

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (Cr.) No. 128 of 2013

Sita Soren..... Petitioner
Versus
Union of India through C.B.I..... Opp. Party

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Coram: **The Hon'ble Mr. Justice R.R.Prasad**

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For the petitioner : Mr. Jitender Singh, Sr. Advocate
M/s Indrajeet Sinha, K. Sarkhel
For the C.B.I. : Md. Mokhtar Khan , ASGI
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ORDER

C.A.V. On 12/02/2014

Delivered on 17/02/2014

4/17.02.2014 The question, which does arise as to whether Article 194 (2) of the Constitution of India confers any immunity on the Members of Legislative Assembly for being prosecuted in a criminal Court of an offence involving offer or acceptance of bribe.

2. Before advertng to the submissions, advanced on behalf of the parties, the case of the prosecution needs to be taken notice of.

3. The Election Commission of India, vide its Notification No. 318/1/2012 dated 12th March, 2012, did notify to fill up two vacant seats of Rajya Sabha from Jharkhand by 31st March, 2012. 19th March, 2012, was fixed as a last date for filing nomination. 20th March, 2012, was fixed for scrutiny of nomination papers. 22nd March, 2012, was fixed for withdrawal of nomination and 30th March, 2012, was fixed for poll. Six candidates, namely, Praveen Kumar Singh, Pradeep Kumar Balmuchu, Sanjeev Kumar, Ansuman Mishra, Pawan Kumar Dhoot and Raj Kumar Agarwal, having allegiance to different political parties including the independent candidates, filed their nominations. According to the case of the CBI, none of the major political parties, which fielded its candidate in the election, had decisive majority to to get its candidate elected. In such situation, some of the independent candidates, such as, Raj Kumar Agarwal, Ansuman Mishra and Pawan Kumar Dhoot, jumped in the fray . Jharkhand Mukti Morcha

(JMM) had fielded its candidate Sanjeev Kumar. Nevertheless, 10 Members of the Legislative Assembly of Jharkhand Mukti Morcha including the petitioner, did propose to nominate R.K.Agarwal, an independent candidate.

Meanwhile, two Members of the Parliament, namely, Babu Lal Marandi and Dr. Ajay Kumar, lodged a complaint on 27/03/2012, before the Chief Election Commissioner of India, alleging therein that there is every possibility of the process of election being influenced by the money power as some of the Members have indulged themselves in Horse Trading. On getting this complaint, the Election Commission of India, on 27/03/2012, alarmed all the departments including the Income Tax Department to check the menace of Horse Trading and use of money power. The Chief Commissioner of Income Tax, Ranchi, in the late night of 29/03/2012, received information to the effect that huge money is being taken from Jamshedpur to Ranchi for distribution amongst some of the Members, who will be participating in the election. On receiving such information, Income Tax authority, with the help of the local police, put a picket on Jamshedpur-Ranchi Highway. During that course, an Innova car was intercepted from which unaccounted cash of Rs. 2.15 crores were recovered. One Sudhanshu Tripathy, the custodian of the cash, explained that the cash of Rs. 2.15 crores had been handed over to him by Sumitra Sah, son-in-law of R.K.Agarwal to be handed over to Arun Kumar Khandelwal, an employee of M/s Jay Shree Motors, Ranchi, belonging to R.K.Agarwal. Upon seizure of cash, the then Dy. Director, Income Tax, Ranchi, lodged a written complaint to Officer-Incharge of Namkum Police Station, Ranchi, which was registered as Namkum P.S. Case No. 58 of 2012 on 30/03/2012, under Section 171(F) and 188 of the Indian Penal Code. Thereupon, this Court, in a Public Interest Litigation (PIL) when did find it a grave case of involvement of money power, Horse Trading to influence the process of the election of the Council of the States, directed the CBI to take up the Investigation relating to the criminality of the persons involved. In compliance with the order, Principal Secretary to the Election Commission of India, requested the

Secretary to the Government of India, Ministry of Personnel, Public Grievance & Pension, New Delhi, for entrusting the matters relating to the Election of Rajya Sabha to CBI for thorough investigation for bringing the culprits to book so that pristine purity of the House of Elders is not tarnished. In that event, upon issuance of necessary notification, the CBI took up the investigation of Namkum P.S. Case No. 58/2012 and re-registered the case as RC 2(S)/ 2012-AHD-R, for further investigation.

During investigation, it was found that out of 80 elected Members of Jharkhand Legislative Assembly, 79 Members of Jharkhand Legislative Assembly, participated in the election, whereas one MLA of CPI (M), did not participate. During investigation, it was found that the petitioner by calling R.K.Agarwal on cell phone, asked him to pay Rs. 50 lakhs as an advance for proposing his nomination. Lateron, Air bag was handed over at the residence of Nalin Soren, where most of the MLAs of JM were present. The said Air bag was dropped by the petitioner at the residence of one Rajendra Mandal. Further evidence, which was collected, is that in the evening of 29th March, 2012, Rs. 1 corer was given by Raj Kumar Agarwal at hotel Radison Blue, Ranchi. The said air bag containing money was brought to the residence of the petitioner and on the following day, it was taken in the vehicle of IOCL to Jamshedpur. The Election Commission did countermand the election and, therefore, Mr. Agarwal was seen coming to the residence of this petitioner at several occasions for getting back a sum of Rs. 1.50 crores, but the petitioner never did oblige him. The CBI further made investigation on the point of investment of the money after the aforesaid transaction. After completion of the investigation, charge sheet was submitted against number of accused persons, including this petitioner on the charge that the petitioner did receive illegal gratification of Rs. 50 lakhs from R.K.Agarwal for proposing his nomination and also Rs. 1 crore for voting in his favour, but the petitioner never voted in favour of Agarwal. On submission of the charge sheet, the Court took cognizance of the offences punishable under Sections 120B and 171 (E) of the Indian Penal Code and also under Section

13(2) read with Section 13(1)(d) of the Prevention of Corruption Act against the petitioner and others vide order dated 07/06/2013, which is under challenge.

4. Mr. Jitender Singh, learned senior counsel appearing for the petitioner submits that notwithstanding the fact that the petitioner has been charged to have received bribe for casting vote in favour of R.K.Agarwal, she cannot be prosecuted criminally as the provision contained in Section 194(2) of the Constitution of India confers immunity upon a person from proceeding in any court in respect of vote given by him in the Legislature and, as such, any prosecution of the petitioner is against the mandate of the Constitution and, thereby, the order taking cognizance is fit to be quashed.

In this respect, learned senior counsel submits that the point involved in this case, has no longer remained *res integra* on account of authoritative judgment rendered by the Hon'ble Supreme Court in a case of "**P.V.Narsimha Rao- versus- State (CBI-SPE), [(1998) 4 SCC 626]**", where number of Members of the Lok Sabha had been alleged to have been bribed for voting against the no-confidence motion.

The question did arise as to whether Article 105(2) of the Constitution confers any immunity on the Members of Parliament for being prosecuted in a criminal Court for an offence involving offer or acceptance of bribe?

There, the then Their Lordship Hon'ble Mr. Justice S.C.Agrawal for himself and also for Hon'ble Mr. Justice Anand (minority view) did hold that the immunity from prosecution of a Member, cannot be extended for having received bribe or having entered into a conspiracy to receive bribe for the purpose of giving a vote in the House, whereas the majority view was that anything done, which had nexus with the vote will not make him liable to be proceeded in the Court of law as provision under Article 105(2) gives complete immunity to those persons. Further, it was submitted that since Article 194 (2) is in parameteria of the provision as contained in Article 105 (2), the same would be the fall out in view of the decision of the Constitution

Bench and, thereby, the instant prosecution can be said to be against the mandate of the constitutional provision and, hence, order taking cognizance is fit to be quashed.

5. As against this, Mr. Khan, learned counsel appearing for the CBI submits that Sub-Clause (2) of Article 194, gives protection to the Members of the Legislature from any liability for a speech made by him or a vote given by him in a Legislature or Committee thereof, but the said immunity cannot be extended to confer immunity from prosecution of a Member for having received bribe or having entered into a conspiracy to receive bribe for the purpose of making a speech or giving a vote in the Legislature or in any Committee thereof. Here, in the instant case, since, the allegation of taking bribe precedes of giving a vote, the petitioner cannot be said to have done in respect of voting and, thereby, the petitioner will have no immunity from being prosecuted.

6. In the context of the submissions, it becomes imperative to take notice of the provision as contained in Article 194 (2), which is in parameteria of the provision as contained in Sub-clause 2 of Article 105 of the Constitution. The provision as contained in Article 194 (2) of the Constitution of India reads as follows:-

194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof-(1).....

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.”

7. Since the aforesaid provision is parameteria to Article 105 (2) of the Constitution of India, the law laid down by the Hon'ble Supreme Court on the issue pertaining to the provision of Sub-clause 2 of Article 105 of the Constitution would also cover the field so far provision of Sub-clause 2 of Article 194 of the Constitution is concerned. In such situation, one may look

to the fact of the case, which were involved in the case of ***“P.V.Narsimha Rao- versus- State (CBI-SPE)”*** (*supra*).

On 26/07/1993, a motion of no confidence was moved in the Lok Sabha against the minority Government of P.V.Narsimha Rao . The support of 14 Members was needed to have the no-confidence motion defeated. On 28/07/1993, the no-confidence motion was lost, 251 members having voted in support and 265 against. Suraj Mandal and others owing allegiance to the Jharkhand Mukti Morcha (JMM) as well as the Members owing allegiance to the Janata Dal, Ajit Singh group, voted against the no-confidence motion. On such allegation, when the case was lodged by the CBI, it was investigated and after investigation, submitted charge sheet, wherein P.V.Narsimha Rao, the then Prime Minister, was charged to be a party to criminal conspiracy and had entered into an agreement with co-accused the Members belonging to JMM and others parties to defeat the no-confidence motion moved on 26/07/1993 against the then Congress (I) Government, headed by him by illegal means, viz., to offer or cause to offer and pay gratification other than the legal remuneration to the co-accused persons namely JMM and Janta Dal (A) MPs as a motive or reward for their helping in defeating the said no-confidence motion moved by the opposition and in pursuance of the said agreement, he paid several lakhs of rupees to the Members of JMM and Janta Dal (A), who obtained him in the manner stated above.

When the charges were framed by the Special Judge, plea was taken of immunity from being prosecuted in a Court of law, but that prayer was rejected. The matter was taken to Delhi High Court, where plea was taken that to offer bribe to a Member of Parliament to influence him in his conduct as Member amount to breach of privilege. However, the Hon'ble Delhi High Court was pleased to hold that it may be a case of breach of privilege, but it never ouster the jurisdiction of ordinary court to try penal offences. Accordingly, the prayer was rejected.

The matter came before the Hon'ble Supreme Court, where it was

heard by a Constitutional Bench consisting of five Hon'ble Judges. There the plea, which was advanced on behalf of the petitioner/appellant was that when giving a bribe is in respect of voting, that act would not make a Member of Parliament liable to be proceeded in a Court of law. Whereas, the submissions, which had been advanced on behalf of the Attorney General was that the immunity granted under clause (2) of Article 105 gives protection to a Member of Parliament from any liability for a speech made by him or a vote given by him in the House or any committee thereof, but the said immunity cannot be extended to confer immunity from prosecution of a Member for having received bribe or having entered into a conspiracy to receive bribe for the purpose of making a speech or giving a vote in the House or in any committee thereof.

On being persuade with the aforesaid submissions, advanced on behalf of the Attorney General, His Lordship Hon'ble Mr. Justice Agrawal, the then he was for himself and also for Hon'ble Justice Anand, was pleased to observe as follows:-

“47. As mentioned earlier, the object of the immunity conferred under Article 105 (2) is to ensure the independence of the individual legislators. Such independence is necessary for healthy functioning of the system of parliamentary democracy adopted in the Constitution. Parliamentary democracy is a part of the basis structure of the Constitution. An interpretation of the provisions of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such members above the law would not only be repugnant to healthy functioning of parliamentary democracy but would also be subversive of the rule of law which is also an essential part of the basis structure of the Constitution. It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basis structure of the Constitution. (See: Sub-Committee on Judicial Accountability v. Union of India SCC at p. 719). The expression “in respect of” precedes the words

“anything said or any vote given” in speech that has already been made or a vote that has already been given. The immunity from liability, therefore, comes into play only if a speech has been made or vote has been given. The immunity would not be available in a case where a speech has not been made or a vote has not been given. When there is a prior agreement whereunder a Member of Parliament has received an illegal consideration in order to exercise his right to speak or to give his vote in a particular manner on a matter coming up for consideration before the House, there can be two possible situations. There may be an agreement whereunder a Member accepts illegal gratification and agrees not to speak in Parliament or not to give his vote in Parliament. The immunity granted under Article 105(2) would not be available to such a Member and he would be liable to be prosecuted on the charge of bribery in a criminal court. What would the position if the agreement is that in lieu of the illegal gratification paid or promised the Member would speak or give his vote in parliament in a particular manner and he speaks and gives his vote in that manner.”

8. Ultimately, it was held that the immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part of the cause of action for the proceedings giving rise to liability. The immunity would not be available to give protection against liability for an act that precedes the making of the speech or giving of vote by a Member in Parliament even though it may have a connection with the speech made or the vote given by the Member if such an act give rise to a liability which arises independently and does not depend on the making of the speech or the giving of vote in Parliament by the Member. Such an independent liability cannot be regarded as liability in respect of anything said or vote given by the Members in Parliament. The liability for which immunity can be claimed under Article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament.

9. However, the majority view is otherwise, wherein Their Lordships did not accept the submissions advanced on behalf of the Attorney General

that even the words “in respect of” are given a broad meaning, the protection under Article 105(2) is limited to court proceedings that impugn the speech that is given or the vote that is cast or arises thereout or that the object of the protection would be fully satisfied thereby, for the reason that the object of the protection is to enable Members to speak their mind in parliament and vote in the same way, freed of the fear of being made answerable on that account in a court of law. Their Lordships have gone further to say that it is not enough that Members should be protected against civil action and criminal proceedings, the cause of action of which is their speech or their vote. To enable Members to participate fearlessly in parliamentary debates, Members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. Ultimately, Their Lordships did hold as which is in para-135, which reads as follows:-

“135. While it is true that the charge against them does not refer to the votes that the alleged bribe-takers, Ajit Singh excluded, actually cast against the no-confidence motion and that it may be established dehors those votes, as the Attorney General argued, we do not think that we can ignore the fact that the votes were cast and, if the facts alleged against the bribe-takers are true, that they were cast pursuant to the alleged conspiracy and agreement. It must then follow, given that the expression “in respect of” must receive a broad meaning, that the alleged conspiracy and agreement had a nexus to and were in respect of those votes and that the proposed inquiry in the criminal proceedings is in regard to the motivation thereof”.

10. Thus, what has emerged out is that Their Lordships (minority view) were of the view that immunity would not be available to give protection against liability for an act that precedes the making of speech or for giving a vote by a Member in Parliament. Even though, it may have connection with the speech made or the vote given by the Members. If such an act gives rise to a liability, which arises independently and does not depend on the making of the speech or giving of vote in Parliament by the Members. Whereas, the majority view is that expression “in respect of” given in the

said provision must receive a broad meaning to protect the Members against civil action and criminal proceedings against all the acts that bear a nexus to their speech or vote. Meaning thereby, that even those acts of conspiracy and agreement preceding the vote or the speech as the case may be it had nexus with the speech and vote, the Members will have protection of immunity.

11. Under the circumstances, Their Lordships taking into account the fact that Members of Parliament having received bribe had cast a vote against the motion of no-confidence, did hold that they had protection of immunity. At the same time, Their Lordships did find that Ajit Singh, who was party to the conspiracy, but did not cast vote, will have no protection for the reason that there was no nexus in between the act of conspiracy and the vote.

12. Here the fact of the case is somewhat different as it is the case of the prosecution that the petitioner having received money from R.K. Agarwal, though did cast vote but not in favour of R.K. Agarwal. In that event, one can say that act of receiving money from R.K. Agarwal was having no nexus with the act of casting vote by the petitioner. It is true that the petitioner did cast vote in the said election not in favour of R.K. Agarwal and, thereby, it will have no nexus with the alleged conspiracy and agreement under which she had received money.

According to the majority view of Their Lordships, as expressed in para-135 that if one casts vote pursuant to the alleged conspiracy and agreement, then alleged conspiracy and the agreement can be said to have had nexus with the vote. Conversely, I can say that if the alleged act of receiving money pursuant to the conspiracy and the agreement, if the vote is not cast in favour of the person from whom money was received, then casting of vote will have no nexus with the alleged act of receiving money and, therefore, in that premise, Their Lordships did not find protection of immunity being available to Ajit Singh as he did not cast vote though he was one of the Members of the conspiracy. Therefore, the principle, under which

the protection of immunity was not available to Ajit Singh, the said principle is applicable in the case of this petitioner.

13. Thus, I am of the view that the act of the petitioner of receiving money pursuant to the conspiracy and the agreement with R.K.Agarwal, will have no nexus with the vote on account of the fact that she did not cast vote in favour of the said R.K.Agarwal and, thereby, she will have no immunity as guaranteed under Sub-clause (2) of Article 194 of the Constitution of India.

14. Accordingly, I do not find any illegality with the order taking cognizance and, thereby, it never warrants to be quashed.

In the result, this application stands dismissed.

(R.R.Prasad, J)