the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a Court in B 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.

C Clause (b) of sub-section (3) is also relevant. It shows that no Court shall stay the proceedings under the 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.

Sub-section (4) postulates that in determining under sub-section (3) D whether the absence of, or any error, omission or irregularity in the 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 appended to the Section is also of significance. It provides, E that for the purpose of Section 19, error includes competency of the authority to grant sanction.

The expression "failure of justice" is too pliable or facile an expression, which could be fitted in any situation of a case. The expression "failure of F justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd.* v. *Deptt. Of Environment,* [1977] 1 All E.R. 813: 1978 AC 359. The criminal Court, particularly the superior Court should make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage. [See *Shamnsaheb M. Multtani* v. *State of Karnataka,* [2001] 2 SCC 577].

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It would also be relevant to take note of Sections 462 and 465 of the Code, which read as follows:

"462. *PROCEEDINGS IN WRONG PLACE:*

H No finding, sentence or order of any Criminal Court shall be set

aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

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.

(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."

In *State of M.P.* v. *Bhooraji and Ors.*, [2001] 7 SCC 679, the true essence of the expression "failure of justice" was highlighted. Section 465 of the Code in fact deals with "finding or sentences when reversible by reason of error, omission or irregularity", in sanction.

In the instant case neither the Trial Court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". 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. The same logic also applies to the appellate or revisional court. The requirement of sub-section (4) about raising the issue, at the earliest stage has not been also considered. Unfortunately the High Court by a practically non-reasoned

A order, confirmed the order passed by the learned trial judge. The orders are, therefore, indefensible. We set aside the said orders. It would be appropriate to require the trial Court to record findings in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19.

B The appeal is allowed to the aforesaid extent.

V.S.S. Appeal partly allowed.