

RESERVED ON 16.09.2019

DELIVERED ON 11.11.2019

Case :- CRIMINAL REVISION No. - 3155 of 2019

Revisionist :- Shyam Bihari Tiwari

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Saroj Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh-I,J.

1. Heard Shri Saroj Kumar Dubey, learned counsel for revisionist as well as learned AGA, Shri G.P. Singh appearing for the State.
2. This criminal revision under Section 397/401 of Criminal Procedure Code has been preferred against the judgment and order dated 11.03.2019 passed by Additional District Judge/Special Judge, Court No. 1, (Prevention of Corruption Act), Varanasi in S.T. No. 29 of 2012 (State Vs. Shyam Bihari Tiwari) arising out of Case Crime No. 102 of 2005 under Sections 419, 420, 465, 468, 406, 409 IPC and 13 (1) (2) of Prevention of Corruption Act, Police Station Reoti, District Ballia whereby the discharge application of the revisionist has been rejected.
3. In order to appreciate the argument of the learned counsel for revisionist, it would be appropriate to mention here the facts of the case in brief and thereafter, the controversy involved in this revision would be appreciated to arrive at the conclusion as to whether the discharge application No. 11 Kha has been rightly dismissed by the learned Special Judge or does it require any interference by this Court in revisional jurisdiction vested in this Court.

4. As per record, the opposite party No. 3 got lodged an FIR against one Gopal Singh, Branch Manager, Ballia, Kshetriya Gram Bank, Dataha Reoti, Ballia, District Ballia and Basic Shiksha Adhikari, Ballia on 09.09.2005 stating therein that the Basic Shiksha Adhikari had opened an Account No. 4131 in the name of Akhilesh Kumar Singh, Principal, Maharana Pratap Junior High School, Reoti in which scholarship amount was withdrawn. The details of which are as under :-

Details of Dates	Amounts Drawn
25 th March, 2014	Rs. 39,360.00
20 th April, 2004	Rs. 7,16,392.00
13 th May, 2004	Rs. 90,720.00
10 th May,2005	Rs. 2,31,280.00
13 th May, 2005	Rs. 1,92,420.00
24 th May, 2005	Rs. 1,44,000.00
Total	Rs.14,14,172.00

5. It is further stated in the First Information Report that on seeing the photo affixed on the certificate given at the time of opening the bank account, it revealed that the name of Akhilesh Kumar Singh was forged; rather the photo affixed on the said account was of Gopal Singh son of Jay Prakash Singh, resident of Teeka Dewari Chilkahar. The conduct of the bank also appears to be suspicious because for withdrawing the scholarship amount in any School a joint account was necessary. While the bank had got opened the account in the name of only one person and through the same account the whole amount was withdrawn and an inquiry was conducted in respect of Maharana Pratap Junior High School, Reoti, but the said School was not in existence. Hence, a prayer was made that First Information Report be

registered against Gopal Singh son of Jay Prakash Singh and others under appropriate Sections.

6. On the basis of the said complaint, First Information Report was registered as Case Crime No. 102 of 2005, under Sections 419, 420, 465, 468, 406, 409 IPC and 13 (1) (2) of the Prevention of Corruption Act, Police Station Reoti, District Ballia and investigation was made. After investigation into the matter charge sheet was submitted by the Investigating Officer against revisionist Shyam Bihari Tiwari mentioning therein that he was found prima facie guilty of misappropriation of Rs. 3,48,000/- and also for causing loss of record. Hence, charge sheet was submitted against him under Sections 419, 420, 465, 468, 406, 409 IPC and 13 (1) (2) of the Prevention of Corruption Act.

7. The revisionist had moved an application 11 Kha to get himself discharged before the Trial Court, which has been rejected by the impugned order dated 11.03.2019 which is under challenge before this Court. It is recorded in the impugned order by the Trial Court that after having taken cognizance on the charge sheet, the revisionist was summoned. But when he did not appear, non bailable warrant and warrants under Sections 82 and 83 of Cr.P.C. were issued against him and the proceedings under Section 83 of Cr.P.C. were also carried out but execution of NBW could not be done, hence, proceedings under Section 299 of the Cr.P.C. were also initiated. Till date, the accused has not appeared before the Court, nor was he on bail. The revisionist had moved an application No. 3840 of 2019 (under Section 482 Cr.P.C.) in which on 29.01.2019 an order was passed to move an application before the Trial Court to get himself discharged and the said application was directed to be decided by the Trial Court within one month. In pursuance of the order passed by this Court an Application 11 Kha for discharge was moved and in the said discharge application it was stated that no offence is made out

against the revisionist as he was not named in the First Information Report. Investigating Officer after investigation submitted the charge sheet against him. The revisionist was Principal of Lagatoo Baba Inter College from where he retired, hence he is covered by the definition of public servant, but no prosecution sanction has been obtained under Section 19 of the Prevention of Corruption Act. Hence, his prosecution is not maintainable. Further plea before the Trial Court was taken by the revisionist that the proceedings against him are also barred by Section 197 Cr.P.C., hence he should be discharged.

8. In the impugned order the Trial Court has recorded that according to the First Information Report, in pursuance of the letter dated 04.07.2006 written by Deputy Inspector General of Police (Eastern), Economic Offences Wing, Uttar Pradesh, Lucknow investigation was made, which discloses that Akhilesh Kumar Singh, Principal, Maharana Pratap Junior High School, Reoti, Ballia and Basic Shiksha Adhikari, Ballia had got opened a joint account in Kshetriya Gramin Bank, Datoha, Reoti, District Ballia in which the amount of scholarship of social welfare was deposited on different dates and from the perusal of the photo which was affixed on the certificate, on the basis of which the account was got opened, it transpired that name of Akhilesh Kumar Singh was forged, rather the photograph posted thereon was that of Gopal Singh and in this matter, the conduct of the bank was also found to be suspicious because for scholarship amount a joint account was necessary but in this case after getting the account opened in the name of one person, the amount was withdrawn despite the fact that there did not exist any School by the name of Maharana Pratap Junior High School, Reoti, hence the present First Information Report was lodged against Gopal Singh, Branch Manager, Ballia, Kshetriya Gramin Bank and Basic Shiksha Adhikari, Ballia under the above mentioned Sections. After

investigation of the case, the Investigating Officer has submitted the charge sheet against Akhilesh Kumar Singh, Ganesh Prasad Singh, Keshav Giri being charge sheet No. 4/2011 dated 11.12.2012 in Case Crime No. 102 of 2005, under Sections 409, 201, 120B IPC and 13 (1) (2) of the Prevention of Corruption Act and against Manoj Kumar Srivastava charge sheet No. 04A of 2011 was submitted under Sections 419, 420, 465, 467, 468, 471, 409, 120B IPC and Section 13(1) and 13 (2) of Prevention of Corruption Act. Cognizance was taken under the same sections by the Court and the case was registered as Special Case No. 12 of 2011. The charge sheet No. 4-B of 2011 was submitted against the present accused Shyam Bihari Tiwari under Sections 409, 201, 120 B and under Sections 13 (1) and 13 (2) of the Prevention of Corruption Act on which cognizance has been taken and the case is being tried as Special Case No. 29 of 2012. There is other co-accused Rajendra Prasad Yadav also against whom charge sheet No. 4-C/2011 under Sections 409, 120-B IPC and Section 7/13(1) and 13 (2) of the Prevention of Corruption Act has been submitted and cognizance has also been taken thereon and a Special Case No. 5 of 2013 has been registered on the said charge sheet. Against another co-accused namely, Rajendra Prasad Akhauri charge sheet No. 4-D of 2011 has been submitted under Sections 409, 201, 120 B IPC and Section 13(1) and 13 (2) of Prevention of Corruption Act, and cognizance on the same was taken by the Court and Special Case No. 10 of 2013 was registered against him.

9. It is further recorded in the impugned order that it transpires from a perusal of the entire evidence collected in the Case Diary that out of above mentioned accused, accused Akhilesh Kumar Singh had opened Maharana Pratap Junior High School, Reoti, District Ballia only on papers and when it was got verified the said School was not found in existence. The registration pertaining to the said School was found forged. The said document was prepared by co-accused

Akhilesh Kumar Singh for personal gain. It was apprised by Assistant Director (Basic), Azamgarh Region by letter dated 14.06.2011 that Maharana Pratap Junior High School, Reoti, District Ballia was not granted sanction. It was only up to Class VI to VIIIth and that name of Akhilesh Kumar Singh was actually found to be Gopal Singh and he had forged these documents with a view to earn profit. The said School was not in existence and for withdrawing the scholarship an account was opened in Kshetriya Gramin Bank, Dataha, Reoti, District Ballia and accused Rajendra Prasad Yadav who was appointed on the post of District Probation Officer, Ballia and was also looking after the work of Prabhari, Zila Samaj Kalyan Adhikari, Ballia, with his collusion the scholarship account No. 4131 was got opened in Kshetriya Gramin Bank, Dataha, Reoti, District Ballia and cheques issued by the Treasury being Cheque No. 682643 dated 21.02.2004 an amount of Rs. 39360.00 was sent to the said account on 25.03.2004. Without there being any entry in records as to which students of which School were entitled for the said amount of scholarship and the same was sent to the Account No. 4131 of non-existing School namely Maharana Pratap Junior High School through forged invoice. Similarly, an invoice was prepared for Rs.10,64,392/- through Cheque No. 688613 dated 31.03.2004 by District Minority Welfare Officer, Ballia in the name of Nagar Kshetra Reoti; out of which an amount of Rs. 1,81,368/- shown on the cheque as per the register maintained in the office of District Social Welfare Officer, Ballia was for the Scheduled Caste and Scheduled Tribe students of Inter College, Dalan Chhapara; Rs. 1,82,284/- was for the Higher Secondary School, Sonwani; Rs. 1,74,040/- for C.V. Inter College, Sahatwar, and Rs. 3,48,80/- for Lagatoo Baba Inter College, Harikalan of which the revisionist was Principal. But out of the said amount, an amount of Rs. 7,16,392/- was sent to non-existing Maharana Pratap Junior High School, Reoti, Ballia and Rs. 3,48,000/-, to the account No. 883 of Lagatoo Baba Inter College,

Hariha Kalan.

10. No entry of Rs. 90,720/- was made in the register for scholarship of the students of any College and the said amount was also sent to the said non-existing School. There are further details of such kind of discrepancies mentioned in the impugned order, which are not being reproduced here. However, it is mentioned that the Investigating Officer had found that through Cheque No. 688617 of Rs. 10,64,392/- on the invoice filled up by the office of District Social Welfare Officer, Ballia Rs. 3,48,000/- was sent to Kshetriya Gramin Bank situated at Dataha in the account No. 883 of Shri Lagatoo Baba Inter College, Hariha Kalan, Reoti, Ballia for scholarship of 725 students of Class - VI to VIIIth, whereas in the list of the requisition letter sent by the Principal there was only mention of 420 students of Class IXth and Xth. The Principal of the said College, Shyam Bihari Tiwari (accused) had withdrawn an amount of Rs. 3,55,000/- through Cheque. On physical verification of the name and address of the students mentioned in the scholarship, demand list which was made available from the office of the District Social Welfare Officer, Ballia, 380 names were found forged. Shri Lagatoo Baba Inter College, Harihar Kalan is receiving financial aid from Government of Uttar Pradesh and its Principal and Teachers along with Class IV employees are drawing salary from the State Exchequer. The procedure laid down by the government for distribution of scholarship for the students of Class-IXth and Xth by cheque and not in cash, was not adhered to by accused Shyam Bihari Tiwari. He had withdrawn the whole amount and embezzled the same.

11. The accused revisionist is running suspended since 22nd of January, 2006 in some matter and after his suspension, the important documents were got lost from the Almirah and in this act the senior clerk Ganesh Prasad was also stated to be involved with the revisionist and he had embezzled total Rs. 3,48,000/- and with a view

to obliterating the evidence in that regard, got the connected papers lost. During the investigation the signatures made on the documents were sent to *the Specialist, Vidhi Vigyan Prayogshala* for examination and on comparison of various documents his signatures were found forged. Thus, it was found that the accused revisionist along with other co-accused despite being *a public servant* had embezzled the government funds and had also got the evidence of necessary documents removed. Hence, offences under Sections 409, 201, 120-B of IPC and Sections 13(1) and 13(2) of the Prevention of Corruption Act were found to be made out against him.

12. In the impugned order it is written that the main argument from the side of accused revisionist was that no offence was made out against him on the basis of the documentary evidence. The sanction of prosecution against the revisionist has been rejected. He was covered under the definition of public servant by Section 21 of the Prevention of Corruption Act. Charge sheet has been submitted against him under other sections also of the Indian Penal Code, for prosecuting under those sections a valid prosecution sanction under Section - 19 of the Prevention of Corruption Act and under Section 197 of the Indian Penal Code is necessary, for want of which the prosecution is not maintainable and accused deserves to be discharged.

13. Further, it is mentioned in the impugned order that it was evident from perusal of the evidence on record that the revisionist having retired from service, there was no requirement of prosecution sanction under Section 19 of the Prevention of Corruption Act. It was also evident from *parcha - 17 Ka/99* of the Case Diary that in this matter one letter had been received from the Secretary of the U.P. Intermediate Education and Service Selection Board, Allahabad stating therein that in the intermediate colleges the managers of the concerned colleges are the appointing authority of the principals and

teachers. The appointing authority of the revisionist on the post of principal was not the Intermediate Education and Service Selection Board, which makes it clear that the Selection Board could not have given the sanction to prosecute him not being his appointing authority but it would not mean the prosecution sanction was refused. As per the provisions of Section 19 for taking cognizance of an offence under the Prevention of Corruption Act it is necessary for the public servant to remain in service and in the present matter on the date of taking cognizance the revisionist was not in service as he had retired, hence there was no need to seek prosecution sanction for the revisionist under Section 19 of the Prevention of Corruption Act.

14. It is also considered in the impugned order that as regards the prosecution sanction under Section 197 of the Code of Criminal Procedure in respect of the offences under Sections - 409, 201, 120-B of IPC, several cases have been relied upon by the Trial Court to record in the impugned order that if the office has been abused as in the present case in which papers have been tampered with and forgery has been committed, it would not be treated that the accused had discharged his function in course of his official duty, in that event, there would be no requirement to seek prosecution sanction. Various rulings which were relied upon from the side of the accused, have also been mentioned in the impugned order and were distinguished by the learned Trial Court as they were not found applicable in the case of the revisionist and the Trial Court has concluded that the revisionist being on the post of a public servant had embezzled an amount of Rs. 3, 48,000/- in collusion with other co-accused and thus, he has committed a criminal breach of trust as defined in Section 409 of IPC and 13 (1) (2) of the Prevention of Corruption Act.

15. The revisionist has placed reliance on ***Professor N.K. Ganguly Vs. C.B.I., New Delhi, (2016) 1 JIC 253 (SC)*** in which the facts of the case are that the Indian Council of Medical Research (ICMR), is a

registered society under the Societies Registration Act, 1860. It is a premier research institute and it deals with the formulation, coordination and promotion of bio-medical research. Its functional object is to initiate, aid develop and coordinate medical and scientific research in India and to promote and assist institutions for the study of diseases, their prevention, causation and remedy. It is fully funded by the Government of India through the Department of Health Research, Ministry of Health and Family Welfare. The Institute of Cytology & Preventive Oncology (hereinafter referred to as "ICPO"). It is one of the institutes of ICMR, the main aim of which is to promote research in the field of cancer. On 30.11.2010 a criminal case was registered under Section 120-B of the Indian Penal Code read with Section 13(1) (d) and 13(2) of the Prevention of Corruption Act on the basis of a written complaint filed by M.R., Atrey, Sub-Inspector of Police, CBI, EOU, VII, New Delhi against the appellants therein, namely, N.K. Ganguly, the then Director General, Mohinder Singh, the then Sr. Deputy Director General (Admn.), P.D. Seth, the then Financial Advisor, A.K. Srivastava, Executive Engineer, all from ICMR, New Delhi and B.C. Das, the then Director ICPO, NOIDA and other unknown persons in the matter relating to the alleged unauthorized and illegal transfer of Plot No. 119, Sector - 35, NOIDA, measuring 9712.62 sq. meters from ICPO, NOIDA to ICPO-ICMR Cooperative Group Housing Society Ltd. NOIDA.

16. In the preliminary inquiry in the matter it was found that the aforesaid officials and the other unknown persons had entered into a criminal conspiracy by abusing their official position as public servants and had unauthorisedly and illegally transferred the aforesaid plot from ICPO to ICPO-ICMR Housing Society at a consideration of Rs.4,33,90,337/- which was much lower than the then prevailing sector rate of Rs.18,000/- per sq.mtrs. of NOIDA, thereby, giving themselves and other members of the ICPO-ICMR Housing Society

an undue pecuniary advantage. It was also revealed in the enquiry that the membership of the ICPO-ICMR Housing Society was granted to such persons who were otherwise not eligible for getting membership as per the bye-laws of the society and terms and conditions stipulated and approved by ICMR for membership in the said society. It was further revealed that the officers of New Okhla Industrial Development Authority (hereinafter referred to as "NOIDA") allowed the transfer of the said plot unauthorizedly and illegally from ICPO to ICPO-ICMR Housing Society, despite the fact that they were not competent to pass such order of transfer.

17. During the course of investigation by CBI, apart from the aforesaid named accused persons in the FIR, the fact of the involvement of other officials namely, L.D. Pushp, the then Administrative Officer, ICPO, Jatinder Singh, the then Senior Accounts Officer, ICMR, Dr. S.K. Bhattacharya, the then Additional Director General, ICMR, Dr. Bela Shah, Head of NCD Division, ICMR, Smt. Bhawani Thiagarajan, the then Joint Secretary, Ministry of Health and Family Welfare, Government of India, S.C. Pabreja, the then Manager (Residential Plots), NOIDA and R.S. Yadav, OSD (Residential Plots), NOIDA, was revealed. After completion of the investigation, a charge-sheet was filed against the appellants for the alleged offences committed by them on account of unauthorised and illegal transfer of the plot in question in favour of the ICPO-ICMR Housing Society.

18. After having discussed the law at length which contains the earlier pronouncement of the Hon'ble Apex Court, a finding has been given in para - 25 of the ***Professor N.K. Ganguly's case (supra)***, which is as follows:-

"From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate government under Section 197 of CrPC, it is imperative that the alleged offence is committed in discharge of official duty by

the accused. It is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the Appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence."

19. It is apparent from the said citation that the learned counsel for the revisionist agrees that even in the above citation as regards the prosecution sanction under Section 197 Cr.P.C. the position of law is settled that it is imperative to seek aid of the provisions that the alleged offence meant to have been committed in discharge of the official duty by the accused.

20. Now, I will have to see in the light of facts of this case as to whether the allegations contained in the present case would be covered under the official duty of the accused revisionist or not. What would be covered under the official duty, has been narrated in para - 21 of the above cited judgment in which reliance has been placed on *the case of Amrik Singh Vs. State of Pepsu, AIR 1955 SC 309* in which it is held that it is not every offence committed by a public servant that requires sanction for prosecution under Section 197 of the Cr.P.C.; nor even every act done by him while he is actually engaged in the performance of his official duties; but if act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

21. Further, in this very judgment in para - 22 it is also observed that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or

fanciful claim, that he did it in the course of the performance of his duty.

22. If the above principle is applied to the present case of the accused revisionist, I find that the allegations against him are that he had drawn Rs. 3,48,000/- as principal of Lagatoo Baba Inter College, Hariha Kalan, which was meant to be distributed by way of scholarship to the deserving students. The said amount was also not distributed among the deserving students through cheque, which was mandatory and it is alleged that the entire amount was embezzled by him and the papers related thereto were also found to be missing in which his role was apprehended and evidence has been gathered to that effect. Now, it cannot be said to be an act performed by the revisionist in discharge of his official duties because embezzling the amount, which was meant to be distributed by way of scholarship among the students entitled for the same, could not have been allowed to be embezzled and brought to personal use. The said act would not fall in the category of having been done in discharge of official duty of the revisionist, therefore, on account of there being no prosecution sanction under Section 197 Cr.P.C., I do not see that there is any infirmity in the prosecution of the accused for the above-mentioned offence under Sections 409, 201, 120 IPC.

23. As regards the offence under Section 13(1) (2) of Prevention of Corruption Act, the provision under Section 19 of Cr.P.C. as it stood at the relevant time, same was interpreted by the Hon'ble Supreme Court in ***Chittaranjan Das vs State Of Orissa, (2011) 7 SCC 167*** as follows:-

"14. We are of the opinion that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent

authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.

15. Now we revert to the decision of this Court in the case of **N. Bhargavan Pillai** (Supra) relied on by the respondents. True, it is that in paragraph 5 of the said judgment, it has been observed that "it is a case where the sanction which was sought for was refused" but from this paragraph, it is not clear whether it was sought before or after the retirement of the public servant. However, while reading the judgment as a whole, it is apparent that in this case Charge-sheet against the public servant was filed after retirement. Further, sanction for his prosecution was sought and refused thereafter. This would be evident from the following narration of facts in the said judgment:

"3.....The managing Director of the Corporation wrote to the Director of Vigilance (Investigation) along with a copy of Ext.P-I report. The Director of Vigilance (Investigation) sanctioned registration of a case. On the basis of the direction the then Deputy Superintendent of Police, Vigilance, Kollam (PW-10) registered a case as per Ext. P-39. He entrusted the investigation to Inspector of the Kollam Vigilance Unit- I (PW-11), who conducted the investigation and sent a report to his higher authorities. In the meantime, the accused retired from service on 28-2-1992. Since he had retired from service sanction for prosecution became unnecessary. The case was transferred to the newly established Pathanamthitta Vigilance Unit. PW-12, the Deputy Superintendent of Police, Vigilance, Pathanamthitta Unit who was put in charge of this case also verified the records and filed the charge sheet."

(underlining ours) Thus in the case relied on, the sanction for prosecution was not necessary and therefore its refusal had no bearing on the Trial of the public servant. However, in the present case sanction was sought and refused while the appellant was in service. Hence, this judgment does not lend any support to the contention of the respondents and is clearly distinguishable."

24. The above citations makes it clear that on the relevant date, in case a public servant had retired, there was no necessity to seek prior prosecution sanction for prosecuting him. In the present case, it is an admitted fact that the accused revisionist had retired much before the cognizance in the case has been taken.

25. It would be in the fitness of things mentioned here that the conduct of accused revisionist has been deprecatory as since the very inception as he has been absconding throughout and has not got himself bailed out till date.

26. In view of the above analysis, I am of the opinion that the

impugned order does not suffer from any infirmity. The same deserves to be affirmed and is affirmed.

27. The revision stands, accordingly, dismissed.

Order Date :- 11.11.2019
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