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THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL REVISION NO. 21 OF 2003

In the matter of a revision/application under section 397 read with 401 and 482 of the Code of Criminal Procedures Code, 1973.

Superintendent of Police,
Central Bureau of Investigation,
SPE/ACU(VI),
New Delhi .... **Petitioner**

VERSUS

Sonam Wangdi .... **Respondent**

For the petitioner : Shri I.D. Vaid, Advocate.

For respondent : Shri A. K. Upadhyaya, Advocate.

PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE.

Date of judgment : 19th December, 2003.

J U D G M E N T

R. K. PATRA, C.J.

The prosecution of the respondent for the offence punishable under section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988 basing on the sanction given by the central government under section 19(1) of the said Act has been invalidated by the learned Special Judge, Gangtok in his order dated 19th August, 2003 in Criminal Case (C.B.I.) No. 03 of 2002 on the ground that it also needed sanction from the state government (which is wanting) in view of the fact that he was

employed during the first part of the check period in connection with the affairs of the state. The validity of the said order is the subject matter of the challenge in this revision filed on behalf of the Superintendent of Police, SPE/CBI.

2. Charge sheet was filed against the respondent under section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act') in the Court of learned Special Judge on 2nd December, 2002 on the allegation that he while working as public servant in different capacities under the government of Sikkim during the period from 1st September, 1976 to 30th September, 1994 was found in possession of total assets worth Rs.45,52,278.94 in his name and in the names of his family members as on 30th September, 1994 as against his likely saving of Rs.24,22,140.15 only and thus acquired assets to the tune of Rs.21,30,138.79 which are disproportionate to his known sources of income, which he could not satisfactorily explain. The learned Special Judge took cognizance of the offence and when the case was fixed for arguments on framing of charge, the respondent filed an application challenging the sanction accorded by the central government under section 19(1) of the Act on the ground that during the first part of the check period i.e., between 1st September, 1976 to 8th March, 1978 he was a state government employee and sanction for prosecution ought to have been taken from it as he was not removable from his office except by the sanction of the state government and in absence of any such

sanction he cannot be prosecuted under a sanction given by the central government. This plea of the respondent has been accepted by the learned Special Judge by the impugned order who has held that sanction ought to have been taken from the state government also.

3. Shri I. D. Vaid, learned counsel for the prosecution contended that law does not contemplate plurality of sanctions in*asmuch* for giving sanction what is relevant is when the offence was alleged to have been committed and the competent authority to remove the pubic servant from the office at the time of commission of offence is competent to give sanction for his prosecution. According to the learned counsel, the offence alleged is a continuing one and, therefore, "30th September, 1994" (the end of the check period) is the time of commission of offence and at that time the respondent being an IAS officer was removable from office only with the sanction of the central government and that is why sanction was sought from the central government which was rightly accorded by it. To buttress his argument, he referred to the form of 'Model charge' under section 5(1)(e) of the 1947 Act (corresponding to section 13(1)(e) of the Act) where emphasis is laid on the day of commission of the offence.

> ***"Charge under Section 5(1)(e) :-*** "That you, being a public servant employed as ..... at ..... during the period between ..... and ..... acquired assets which were disproportionate to your known sources of income and on or about the .....day of ..... you had been in possession of pecuniary resources or property in your name and in the name of ..... (names of persons to

> be given) to the extent of ..... (if necessary, detailed particulars may be given here or in a separate statement) which were disproportionate to your known sources of income for which could not satisfactorily account, and thereby committed an offence under Section 5(1) (e) of the Prevention of Corruption Act, 1947, punishable under Section 5(2) of the Act, and within my cognizance."
>
> [emphasis laid on the underlined portion]

Shri Upadhayaya, learned counsel for the respondent on the other hand submitted that during the earlier part of the check period, i.e., from 1st September, 1976 to 7th March, 1978 the respondent was admittedly the state government employee and the competent authority to remove him from office during that period was the state government and no sanction having been given by the state government, sanction accorded by the central government is of no avail. His submission is that object behind sanction is to protect public servants against frivolous or vexatious prosecutions and sanction being not a formality, the concerned authority is required to apply its mind and come to the conclusion that prosecution in the circumstances be sanctioned or not. By referring to sub-section (2) of section 19 of the Act Shri Upadhyaya submitted that competent authority to give sanction is that authority which would have been competent to remove the public servant from office when the offence was alleged to have been committed and, therefore, for the period when the respondent was the state government employee, sanction for the state government is, a 'must' and the check period cannot be severed.

4. The following are the undisputed facts. The check period is from 1st September, 1976 to 30th September, 1994. The respondent who is still in service was inducted to IAS cadre on 8th March, 1978 and was given the year of allotment of 1971. During the period from 1st September, 1976 to 7th March, 1978, i.e., the earlier part of the check period he was a state government employee. Sanction for his prosecution has been accorded by the central government.

5. To resolve the controversy raised in this revision, the scope and applicability of section 13(1)(e) and sub-sections (1)(a)(b) and (2) of section 19 of the Act are necessary to be examined. Section 13(1)(e) of the Act so far as relevant is extracted hereunder :-

> **"13. Criminal misconduct by a public servant**
>
> (1) A public servant is said to commit the offence of criminal misconduct,-
>
> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d) .....
>
> (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
>
> **19. Previous sanction necessary for prosecution**
>
> (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 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 a State and is not removable from his office save by or with sanction of the State Government, of that government;

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that government or 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."

Section 13(1)(e) requires the following ingredients:

(i) The public servant (or any person on his behalf) is in possession of pecuniary resources or property disproportionate to his known sources of income;

or

(ii) he (or any person on his behalf) has been at any time during the period of his office in possession of pecuniary resources or property disproportionate to his known sources of income;

and

(iii) he cannot satisfactorily account for such possession.

The expression in the clause "at any time during the period of his office been in possession" indicates that it covers past possession of assets.

6. Section 19 of the Act lays down that for prosecution of offences punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, valid

sanction is the condition precedent to taking cognizance by the Court. It may be noted that the Court takes cognizance of the offence and not of the offender. The phraseology "is not removable from his office save by or with sanction of the central/state government" occurring in section 6 of the 1947 Act (corresponding to section 19 of the Act) came up for consideration before the Supreme Court in S. A. Venkataraman vs. State AIR 1958 SC 107 wherein it was held as follows :-

> "In our opinion, in giving effect to the ordinary meaning of the words used in Section 6 of the Act, the conclusion is inevitable that at the time a Court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of S. 6 can apply."

In Mohd. Iqbal Ahmed vs. State of Andhra Pradesh AIR 1979 SC 677 the Supreme Court while considering the scope of section 6 of 1947 Act observed as follows :-

> "A trial without a sanction renders the proceedings ab initio void. <u>But the terminus a quo for a valid sanction is the time when the Court is called upon to take cognizance of the offence.</u> If therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the Court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. This approach is in accord with the policy underlying section 6 in that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution. If he has ceased to be a public servant in the meantime, this vital consideration ceases to exist. As a necessary corollary, if the accused has ceased to be a public servant at the time when the Court is called upon to take cognizance of the offence alleged to have been

committed by him as public servant, section 6 is not attracted."

The Constitution Bench of the Supreme Court in R. S. Nayak vs. A. R. Antulay AIR 1984 SC 684, after considering earlier cases governing the field held as follows:-

> "It therefore appears well settled that the relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by S. 6 is the date on which the Court is called upon to take cognizance of the offence of which he is accused."

7. At this stage, let me consider whether sub-section (2) of section 19 of the Act which lays down that for any reason if any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the central government or the state government such sanction shall be given by that government 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 would at all be applicable to the case at hand.

As has been held by the Supreme Court in State of Maharastra vs. Pollonji Darabshaw AIR 1988 SC 88 there can be no general rule or criterion, valid for all cases, in regard to the choice of the period for which accounts are taken to establish criminal misconduct under section 5(1)(e) of the 1947 Act (corresponding to section 13(1)(e) of the Act). The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests.

The sum and substance of the charge sheet is as follows :-

Period		Office held
1.9.76 to 3.1.79	-	District Officer/DM/DC East Sikkim
4.1.79 to 20.1.80	-	Joint Director, Survey Settlement, Govt. of Sikkim.
21.1.80 to 29.5.80	-	Secretary, Food and Civil Supplies, Govt. of Sikkim.
30.5.80 to 13.5.81	-	Secretary, Information and Public Relations Department and Labour Department.
14.5.81 to 2.2.86	-	Secretary to the Governor of Sikkim.
3.2.86 to 5.9.86	-	Secretary, Sikkim Legislative Assembly, Gangtok.
6.9.86 to 30.6.89	-	Secretary, Industries with additional charge of Secretary, Labour w.e.f. 20.10.87.
1.7.89 to 20.5.90	-	Secretary, SNT with additional charge of labour.
21.5.90 to 30.9.94	-	Development Commissioner-cum-Secretary Planning, Government of Sikkim.

During the check period, his assets, income and expenditure are found to be as under:-

A.	Assets acquired	Rs. 45,52,278.94
B.	Income earned by him through Bank interest, LIC etc.	Rs. 29,69,689.87
C.	Expenditure made by him	Rs. 5,47,549.72
D.	Likely savings made (B – C)	Rs. 24,22,140.15
E.	The extent of disproportionate assets acquired by him either in his name or in the names of his family members (A – D)	Rs. 21,30,138.79

From the above, it may be seen that it is not the case of the prosecution that during the period (from 1st September, 1976 to 8th March, 1978) when the respondent was a state government employee he acquired assets which were disproportionate to his known sources of income for which he could not satisfactorily account. The gravamen of the charge is that on 30th September, 1994 (the end of the check period) he was found in possession of assets disproportionate to his known sources of income for which he could not satisfactorily account. In other words, the respondent on 30th September, 1994 is alleged to have committed the offence under section 13(1)(e) of the Act and he being still in service is removable from his office only with the sanction of the central government and, therefore, that government (central government) is the competent authority to give sanction. The allegations on which the prosecution case is based are clear and unambiguous and in the facts and circumstances there being no doubt as to the authority which is competent to sanction prosecution, there is no need to take resort to sub-section (2) of section 19 of the Act. It has been held by the Supreme Court in Mansukhlal Vithaldas Chauhan vs. State of Gujarat 1997 CRI.L.J. 4059, that sub-section (2) of Section 6 of the 1947 Act (corresponding to section 19(2) of the Act) is clarificatory in nature inasmuch as it provides that if any doubt arises whether the sanction is to be given by the Central Government or the State Government or any other authority, it shall be given by the appropriate Government or the authority, which was competent to remove that person from the office on the date on which the

offence was committed. This rule is a departure from the normal rule under which the relevant date is the date of taking cognizance. [emphasis laid]

8. In view of the fact that when the Court was called upon to take cognizance of the offence, the respondent was employed in connection with the affairs of the Union and was not removable from his office except by or by sanction of the central government, in my considered opinion the competent authority to grant sanction to prosecute him under section 13(1)(e) of the Act is the central government and that authority has rightly accorded sanction.

9. For the reasons aforesaid, the impugned order passed by the learned Special Judge cannot be sustained in law which is hereby set aside.

10. In the result, the revision is allowed.

(R. K. Patra)
Chief Justice
19.12.2003