

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 843 OF 2009
(Arising out of SLP (Crl.) No. 707 of 2004)

State of M.P.

....Appellant

Versus

Virendra Kumar Tripathi

....Respondent

With

CRIMINAL APPEAL NO. 844 OF 2009
(Arising out of SLP (Crl.) No. 3753 of 2004)

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. These appeals are inter linked and are therefore disposed of by this common judgment. Challenge in these appeals is to the order passed by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench, questioning the order dated 3.10.2002 passed by a learned Special Judge and First Additional Sessions Judge, Indore framing charges in relation to accusations under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act'). A revision petition was filed by Virender Kumar Tripathi (hereinafter referred to as the 'accused'). The State through Special Police Establishment, Lokayukt Office, Indore filed charge sheet against the accused alleging that during

the period of 1.1.1980 to 1.1.1990 while serving as Ranger in Forest Department of the State of Madhya Pradesh he acquired assets disproportionate to the known sources of income. At the time of framing charge the accused took the stand that he was liable to be discharged as the investigation was not conducted by the authorized police officer as required under Section 17 (second proviso) of the Act. Further sanction was not accorded in accordance with law by the Law Department who was required to consult the parent department of the applicant i.e. Forest Department in view of the order dated 9th February, 1988 of the State Government. It was also submitted that the investigating agency had wrongly excluded the income of the wife of the accused though the same was properly disclosed as her income before the department as well as in the income tax returns. Similarly, certain receipts were not taken into account. The trial court held that the investigation was done by the authorized police officers i.e. Deputy Superintendent of Police who had obtained search warrant from the CJM, Indore and, therefore, authorized officer investigated the matter. It was also submitted that under Section 17 of the Act Deputy Superintendent of police can investigate into any offence under the Act being a designated officer. Further it was noted that as per the Business Allocation Rules framed under Article 166(3) of the Constitution of India, 1950 (in short the 'Constitution') the sanction was granted in the name of the Governor of the State by the Additional Secretary of the Department of Law and Legislative Affairs which was the legally authorized Department. However, the Court held that the plea that value of disproportionate asset was to be reduced so far as the exclusion of certain items is concerned, same was matter of evidence and is to be considered trial. The stands taken before the trial court were reiterated before the High Court. By the impugned judgment the High Court held that the Law and Legislative Department was required to consult the parent department which was necessary as per the circular/order dated 9th February, 1988 and, therefore, there was no proper

sanction. Accordingly, it was held that the accused cannot be prosecuted on the basis of the sanction of the Law and Legislative Department. It did not express any final opinion as far as the exclusion of income aspect is concerned. But it upheld the view regarding legality of investigation.

3. In the appeal filed by the State it has been contended that the sanction had been given by the concerned authority and, therefore, the High Court's view is not correct. Additionally, it is submitted that the exclusion of certain items as directed by the High Court cannot be maintained because at the stage of framing charges the Court is not required to take into account materials which have to be established during trial.

4. In the appeal filed by the accused the stand is that apart from the question of lack of sanction even on facts there is no scope for proceeding against the accused. In that view of the matter also the accused was entitled to be discharged. It is also submitted that the Dy. Superintendent of Police was not authorized to conduct investigation.

5. So far as the defect in sanction aspect is concerned, the circular of which the High Court has placed reliance needs to be noted. The Circular in question is dated 9.2.1988 the relevant portion reads as follows :

“The Government also decided that before giving approval of prosecutions, the Principal Secretary, Law and Legal Deptt. will obtain the advise of concerned Department.”

6. A bare perusal of the paragraph shows that before giving approval for prosecution,

advice of the concerned Department was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative. The State government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an inter-departmental matter. Further the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of /or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the Court a failure of justice has in fact been occasioned thereby. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was lead. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [2004(7) SCC 763] and in Prakash Singh Badal v. State of Punjab [2007(1) SCC 1] need to be noted.

JUDGMENT

7. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct.

8. Coming to the appeal filed by the accused one of the questions is whether the investigating officer was authorized to conduct the investigation. The investigation was carried on by the duly authorized officer namely the Dy. Superintendent of Police under Section 17(c) of the Act.

9. The broader issues raised need not be looked into. The function of investigation was merely to collect evidence and any irregularity and illegality in the course of collection of evidence can hardly be considered by itself to affect legality of trial by a competent Court of the offence so investigated. In H.N. Rishbud and Anr. v. State of Delhi (AIR 1955 SC 196), it was observed that a conviction is not violated because there has not been strict compliance with the provisions of the Act in the matter of investigation by a police officer unless the accused is shown to have been prejudiced. There is no material to show prejudice. The proceedings started in 1987. FIR was registered on 22.2.1991. In 1992, the accused filed a petition before the High Court. Chargesheet was filed on 21.12.1993. On 30.8.2000, the petition filed before the High Court was disposed of. There was no challenge at that stage to legality of investigation and related to consideration of certain documents. Learned Special Judge considered the matter afresh and rejected accused's plea. Again, High Court was moved. Only the plea related to non-consideration of documents during investigation and did not relate to legality of investigation. So, the present stand without establishing any prejudice deserves to be rejected.

JUDGMENT

10. So far as the non-exclusion of certain alleged income of relatives is concerned, it needs to be noted that these are matters of evidence and in such matters, the decision of this Court in State of Orissa v. Debendra Nath Padhi [JT 2004(10) SC 303] is relevant. The High Court's judgment in this aspect does not suffer from any infirmity.

11. In the ultimate analysis, the appeal filed by the State deserves to be allowed which we

direct while dismissing the appeal filed by the accused.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(P. SATHASIVAM)

.....J.
(AFTAB ALAM)

New Delhi;
April 27, 2009

