

STATE OF KERALA
v.
M.M. MANIKANTAN NAIR

APRIL 25, 2001

[K.T. THOMAS, R.P. SETHI AND S.N. PHUKAN, JJ.]

Code of Criminal Procedure, 1973:

Section 362—Scope of—Judgment—Final order—Court has no power to review except to correct clerical or arithmetical error—Gram Panchayat—Secretary—Prosecution—Order rejecting prayer for quashing prosecution for want of sanction to prosecute—Order attaining finality—Review and reversal of said final order held invalid.

Kerala Panchayat Act, 1994:

Section 122—Scope of—Gram Panchayat—Secretary—Prosecution—Sanction for prosecution—Not necessary when he has retired from service.

The Respondent, Secretary of a Gram Panchayat, was prosecuted under Sections 120B, 409, 468, 471 and 477 of the Indian Penal Code, 1860 read with Sections 13(1)(c) and 13(2) of the Prevention of Corruption Act, 1988. He filed an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing criminal proceedings on the ground that no sanction to prosecute him was obtained under Section 122 of the Kerala Panchayat Act, 1994. Rejecting his contention the High Court passed an order dated 31st May, 2000 holding that there was proper sanction to prosecute and a *prima facie* case was made out against the respondent. Thereafter the respondent filed a miscellaneous petition for clarification of the order dated 31st May, 2000. By its order dated 13.7.2000 the High Court reversed its earlier order and quashed criminal proceedings for want of proper sanction. Against the order dated 13.7.2000 State of Kerala preferred appeal before this Court.

Allowing the appeal and setting aside the impugned order, the Court

HELD: 1. The High Court committed grave error in passing the impugned order. Section 362 of the Code of Criminal Procedure, 1973 prohibits the court after it has signed its judgment or final order disposing

- A a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed. By the first order dated 31.05.2000 the High Court rejected the prayer of the respondent for quashing the criminal proceeding. This order attained finality.
- B By the impugned order, the High Court reversed its earlier order and quashed the criminal proceeding for want of proper sanction. By the impugned order the High Court has not corrected any clerical or arithmetical error. In fact the impugned order is an order of review, as the earlier order was reversed, which could not have been done as there is no such provision under the Code of Criminal Procedure, but there is an interdict against it.

C [205-H; 206-A-C]

Hari Singh Mann v. Harbhajan Singh Bajwa & Ors., [2001] 1 SCC 169, referred to.

- D 2. The language of Section 122 of the Kerala Panchayat Act, 1994 is clear and unambiguous. Sanction to prosecute the President, Executive Authority or members of a Panchayat is necessary for prosecution of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. If a person ceases to hold the above office on retirement or otherwise no sanction for prosecution is necessary. The petitioner who retired from the service could not claim protection under this section as he ceased to hold the post under the Panchayat. [206-G-H]
- E

State of Kerala v. V. Pedmeanabhan, [1999] 5 SCC 690 and *R. Balakrishna Pillai v. State of Kerala & Anr.*, [1996] 1 SCC 478, referred to.

- F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 549 of 2001.

From the Judgment and Order dated 13.7.2000 of the Kerala High Court in Crl.M.P. No. 3062 of 2000.

- G G. Prakash for the Appellant.
E.M.S. Anam for the Respondent.

The Judgment of the Court was delivered by

PHUKAN, J. Leave is granted.

- H The respondent has been booked for trial along with another accused

for offences punishable under Section 120B, 409, 468, 471 and 477 of IPC and Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988. The allegation against the respondent No.1 was that while he was working as the Secretary of Melukavu Grama Panchayat along with another accused, who was the Head Clerk of the Panchayat, committed criminal conspiracy to misappropriate the funds of the Panchayat which was earmarked for construction of waiting sheds, Tribal training centres etc. and misappropriated large amount by creating bogus receipts and bills and thereby committed the above offences. Initially the respondent was placed under suspension and subsequently was allowed to retire from service on attaining superannuation.

The respondent filed a revision petition under Section 482 of the Criminal Procedure Code before the High Court of Kerala for quashing the said criminal proceeding on the ground that there was no sanction to prosecute him as required under Section 122 of the Kerala Panchayat Act. That petition viz. CrI.M.C. No. 1137 of 2000 was dismissed by the learned single Judge of the High Court by judgment dated 31st May, 2000 on the grounds that there was proper sanction to prosecute the respondent and a *prima facie* case was made out against him. Subsequently, a miscellaneous petition was filed in the above criminal case by the respondent for clarification of the above order. This petition was finally allowed by the impugned order dated 13.07.2000 by the same learned Judge holding that there was no proper sanction from the competent authority and, therefore, no cognizance could have been taken against him. Being aggrieved, the State has approached this court.

The first question which needs our consideration is whether the impugned order dated 13.07.2000 passed by the learned single Judge clarifying the earlier order dated 31.05.2000 holding that no cognizance against the respondent could have been taken for want of proper sanction is valid or not.

The first order dated 31.05.2000 is a composite order by which the petition under Section 482 of Criminal Procedure Code was dismissed on the grounds as stated above. By way of clarification, this order was reversed by the impugned order and the criminal proceeding was quashed for want of proper sanction.

The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the court after it has signed its judgment or final order disposing a case from altering or reviewing

A the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed. By the first order dated 31.05.2000, the High Court rejected the prayer of the respondent for quashing the criminal proceeding. This order attained its finality. By the impugned order, the High Court reversed its earlier order and quashed the criminal proceeding for want of proper sanction. By no stretch of imagination it can be said that by the impugned order the High Court only corrected any clerical or arithmetical error. In fact the impugned order is an order of review, as the earlier order was reversed, which could not have been done as there is no such provision under the Code of Criminal Procedure, but there is an interdict against it.

C This court in *Hari Singh Mann v. Harbhajan Singh Bajwa & Ors.*, [2001] 1 SCC 169 held that Section 362 of the Criminal Procedure Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error and that this section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes *functus officio* and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by the court of competent jurisdiction.

E The next question that we have to answer is whether sanction to prosecute under sub-section (1) of Section 122 of the Kerala Panchayat Act is necessary in the present case. We extract below the said sub-section:

F “Sanction for Prosecution of President, Executive Authority or members of a Panchayat (i) When the President, Executive Authority or any member is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of this Government.”

G The language of Section 122 is clear and unambiguous. Sanction to prosecute the President, Executive Authority or members of a Panchayat is necessary for prosecution of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. If a person ceases to hold the above office on retirement or otherwise no sanction for prosecution is necessary. The petitioner who retired from the service could not claim protection under this section as he ceased to hold the post under the Panchayat.

H

Section 19 of the Prevention of Corruption Act, *inter alia*, provides for previous sanction for prosecution and such sanction is necessary if a person is employed in connection with the affairs of the Union/State. This section came up for consideration by this court and in *State of Kerala v. V. Padmanabhan*, [1999] 5 SCC 690 this court held that a person who ceased to be a public servant on the date when the court took cognizance, no sanction under the above section is required. It is not necessary to refer to other decisions of this court.

The Section 197 of the Criminal Procedure Code is the corresponding provision for previous sanction of a public servant for prosecution of offences in a criminal trial. The language used in this section is 'when any person is or was a public servant'. This provision was considered by this court in *R. Balakrishna Pillai v. State of Kerala & Anr.*, [1996] 1 SCC 478 and after referring to the report of the Law Commission which suggests an amendment to above section and accordingly it was amended in 1991, the bench observed as follows:

"It is in pursuance of this observation that the expression 'was' came to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted."

We are, therefore, of the opinion that in view of clear language of sub-section (1) of Section 122 of the Kerala Panchayat Act, sanction is required under the said sub-section only if a person holds the office of President, Executive Authority or any member and not otherwise. As the respondent retired from service no previous sanction for prosecution under this section is required.

In the result we hold that the High Court committed grave error in passing the impugned order and accordingly appeal allowed by setting aside the said order.

T.N.A.

Appeal allowed.