

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 26.07.2016)

DATED: 05.08.2016

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.R.C.No.881 of 2016

and

Crl.M.P.Nos.6739 & 6740 of 2016

V.Palanisamy ... Petitioner/Accused

Vs.

State rep. by the
Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore. ... Respondent/Complainant

Prayer:- Criminal Revision Petition has been filed under Sections 397 & 401 of Cr.P.C., against the order made in Crl.M.P.No.273 of 2015 in Spl.C.C.No.11 of 2014, dated 31.03.2016, on the file of the Special Judge, Special Court of the cases under Prevention of Corruption Act, Coimbatore.

For Petitioner : Mr.N.Naganathan

For Respondent : Mr.P.Govindarajan, APP

ORDER

This revision has been filed by the petitioner/accused challenging the order dated 31.3.2016 in Crl.M.P.No.273 of 2015 in Spl.C.C.No.11 of 2014 passed by the learned Special Judge for cases under Prevention of Corruption Act, in and by which the petition under Section 239 of Cr.P.C., filed by the petitioner for discharge from the case, was dismissed.

2.The brief facts of the case of the prosecution are as follows:-

2-1.The petitioner was working as Assistant District Treasury Officer at Dindigul and he retired from the service on 30.06.2010. After his retirement, the petitioner was

reappointed as Re-employed Accountant at District Treasury Office, Coimbatore on consolidated basis vide proceedings in R.C.No.11734/2012/A1 dated 26.04.2013. The petitioner/accused joined his duty on 06.05.2013.

2-2.The father of the defacto-complainant viz., T.A.Sivakumar had worked as Herbarium Keeper at Sri Kumaragurupara Swamigal Arts College, Srivaikundam and he retired from service during the year 1997 and he passed away on 29.12.2006; as such, the mother of the defacto-complainant S.Neela @ Ponnammal is getting family pension vide PPO No.542827/EDA, dated 17.04.2008. With regard to the revised pension vide G.O.M.s.No.325, the mother of the defacto-complainant approached the petitioner several times. But, the petitioner made them to run from pillar to post. On 20.09.2013 at about 11.00 hours, the defacto-complainant requested the petitioner to work out the revised pension and arrears as per the Government Order; but, the petitioner demanded bribe amount of Rs.1,500/- to work out the revised pension of the mother of the defacto-complainant. When the defacto-complainant expressed his inability, the petitioner went to the extent of threatening the defacto-complainant stating that he would delay the process to get the revised pension and arrears by means of audit. Again on 25.09.2013, at about 12.00 hours, the petitioner reiterated his earlier demand and directed the defacto-complainant to handover the bribe amount on 26.09.2013 itself. Hence, the defacto-complainant lodged a complaint with the respondent-Police. Thereafter, a trap was laid by the respondent and the petitioner was caught red-handed as he received bribe amount on 26.09.2013. Thereafter, the petitioner was chargesheeted for the offences under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

2-3.Before the Trial Court, the petitioner filed a petition under Section 239 of Cr.P.C. to discharge him from the case, by raising the ground that the petitioner is a re-employed Accountant on contract basis and as such, he is a public servant as defined under Section 2(c) of the Prevention of Corruption Act; that the prosecution has failed to obtain necessary sanction order from the competent authority, as required under Section 19 of the Prevention of Corruption Act, to prosecute the petitioner for the alleged offences under the Prevention of Corruption Act; thus, he sought for discharge from the case. The said petition filed by the petitioner was opposed by the prosecution by filing a detailed counter. After hearing both sides and considering the materials available on record, the Trial Court dismissed the said petition by order dated 31.03.2016. Aggrieved over the same, the petitioner has come forward with the present Revision before this Court.

3.The learned counsel for the petitioner submitted that the petitioner retired from service from the post of Assistant District Treasury Officer at Dindigul on 30.06.2010. Thereafter, he was reemployed as Accountant at District Treasury Office, Coimbatore, on consolidated basis and he joined duty on 06.05.2013. Based on the complaint lodged by the defacto-complainant, a trap was conducted between 12.15 hours ad 12.30 hours on 26.09.2013 at his office and he was arrested on the same day at 2.00 pm, which is evident from the Arrest Memo. These facts would go to show that the petitioner was in service at the time of alleged offence; hence, he would fall within the definition of 'public servant' as defined under Section 2(c) of the Prevention of Corruption Act; therefore, to prosecute the petitioner, prior sanction order ought to have been obtained from the competent authority by the prosecution, as required under Section 19 of the Prevention of Corruption Act. But, no such sanction order was obtained by the prosecution in this case.

4.In this regard, the learned counsel for the petitioner has also invited the attention of this Court to the Termination Order issued by the Treasury Officer and submitted that in the Termination Order it has been stated that the petitioner was terminated from service with effect from the forenoon of 26.09.2013. When the occurrence itself, even according to the prosecution, took place between 12.15 and 12.30 hours, the question of termination from service with effect from forenoon of 26.09.2013, does not arise. According to the learned counsel for the petitioner, there cannot be any retrospective termination from service. Only in order to overcome the non-obtaining of the Sanction Order, the Termination Order was issued as if the petitioner was terminated from service from the forenoon of 26.09.2013 itself. Thus, the learned counsel for the petitioner submitted that at the time of occurrence, the petitioner was a public servant; while so, in the absence of sanction order, the cognizance taken in this case is not legally sustainable. In this regard, the learned counsel for the petitioner has also invited the attention of this Court to the counter filed by the respondent-Police and submitted that even in the counter statement, the respondent-Police has stated that the petitioner was a public servant from 06.05.2013 to 26.09.2013 ie., till the date of termination from service. When that being so, the trial Court ought to have discharged the petitioner from the case for the want of sanction order. In support of his contention, the learned senior counsel for the petitioner has also relied upon the following decisions_

i)1957 Madras Weekly Notes (crl) 17 [Baij Nath Prasad Tripathi Vs. State of Bhopal and others],

ii) 2015(3) Crimes 125(SC) [Nanjappa Vs. State of Karnataka]

iii) (2004) 8 SCC 40 [State of Orissa VS. Ganesh Chandra Jew].

5. Countering the submissions made by the learned counsel for the petitioner, the learned Additional Public Prosecutor, by filing a detailed counter, submitted that at the time of taking cognizance by the Court below, the petitioner had ceased to be a public servant; hence, sanction for prosecution is absolutely not necessary in this case. The District Treasury Officer has passed the order of termination of service against the petitioner on 26.09.2013 with retrospective effect i.e., from forenoon itself; hence, though the petitioner was a public servant during the time of occurrence, he had ceased to be a public servant during the time of taking cognizance in this case; therefore, absolutely there is no need to obtain any sanction for prosecuting the petitioner. In this regard, the learned Additional Public Prosecutor has also relied upon the decision reported in (2014) 16 SCC 807 [State of Punjab Vs. Labh Singh]. Thus, the learned Additional Public Prosecutor sought for dismissal of the present Revision.

6. I have carefully heard the submissions made on either side and perused the materials available on record.

7. It is the main submission of the learned counsel for the petitioner that the alleged occurrence took place between 12.15 hours and 12.30 hours on 26.09.2013. Therefore, at that time, he was working as Accountant at District Treasury Office, Coimbatore on consolidated basis; as such he would fall within the purview of Section 2(c) of the Act and he is a public servant at the relevant point of time; therefore, the prior sanction to prosecute the petitioner is necessary. But, without obtaining the prior sanction from the competent authority, the prosecution has filed the chargesheet. Only in order to overcome the non-obtaining of the sanction order, the Treasury Officer has issued the termination order by giving retrospective effect, i.e., from forenoon of 26.09.2013 itself. Therefore, the said retrospective is not legally sustainable.

8. But, the decision of the Hon'ble Supreme Court reported in (2014) 16 SCC 807 [State of Punjab Vs. Labh Singh], relied upon by the learned Additional Public Prosecutor, gives a fitting answer to the issue involved in the present case. The said judgment it has been held by the Hon'ble Supreme Court as follows_

"9. In the present case the public servants in question had retired on 13.12.1999 and 30.4.2000. The sanction to prosecute them was rejected subsequent to their retirement

ie., first on 13.09.2000 and later on 24.09.2003. The public servants having retired from service there was no occasion to consider grant of sanction under Section 19 of the PC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the PC Act is not required if the public servant had already retired on the date of cognizance by the Court. In S.A.Venkataraman Vs. State [AIR 1958 SC 107], while construing Section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with Section 19 (1) of the PC Act, this Court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in S.A.Venkataraman case was adopted by this Court in C.R.Bansi Vs. State of Maharashtra [(1970) 3 SCC 537], and in Kalicharan Mahapatra Vs. State of Orissa [(1998) 6 SCC 411], and by the Constitution Bench of this Court in K.Veerarwami Vs. Union of India [(1991) 3 SCC 655]. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the PC Act was concerned.

10. However as regards charges for the offences punishable under the Penal Code, the High Court was absolutely right in setting aside the order of the Special Judge. Unlike Section 19 of the PC Act, the protection under Section 197 Cr.PC is available to the public servant concerned even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13.09.2000 and secondly on 24.09.2003, the Court could not have taken cognizance insofar as the offences punishable under the Penal Code are concerned. As laid down by this Court in State of H.P. Vs. Nishant Sareen [(2010) 14 SCC 527], the recourse in such cases is either to challenge the order of the sanctioning authority or to approach it again if there is any fresh material."

In the deviation the case of Kalicharan Mahapatra Vs. State of Orissa [(1998) 6 SCC 411], the Hon'ble Supreme Court has held as follows_

"The result of the above discussion is thus: A public servant who committed an offence mentioned in the Act, while he was a public servant when the court takes cognizance of the offence. But, if he ceases to be a public servant by that time the Court can take cognizance of offence without any such sanction. In other words, the public servant who committed the offence while he was public servant is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution."

The dictum laid down in the above decisions would clearly show that on the date of taking cognizance by the Court, if the accused ceased to be a public servant, then absolutely there is no need for any prior sanction from the competent authority for prosecuting the accused. In the present case, the petitioner was terminated from service as early as on 26.09.2013 ie., much earlier to the taking of cognizance by the Court. Therefore, the judgments relied upon by the learned senior counsel for the petitioner cannot be made applicable to the present facts of the case. I do not find any merit in the submissions made by the learned senior counsel for the petitioner. The Criminal Original Petition is liable to be dismissed.

In fine, the Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssv

1.The Special Judge for the cases
under Prevention of Corruption Act,
Coimbatore.

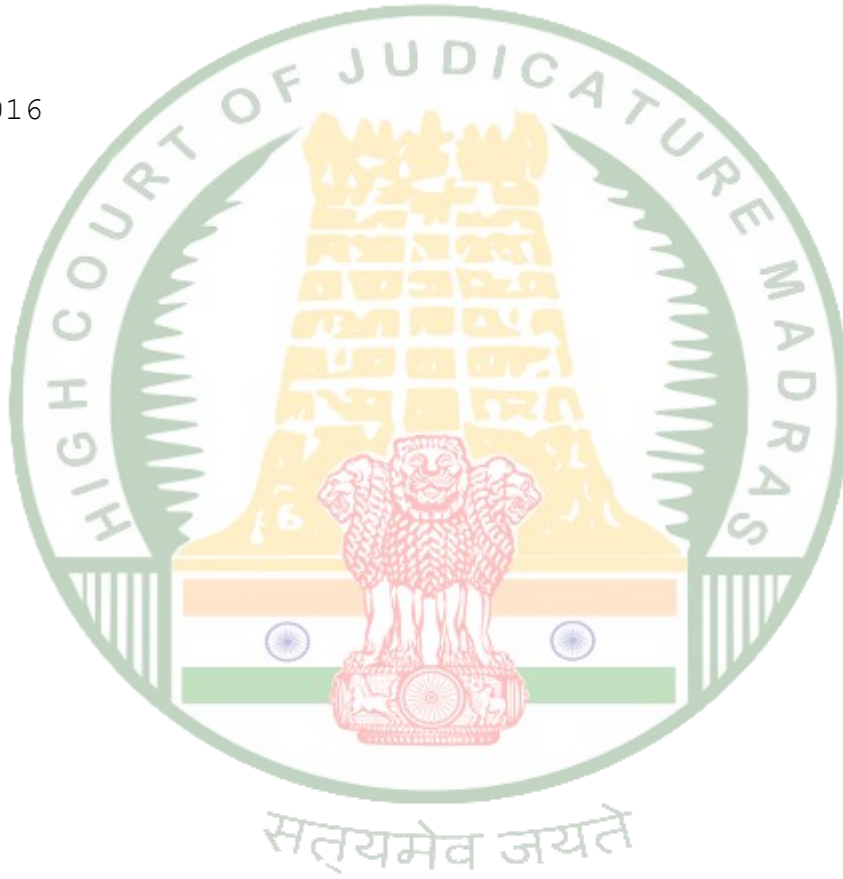
2.The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore.

3.The Public Prosecutor
High Court Madras

+1 cc to Mr.N.Naganathan Advocate sr 44738

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