

LOUIS PETER SURIN
v.
STATE OF JHARKHAND
(Criminal Appeal No. 498 of 2006)

JULY 27, 2010

[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Code of Criminal Procedure, 1973:

s. 482 – *Petition for quashing criminal proceedings against a retired public servant – FIR filed in 1984 alleging commission of offences punishable under the provisions of the Prevention of Corruption Act and the Penal Code – Charge-sheet submitted in November 2001 – Cognizance taken by the Special Judge in December 2001 – Challenged on the ground of 17 years delay – High Court rejecting the petition – HELD: The public servant had superannuated in 1997 and cognizance was taken by Special Judge four year thereafter in a matter arising out of an FIR registered in April 1984 even though the request for sanction had been rejected by State Government on two occasions – In view of the peculiar facts, initiation of proceedings was not justified – Order of High Court set aside – Proceedings quashed – Constitution of India, 1950 – Article 136.*

Mahendra Lal Dua vs. State of Bihar & Ors. (2001) Supp (4) SCR 157 = (2002) 1 SCC 149; and Ramanand Chaudhary vs. State of Bihara and Ors. (2002) 1 SCC 153, relied on.

Case Law Reference:

(2001) Supp (4) SCR 157 relied on para 4
(2002) 1 SCC 153 relied on para 4

- A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 498 of 2006.

From the Judgment & Order dated 23.11.2004 of the High Court of Jharkhand at Ranchi in CrI. M.P. No. 1120 of 2003.

- B Vikas Singh, Yunus Malik, Ravi Kishore, Samir Malik, Amrita Narayan, Shiva Lakshmi Udit Singh, Prashant Chaudhary for the Appellant.

Gopal Prasad for the Respondent.

- C The Order of the Court was delivered

O R D E R

This appeal arises out of the following facts:

- D On 8th July, 1983 an agreement was executed by the Deputy Commissioner, Palamu with M/s. Bharat Drilling for doing some drilling work in the District. The appellant was then employed as the Managing Director of the District Rural Development Agency, Palamu, and as per his statement had absolutely no role to play in the award of the contract to M/s. Bharat Drilling. By order dated 16th July, 1983 the appellant was transferred from his post as Managing Director and he handed over the charge from that very date to some other officer.

- F A first Information Report was registered on 14th April, 1984 under the Prevention of Corruption Act and the Indian Penal Code against the Deputy Commissioner who had signed the contract with M/s. Bharat Drilling on 8th July 1983 and against the District Rural Development Agency alleging that the Deputy Commissioner and the appellant had entered into a conspiracy in awarding the contract to M/s. Bharat Drilling for consideration. The Investigating Agencies moved the State of Bihar for sanction to prosecute the appellant but the same was declined by the Governor on 2nd February, 1990 on the
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premise that no prima facie case was made out against any of the accused. A review of the order dated 2nd February 1990 was again sought which too was rejected vide order dated 28th July 1992 for the same reason, the appellant superannuated from service on 1st December 1997. On 16th June, 1999 the dispute between M/s. Bharat Drilling and the Government of Bihar was referred to Arbitration to the then Superintendent Engineer who made an award in favour of M/s. Bharat Drilling thereby settling the issue in its favour. Apparently piqued with what had happened and taking advantage of the fact that the appellant had retired in the meanwhile and that sanction for prosecution was no longer required, a charge-sheet was submitted de hors the sanction on 9th November 2001. The Special Judge Ranchi thereafter took cognizance of the matter on 13th December, 2001. The order of the Special Judge was challenged before the High Court which by its order dated 23rd November, 2004 rejected the challenge. The matter is before us in this appeal in the above circumstances.

Mr. Vikas Singh, the learned senior counsel for the appellant has raised primarily one plea before us today. He has pointed out that cognizance had been taken by the Special Judge a full seventeen and half years after the filing of the FIR and about four years after the appellant had retired from service and in the light of the judgments of this Court reported in (2002) 1 SCC 149 (*Mahendra Lal Dua vs. State of Bihar and Ors.*) and (2002) 1 SCC 153 (*Ramanand Chaudhary vs. State of Bihar and Ors.*) this was impermissible and the proceedings were liable to be quashed as being belated and stale. He has highlighted that after the State Government had on two occasions, declined the sanction, on the ground that no prima facie case existed, there was no change in circumstances except that the appellant had superannuated in the meanwhile which was a factor which could not justify cognizance after such a long delay.

The learned counsel for the State of Jharkhand has

A however supported the orders of the Special Judge and the High Court and has pointed out that the State Government had not considered the matter in its proper perspective, when it had declined sanction on the two occasions.

B We see from the judgments cited by Mr. Vikas Singh that they proceed on facts which are akin to the present one. In both cases sanction was granted after a delay of thirteen years while the officials concerned were still in service under the State Government. We find in the matter before us that the appellant had superannuated in the year 1997 and the cognizance had
C been taken by the Special Judge four years thereafter in a matter arising out of an F.I.R. registered in April 1984 even though the request for sanction had been rejected by the State Government on two occasions. In view of these peculiar facts we are of the opinion that the initiation of proceedings against
D the appellant was not justified.

We may however clarify that this judgment should not be read to mean that sanction would be required in a case where an employee has in the meanwhile superannuated.

E We accordingly allow this appeal, set aside the impugned orders and quash the proceedings against the appellant.

R.P.

Appeal allowed.