

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.A. (SB) 2 of 2023

Bandana Mondal Naskar

Vs.

State of West Bengal Anr.

For the Petitioner :Mr. Asimes Goswami, Adv.
Ms. Priyanka Dutta, Adv.

For the State :Mr. Abhra Mukherjee, Adv.
Mr. Dipankar Mahata, Adv.

Heard on : 28.06.2023, 18.07.2023, 19.07.2023
Judgment on : August 01, 2023

Bibhas Ranjan De, J.

1. This appeal has been preferred assailing the judgment and order of conviction dated 14.12.2022 passed by Ld. Judge, 1st

Special Court, Alipore, South 24 Parganas in connection with special case no 4 / 2018 under Section 409 of the Indian Penal Code (hereinafter referred to as IPC), whereby Ld. Judge convicted the appellant/ Bandana Mondal (Naskar) and sentenced her to suffer simple imprisonment for 2½ years and to pay a fine of Rs. 5,000/- in default suffer further simple imprisonment for 2 months.

2. Circle Project Co-ordinator, Sonarpur as per direction of competent authority (District Magistrate, South 24 Parganas), lodged FIR before the Officer in-charge of Sonarpur Police Station alleging *inter alia* that funds of Rs. 35,000/- was placed by the Sarbashikha Mission, South 24 Parganas, through his office to Jardaha Beniabow F.P. School, under Jurisdiction of Sonarpur Police Station for the year 2011-12 for constriction of TSC toilet. But, the school authority neither completed the civil construction nor utilized the fund properly. Moreover, the school authority did not refund the said fund within stipulated time.
3. On receipt of the complaint Sonarpur PS Case No. 581/ 16 dated 18.03.2016 under Section 409 IPC was started against

the appellant, Bandana Mondal (Noskar). After investigating charge sheet was filed against the appellant under Section 409 IPC.

- 4.** Ld. Judge, of the 1st Special Court, Alipore, took cognizance of the offence and the same was registered under special case no. 4 of 2018 and took up for disposal. On 26.06.2018 Ld. Judge, framed formal charge under Section 409 of the Indian Penal Code as follows:-

“First – That being the teacher in-charge in respect of Benia-Bow F.P. School entrusted to construct civil work during the period 2011-2012 and a sum of Rs. 35,000/- have been allotted for construction of TSC Toilet but neither you have completed your entrusted work nor refund the amount within stipulated time and moreover you have done the same to give benefit to your husband without any work order and thereby committed offence under section 409 of IPC and is within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

Charge has been read over and explained to the accused person in Bengali, to which they pleaded not guilty and claimed to be tried by saying that “ami nirdosh, bichar chai”

Dated: this 26th day of June, 2018”

- 5.** To prove the charge, prosecution examined five witnesses namely Nachiketa Das (defacto complainant) as PW1, Dipika

Paul (Field Junior Engineer, Sonarpur block and municipality) as PW2, Keshida Khatun (Shikha Bandhu attached to SI of school) as PW3, SI Kishore Kumar Das (1st Investigating Officer)as PW4 and one S.I Susobhon Sarkar (2nd Investigating Officer) as PW5. In course of their evidence signature of PW1 on the inquiry report as exhibit 1/1 FIR and signatures thereon as exhibit 2 series, formal FIR as exhibit 3 and rough sketch map with index as exhibit 4.

6. On behalf of the defence/appellant utilization certificate was admitted in evidence as exhibit A, audit reports as exhibit B and copy of resolution book dated 23.2.2013 along with work order were marked as exhibit C.

Argument advanced:-

7. Ld. Advocate, Mr. Asimes Goswami, appearing on behalf of the petitioner has advanced his argument as follows:-

7.1. No sanction was obtained under section 197 of code of criminal procedure before initiating proceeding against appellant, a public servant with the meaning section 21 of the Indian Penal Code. In support of his contention he relied on

Mansukhlal Vithaldas Chauhan vs. State of Gujarat

reported in ***(1997) 7 Supreme Court Cases 622.***

7.2. Mr. Goswami assailed the evidence on record and submitted that there is no cogent evidence to sustain conviction of the appellant under Section 409 in terms of defective charge framed by the Ld. Trial Judge, with regard to incomplete construction of toilet whereas evidence shows completion of construction work.

7.3. No vital documents relied on behalf of the prosecution were not admitted in evidence.

7.4. Work order, audit report and utilization certificate were admitted in evidence as exhibit A to C in terms of reply given by the appellant in course of her examination under section 313 of the Code of Criminal Procedure. The documents exhibited on behalf of the defense clearly disproved the prosecution case.

8. Per contra, Mr. Mr. Abhra Mukherjee, Has contended as follows:-

8.1. Appellant entrusted her husband with the work of construction without observing any rules for tender.

8.2. No sanction is required for initiating proceeding as the appellant did not follow the rules of tender rather entrusted the construction work with her husband, which was not in discharge of her official duty.

8.3. Appellant admitted that repair works were done by the excess money but there is no specific evidence on behalf of the defence to show other repairing works. Thereby, it is submitted on behalf of the State that prosecution was able to prove the charge.

9. Ld. Judge, Special Court, after evaluation of the evidence of PW1 to PW3 particularly returned his findings that though appellant was entrusted with the fund of Rs. 35,000/- for the purpose of construction of toilet but the fund was not utilized properly that too without following norms. A doubt was created in the mind of the Judge as fund of Rs. 35,000/- was shown as expenditure in the column of toilet of the statement ending 31st March, 2013 in terms of exhibit B (audit report) though appellant during her examination under Section 313 CrPC replied that toilet was constructed in the month of May, 2013. Regarding utilization certificate Ld. Judge did not act

upon on the ground of absence of any official seal and signature of concerned block junior engineer. Ld. Judge also pointed out non-production of cash memo or voucher in support of expenditure and also the rule for process of tender was not followed. Above all, Ld. Judge, could not rely on the documents submitted on behalf of the defence as the entire construction work was given to the husband of the appellant without following any tender process.

Decisions with reasons:-

- 10.** It is not disputed by either of the parties regarding status of the appellant as public servant. Admittedly, at the relevant point of time appellant was a teacher in-charge Jardaha Beniabow F.P. School and from that point of view appellant was a public servant with the meaning of Section 21 of the Indian Penal Code.
- 11.** Ld. Advocate, Mr. Mukherjee, appearing on behalf of the State submitted that there was sanction of District Magistrate to initiate the proceeding as it appears from the evidence. Mr. Majumder, alternatively, submits that utilization of government fund by a teacher in-charge of a school not

following the norms that too with the help of her husband cannot be said to be an act in discharge of her official duty to attract the Provision of Section 197 of the Code of Criminal Procedure.

- 12.** Admittedly, appellant was teacher in-charge of the Jardaha Beniabow F.P. School she defended the criminal charge under Section 409 of the Indian Penal Code. Therefore, by no stretch of imagination, I can hold that appellant was not a public servant. Now, the question is whether the protection under Section 197 of Criminal Procedure Code was available to the appellant or not. From the FIR (exhibit 2) it is found that government fund was allotted to her school for construction of a toilet for students and it was alleged that fund was not properly utilized in constructing the toilet for students. It is trite law that protection under Section 197 of Criminal procedure Code is available when alleged act done by public servant is reasonably connected with discharged of his official duty. Here in this, I cannot come to any conclusion that offence alleged to have been committed by the appellant is not connected with discharged of her official duty. Therefore,

prosecution, in our case, must prove that valid sanction was granted by the sanctioning authority within the meaning of Section 197 of Criminal Procedure Code.

- 13.** The validity of sanction for prosecution under Section 197 of the Code of Criminal Procedure was expounded with clarity in ***Mansukhlal*** (supra) which is being reproduced below:-

“17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. (See Mohd. Iqbal Ahmed v. State of A.P. [(1979) 4 SCC 172 : 1979 SCC (Cri) 926 : AIR 1979 SC 677]) Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh v. State of Punjab [AIR 1958 SC 124 : 1958 SCR 762] and State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : 1991 Cri LJ 1438]).”

- 14.** On careful perusal of the evidence as well as documents exhibited on behalf of the prosecution, I do not find any sanction of competent authority let alone valid sanction in compliance with the principle laid down in ***Mansukhlal*** (supra).
- 15.** Admittedly, government fund of Rs. 35,000/- was allotted to Jardaha Beniabow F.P. School for construction of a toilet for girls. from the evidence it is also an admitted position of fact that said construction of toilet was completed before lodging of complaint. But, unfortunately, charge was framed by the Ld. Court with the accusation of incomplete construction of toilet.
- 16.** Neither PW1 (Circle Project Coordinator Sonarpur) nor PW2 (Field Junior Engineer) uttered any single word in support of construction toilet in question by the husband of the appellant though PW3 in her evidence in chief has stated that appellant got the toilet constructed with the help of her husband during summer vacation and that was not corroborated by any other witnesses.
- 17.** I failed to make me understand that why field engineer of concerned block and municipality did not submit the

completion certificate instead of shifting responsibility upon the teacher in-charge/appellant of Jardaha Beniabow F.P. School. That apart, it is not duty of teacher in-charge to issue work order after following prescribed tender process. From the resolution of Village Education Committee (exhibit C) it is found that decision was taken for construction of toilet after receiving fund therefor. From the audit report (exhibit B) under the signature of auditor who was appointed by District Project Officer, also shows that fund of Rs. 35,000/- was spent for construction of toilet in question.

18. Therefore, the conviction of appellant is not sustainable either on the issue of ‘no sanction’ or in terms of evidence adduced on behalf of the prosecution.

19. Before parting with, once again, I would like to reproduce the principle enunciated in ***Mansukhlal*** (supra) particularly paragraph 39 which runs below:-

“39. Normally when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. But in the instant case, the incident is of 1983 and, therefore, after a lapse of fourteen years, it will

not, in our opinion, be fair and just to direct that the proceedings may again be initiated from the stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as part of right to life, philosophises early end of criminal proceedings through a speedy trial.”

20. Here in our case, also the criminal proceeding was initiated in the year 2016 and therefore after lapse of 7 years it would not be fair to remand back for retrial after obtaining valid sanction while prosecution could not produce any cogent evidence save an except assumption of Junior Field Engineer (PW2) as per her report of “approx expenditure of this particular toilet **may be** Rs. 20,000/-.” That apart, amount of expenditure was over written by pen ink without any initial.

21. In the premises set forth above, judgement and order of conviction dated 14.12.2022 stands set aside. Accused/appellant Bandana Mondal (Naskar) is acquitted of the charge and also discharged from the bail bond.

22. In the view of the above observations, Criminal Appeal Being NO. CRA (SB) 2 of 2023 stands disposed of.

- 23.** Pending applications, if there be any, stand disposed of.
- 24.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 25.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]