

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPR) NO.80 OF 2018

(Bipin Kumar Saxena Vs. The State (Govt. of India) the Inspector of Mines, also
designated as Dy. Director of Mines Safety, Nagpur Region)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri S.P. Dharmadhikari, Senior Counsel assisted by Shri G.E. Moharir,
Advocate for Petitioner/Applicant.
Shri V.A. Thakare, APP for Respondent/State.

CORAM: ROHIT B. DEO, J.

DATE: 12th JUNE, 2018.

1] Challenge is to the judgment and order dated 03.10.2017 rendered by the District Judge-16 and Additional Sessions Judge, Nagpur in Criminal Revision Application 164/2016, by and under which, the order dated 10.06.2016 passed by the Judicial Magistrate First Class, Umred in Criminal Complaint Case 204/2011 is set aside.

2] Heard Shri S.P. Dharmadhikari, the learned senior counsel for the applicant and Shri V.A. Thakare, the learned Additional Public Prosecutor for the respondent/State.

3] The applicants and others were prosecuted for offence punishable under section 72(C) and 73 of the Mines Act, 1952. The applicant was at the relevant time Director (Technical) of Western Coalfields Limited, Nagpur and the

nominated owner of Open Cast Mine, Umred.

4] The applicant moved an application (Exh.24), before the Judicial Magistrate First Class seeking discharge contending that in the absence of sanction under section 197 of the Criminal Procedure Code no cognizance can be taken of the complaint instituted by the authority under the Mines Act. This submission found favour with the learned Magistrate who discharged the applicant and directed the complainant authority to seek sanction from the appropriate authority within three months.

5] The issue is not *res integra*. It is well settled that an employee of government company is not entitled to the protection under section 197 of the Cr.P.C. Suffice it to refer to the relatively recent decision of the Hon'ble Apex Court in *Punjab State Warehousing Corporation v. Bhushan Chander and another* reported in (2016) 13 SCC 44 and in particular the following observations and in paragraphs 22, 23, 24 and 25, which read thus:

22. Another line of argument was advanced on behalf of the appellant Corporation that even if the respondents are treated as public servants, they being the employees of the Corporation, they do not get the protective shelter of Section 197 CrPC. In Lakshmansingh Himatsingh Vaghela, a three-Judge Bench dissecting the anatomy of Section 197(1) CrPC opined that the said provision clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the Government to their

prosecution be necessary. While a public servant holding an office of the kind mentioned in the section is as such public servant appointed to another office, his official acts in connection with the latter office will also relate to the former office. Thereafter, the Court ruled: (SCC p.171, para 5)

“5. ... The words “removable from office” occurring in Section 197 signify removal from the office he is holding. The authority mentioned in the section is the authority under which the officer is serving and competent to terminate his services. If the accused is under the service and pay of the local authority, the appointment to an office for exercising functions under a particular statute will not alter his status as an employee of the local authority”.

In the said case, the appellant was admittedly a laboratory official in the service and pay of Municipal Corporation of Ahmedabad. His appointment as Public Analyst by the Government, as held by this Court, did not confer him the status of a public servant or an officer under service and pay of the Government. Being of this view, the Court opined he was not a public servant removable only by the State Government and accordingly allowed the appeal.

23. *In Mohd. Hadi Raja v. State of Bihar the question arose whether Section 197 CrPC was applicable for prosecuting officers of the public sector undertakings or the Government companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the submissions and eventually held that the protection by way of sanction under Section 197 CrPC is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are ‘State’ within the meaning of Article 12 of the*

Constitution on account of deep and pervasive control of the government.

24. The High Court has not accepted the submission of the Corporation in this regard. We are constrained to note that the decision in Md. Hadi Raja has been referred to in the grounds in this appeal. There is nothing on record to suggest that the said decision was cited before the High Court. It has come to our notice on many an occasion that the relevant precedents are not cited by the Corporations and the government undertakings before the High Court. We should, as advised at present, only say that a concerted effort should be made in that regard so that a stitch in time can save nine.

25. In view of the aforesaid analysis, the irresistible conclusion is that the respondents are not entitled to have the protective umbrella of Section 197 CrPC and, therefore, the High Court has erred in setting aside the conviction and sentence on the ground that the trial is vitiated in the absence of sanction. Consequently, we allow the appeal and set aside the judgment and order passed by the High Court and remit the matter to the High Court to decide the revision petition in accordance with law.

6] In view of the authoritative pronouncement of the Hon'ble Apex Court, the application is without substance, and is rejected.

JUDGE