PAUL VARGHESE

*v.*

STATE OF KERALA AND ANR.

APRIL 10, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

*Prevention of Corruption Act, 1988:*

*s. 19—Sanction for prosecution—Necessity of—Impleadment of accused under s. 319 Cr.P.C. without sanction for prosecution, holding that s. 319 Cr.P.C. overrides s. 19 of the Act—Order of impleadment set aside by Revisional Court holding that s. 319 does not override s. 19—On appeal, held: s. 319 Cr.P.C. does not have preference over s. 19—However, in the cases covered under the Act, in respect of public servants, the sanction is automatic—Mere error, omission or irregularity in sanction is not fatal unless it has resulted in failure of justice—Code of Criminal Procedure, 1973—s. 319.*

*s. 19—Sanction for prosecution—Under s. 19 of the Act and s. 197 Cr.P.C.—Distinction between—Code of Criminal Procedure, 1973—s. 197.*

**Investigating Officer submitted a report recommending prosecution of accused 1, accused 2 (respondent No. 2) and accused 3. Sanctioning Authority decided to sanction the prosecution of only A-1 and names of A-2 & 3 were deleted. During trial, material came to light showing alleged involvement of A-2 and A-3 also. Trial Court impleaded A-2 and A-3 in terms of Section 319 Cr.P.C and directed Legal Advisor to obtain sanction from the Competent Authority to prosecute them. Legal Advisor took the stand that no sanction was necessary. Trial court held that the accused could be impleaded even without sanction as Section 319 Cr.P.C. overrides Section 19 of Prevention of Corruption Act, 1988, and for exercise of power under section 319, the only condition required to be fulfilled was as set out in sub-section (4) thereof. In Revision, High Court held that the view of trial court was not sustainable. Hence the present appeal.**

**Disposing of the appeal, the Court**

**HELD: 1. It has been rightly held by the High Court that the Trial Court**

**was not justified in holding that Section 319 Cr.P.C. has to get preference/ primacy over Section 19 of Prevention of Corruption Act, 1988.**

**[Para 4] [1157-E]**

**2.1. In Sub-Section (3) of Section 19, the stress is on "failure of justice" and that too "in the opinion of the Court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Whether sanction is necessary or not has to be considered on the factual scenario. The question of sanction involves two aspects i.e. one relating to alleged lack of jurisdiction and the other relating to prejudice. [Paras 8 and 9] [1159-C, D, E]**

*State by Police Inspector* **v.** *T. Venkatesh Murthy,* **[2004] 7 SCC 763, relied on.**

*Central Bureau of Investigation* **v.** *V. K. Sehgal and Anr.,* **[1999] 8 SCC 501 and** *Parkash Singh Badal and Anr.* **v.** *State of Punjab and Ors.,* **[2007] 1 SCC 1, referred to.**

**2.2. Section 197 Cr.P.C. and Section 19 of the Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 Cr.P.C. the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of Section 19 of the Act. [Para 10] [1159-E, F]**

*Lalu Prasad @ Lalu Prasad Yadav* **v.** *State of Bihar through CBI (AHD) Patna,* **[2007] 1 SCC 49, referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 527 of 2007.

From the Judgment and Order dated 19.01.2006 of the High Court of Kerala at Ernakulam in Criminal Revision Petition No. 370 of 1999.

Colin Gonsalves, Komal and Jyoti Mendiratta for the Appellant.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single

Judge of the Kerala High Court allowing the revision filed by the respondent no.2 in the present appeal who was the petitioner before the High Court. He had questioned correctness of the order passed by the Inquiry Commissioner and Special Judge, Trichoor, by which the prayer for his impleadment as accused in terms of Section 319 of the Code of Criminal Procedure, 1973 (in short the 'Code') was accepted. By the said order the Trial Court had held that Section 319 of the Code overrides the provisions of Section 19 of the Prevention of Corruption Act, 1988 (in short the 'Act') and for exercise of power under the former provision, the only conditions required to be fulfilled are set out in sub-section (4) of Section 319 itself. The High Court felt that the view was not sustainable in view of what has been stated by this Court in *Dilawar Singh* v. *Parvinder Singh alias Iqbal Singh and Anr.*, [2005] 12 SCC 709. Accordingly, the order was set aside.

3. In support of the appeal, learned counsel submitted that the view taken by the High Court is not correct as the effect of sub-sections (3) and (4) of Section 19 of the Act has been lost sight of. There was no material to show that absence of sanction in any way occasioned failure of justice. It was also submitted that it is a case where no sanction was necessary because the alleged act did not form part of any official duty. There is no appearance on behalf of respondent no.2 in spite of service of notice.

4. As has been rightly held by the High Court in view of what has been stated in *Dilawar Singh's* case (supra), the Trial Court was not justified in holding that Section 319 of the Code has to get preference/primacy over Section 19 of the Act, and that matter stands concluded. But the other stand of Mr. Colin Gonsalves, learned counsel, deserves consideration.

5. It appears that by order dated 22.3.1999 the Trial Court had impleaded two persons as accused nos. 2 and 3. We are concerned with accused no.2 i.e. respondent no.2. It appears from the order of the High Court that accused no.3 has expired and so there is no need for considering his case. While impleading the persons as accused nos. A2 and A3, the Trial Court had directed the Additional Legal Advisor to obtain sanction from the competent authority to prosecute them. When the matter was taken up on 12.4.1999, the Vigilance Legal Advisor took the stand that no sanction was necessary. The investigating officer had submitted a report recommending prosecution of accused nos. 2 and 3, but the sanctioning authority decided to sanction for prosecuting only A1, and names of A2 and A3 were deleted. During trial, material came to light showing alleged involvement of two other persons i.e.

A2 and A3. In view of that situation, Section 319 of the Code was resorted to. The broader question as to whether sanction was at all necessary was not gone into.

6. At this juncture it would be appropriate to take note of what has been stated by this Court in *Central Bureau of Investigation* v. *V.K. Sehgal and Anr.*, [1999] 8 SCC 501. At para 10 it was stated, inter alia, as follows:

> "A Court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid Sub-section (2) enjoins on the Court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate Court. In *Kalpnath Rai* v. *State,* (through CBI) [1997] 8 SCC 732, this Court has observed in paragraph 29 thus:
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> > "29. Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The sub-section only says that 'the Court shall have regard to the fact' that objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial."

7. In *State by Police Inspector* v. *T. Venkatesh Murthy,* [2004] 7 SCC 763, it was observed as follows:

> "14. 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 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."

8. The effect of sub-sections (3) and (4) of Section 19 of the Act is of considerable significance as noted in *Parkash Singh Badal and Anr.* v. *State of Punjab and Ors.*, [2007] 1 SCC 1. In Sub-Section (3) the stress is on "failure of justice" and that too "in the opinion of the Court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to root of jurisdiction. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the 'Old Act') corresponding to Section 19(2) of the Act, question relates to doubt about authority to grant sanction and not whether sanction is necessary.

9. Whether sanction is necessary or not has to be considered on the factual scenario. The question of sanction involves two aspects i.e. one relating to alleged lack of jurisdiction and the other relating to prejudice.

10. It may be noted that Section 197 of the Code and Section 19 of the Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the Code, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of Section 19 of the Act.

11. The above aspect was highlighted in *Lalu Prasad @ Lalu Prasad Yadav* v. *State of Bihar through CBI (AHD) Patna,* [2007] 1 SCC 49.

12. Appeal is accordingly disposed of.

K.K.T. Appeal disposed of.