

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

Cr. Ref.15/2005

Date of Order: 31.03.2016.

State

vs

Mohd Hafiz Wani

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the petitioner(s)	:	None.
For the Respondent(s)	:	Mr. P N Goja, Sr. Adv with Mr. Arjun Singh, Advocate.

(i) Whether approved to be reported in press/ media : Optional.

(ii) Whether approved to be reported in Law Journal/Digest: Yes.

- Respondent accused was noticed to have mis-appropriated an amount of Rs.1,35,716/- from Judicial fine income of the Court of Additional Special Mobile Magistrate Traffic Jammu, as a result whereof case was registered against the accused for commission of offences punishable under Section 409,466,468 RPC. The investigation of the case FIR No.269/90 P/s Pacca Danga Jammu culminated in filing of charge-sheet (challan) before the Court of Judicial Magistrate 1st Class which was committed to the Court of Sessions Judge (Principal Sessions Judge Jammu) who assigned the same to the Court of 2nd Additional Sessions Judge Jammu.
- While hearing the APP and the counsel for the accused at the stage of framing or otherwise of the charge, an objection was raised by the counsel for the accused that

in absence of sanction, the prosecution against the accused could not be launched. Buttressing the submission has contended that the offence punishable under Section 409 RPC is similar to that of the offence falling within the ambit of Section 5(1)(c) of the Prevention of Corruption Act, 2006. The requirement of prior sanction is imperative for taking cognisance of the case. Without obtaining such sanction, challan has been presented. Therefore, the accused could not be put to trial for commission of offence under Section 409 RPC. The investigating agency has erred in filing report (charge-sheet) under Section 173 CrPC for commission of offence under Section 409 RPC. In support of his contention has relied upon the judgment rendered by this Court in the case State vs. Rajani Sehgal and ors reported in 2003 (1) JKJ Page 21.

3. In opposition learned APP had projected before the trial Court that in view of law laid down by the Hon'ble Apex Court in the judgment rendered in various cases reported in AIR 1957 SC 458, the investigating agency was right in filing final report under Section 173 Cr.PC for the commission of offence under Section 409 RPC, as such sanction was not required.

4. Learned trial Court without looking into the law as has been laid by the Hon'ble Apex Court in the Constitutional Judgment reported as AIR 1957 SC 458 as was referred to and relied upon in support of the contentions by the learned APP has chosen to make reference. This is how the matter has landed in this Court.
5. Today learned senior counsel for the respondent Mr. P N Goja stated that to his information, respondent (accused) is dead. Therefore, no further proceedings can survive.
6. In the Constitutional Judgement rendered by the Hon'ble Apex Court reported AIR 1957 SC 458, the position of law has been clearly laid down. Para-29 and 30 are advantageous to be quoted:

"29. It seems to us, therefore, that the two offences are distinct and separate. This is the view taken in "Amarendra Nath Roy v. The State" (H) (supra) and we endorse the opinion of the learned Judges expressed therein. Our conclusion, therefore, is that the offence created under S.5(1)(c) of the Prevention of Corruption Act is distinct and separate from the one under S.405. Penal Code and, therefore, there can be no question of S.5(1)(c) repealing S.405, Penal Code. If that is so, then, Art.14 of the Constitution can be no bar.

30. The last argument of Mr. Isaacs is that despite the fact that the prosecution is under S.409, Penal Code, still sanction to prosecute is necessary. Quite a large body of case law in all the High Courts has held that a public servant committing criminal breach of trust does not normally act in his capacity as a public servant, see

(a) "The State v. Pandurang Baburao, (F) (supra)

(b) “ Bhup Narain Sexena v. State,” (J) (supra)
and (c) “State v. Gulab Singh,” AIR 1954 RAJ 211(L).

We are in agreement with the view expressed by Hari Shankar and Randhir Singh, JJ. that no sanction is necessary and the view expressed by Mulla, J. to the contrary is not correct.”

7. It appears that this Constitutional Bench Judgment has not been brought to the notice of this Court while deciding the case titled State of J&K vs. Rajani Sehgal and ors, 2003 JKJ 21. Learned trial Court had no difficulty in following the law as has been laid down by the Hon’ble Apex Court .
8. The reference shall stand answered, accordingly.
9. Now another development is that the accused is reported to be dead. Learned Trial Court shall after satisfying itself about the fact of death of the accused pass appropriate orders as warranted i.e. in case is found to be alive, then to decide the question of framing or otherwise of the charge and in case is reported dead, then to pass orders about abatement as shall be permissible.
10. The reference shall accordingly stand disposed of.
11. Copy of the order be sent to the Trial Court along with Trial Court record forthwith.

(Mohammad Yaqoob Mir)
Judge

Jammu
31.03.2016
Raj Kumar