

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.2881 of 2018

ORDER:

This Criminal Revision Case is arising out of the order dated 13.08.2018 passed in Crl.M.P.No.307 of 2018 in C.C.No.95 of 2014 on the file of I Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad.

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

The Revision Petitioner is the Accused No. 1. He has filed Crl.M.P.No.307 of 2018 under Section 327 read with Section 19 of Prevention of Corruption Act, 1988 seeking for his discharge and the same was dismissed by the learned I Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad.

3. The brief contents of the petition filed under Section 227 CrPC read with Section 19 of P.C Act by the petitioner/AO.1 are as follows:

4. The petitioner has filed two petitions for his discharge for the offence punishable U/Sec. 13 (1) (c) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988 r/w 120 (B), 419, 420, 468 and 471 I.P.C. for want of sanction under section 197 Cr.P.C. The petitioner sought for his discharge from the offence under section 13 (1) of PC Act, 1988. This court has allowed one of the said petitions extending the protection under Section 197 Cr.P.C vide order dated 18.7.2017 in Crl.M.P.No. 390 of 2016. In the

said order, clerical errors were crept in which compelled the petitioner to file a petition under Section 362 Cr.P.C. On 30.08.2017 for rectification of the errors and for adding the addition of Section 13(1)(c)(d) of the Prevention of Corruption Act. In para-18 of the order dated 18.7.2017 and the same was disposed of vide Criminal Appeal No. 773 of 2017 dated 30.01.2018.

5. Learned counsel for the petitioner submitted that even for prosecuting a retired employee there is requirement of obtaining previous sanction. In the present case the petitioner was in service by the time of the commission of the offence, and he has retired from service in the month of July 2001, as such sanction was necessary to prosecute him.

6. It is further submitted that under section 19 of Prevention of Corruption Act 1988 no court shall take cognizance of an offence punishable under section 13 except with the previous sanction.

7. It is lastly submitted that the order passed by the learned Special Judge for SP and ACB cases in CrI.M.P.No. 307 of 2018 in C.C. No.95 of 2014, dated 13.8.2018 is liable to be set-aside.

8. On the other hand, the learned Public Prosecutor for ACB submitted that the petitioner was in service by the date of commission of this offence and thereafter he has retired from service and therefore no sanction is required under Section 19 of P.C.Act to prosecute him.

9. It is further submitted that as per the contention of the charge sheet no sanction is required under section 19 of prevention of corruption act for prosecuting the accused officer No. 1 under Section 13 of PC Act.

10. The point that arises for consideration in this matter is:

Whether the prosecution of the accused No.1 after his retirement without obtaining sanction under Section 197 Cr.P.C is in accordance with law?

11. The Special Public Prosecutor for SPE and ACB cases submits that sanction in case of a retired employee is not necessary.

12. Section 19 of the Prevention of Corruption Act, reads as under:

SEC 19 of P.C.Act : Previous sanction necessary for prosecution:

1. *No court shall take cognizance of an offence punishable under section 710 1113 and 15 alleged to have been committed by a public servant, except with the previous sanction.*
 - 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:*
 - b. *in the case of a person, who is employed in connection with the affairs of this state and is not removable from his office save by or with the sanction of the State government, of that government.*
 - c. *In case of any other person, of the authority competent to remove him from his office.*
2. *Wait for any reason whatsoever any doubt arises as to whether the previous sanction as required under subsection 1 should be given by the central government or the state government or any other authority, such sanction shall be given by that government 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 court of criminal procedure, 1973 2 of 1974*
 - a. *no finding, sentence or order passed by the special judge shall be reversed or altered by a court in appeal, confirmation revision on the ground of the absence of, or rather, omission or irregularity in the sanction required under subsection 1, unless in the opinion of the 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 other, 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 enquiry,, trial appeal or other proceedings*
4. *in determining under subsection 3 whether the absence of, or any error, omission or irregularity in such sanction has occasioned 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. *herein 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 of a specified authority on with the sanction of a specified person or any requirement of a similar nature.*

13. In a case of **Kalicharan Mahapatra V. State of Orissa**¹, wherein it was held that *a public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be 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 a public servant is liable to be*

¹ 1998 CrLJ 4003

prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution.

14. In view of the above decision, no prior sanction is required for prosecution of retired employee who has committed offence during his tenure while discharging his official duties.

15. With the above discussion, the Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 26-12-2018.

