

REVISIONAL CRIMINAL

Before Kapur, J.

STATE,—Petitioner

versus

YASH PAL. P. S. I.,—Respondent

Criminal Revision No. 636 of 1956

Prevention of Corruption Act (II of 1947)—Sections 5 and 6—Sanction for prosecution—Requirements of—Authority competent to sanction prosecution—

1956

Aug. 31st.

The Police Act (V of 1861)—Whether in force in the Punjab State—Constitution of India—Articles 246 and 372—Effect of—Pre-existing laws—Whether in force after the coming into force of the Constitution.

Y. P. a prosecuting Sub-Inspector was prosecuted under section 5(2) of Act II of 1947. This prosecution was sanctioned by the Deputy Inspector-General of Police, while his appointment to the post was made by the District Superintendent of Police. Objections were raised that the sanction given under section 6 was bad in law and the Police Act was no longer a valid Act.

Held, that since the appointment was by a person of the rank of a District Superintendent of Police and the sanction given is by a person who ranks higher than the Superintendent of Police, no objection could be levelled on the ground of the sanction not being proper.

Held, that the Police Act no doubt was passed in 1861 when there was no representative Government in India, but all laws which were in force in the territory of India upon the commencement of the Constitution of 1950 continued to remain in force under Article 372(1) of the Constitution of India, and Article 246 does not apply to any act which was already in existence.

Petition under Section 439 of Criminal Procedure Code, for revision of the order of Shri I. M. Lall, Special Judge, Ambala, dated the 21st April, 1956, refusing to take cognizance and try the case.

KARTAR SINGH CHAWLA, Assistant Advocate-General, for Petitioner.

Respondent in person.

JUDGMENT.

Kapur, J.

KAPUR, J. This is a rule which I issued on the 14th June 1956 at the instance of the State against an order made by Special Judge I. M. Lall on the 21st April 1956.

The opposite party Yash Pal who was a Prosecuting Sub-Inspector was being tried by the Special Judge for an offence under section 5 (2) of the Prevention of Corruption Act, and I am informed that two points were taken against the prosecution by the learned Judge himself—(1) that the sanction given under section 6 of the Prevention of Corruption Act was bad in law, and (2) that the Indian Police Act was no longer a valid Act as far as the State of the Punjab was concerned.

On the first point the learned Judge referred to *North West Frontier Province v. Suraj Narain Anand* (1). In the present case it is admitted by the opposite party that he was appointed by an Assistant Inspector-General of Police who ranks with the Superintendent of Police, and in the present case the sanction was given by the Deputy Inspector-General of Police Mr. Shamsher Singh. Under section 6 (1) (c)—and the present case falls under this section—previous sanction has to be obtained from the authority competent to remove a public servant from his office. The appointment in the present case was by a person of the rank of a Superintendent of Police and the sanction given by a person who ranks higher than the Superintendent of Police, i.e., the Deputy Inspector-General of Police. I do not think that any attack can be levelled on the ground of the sanction not being proper. In *Suraj Narain Anand's case* (1), a person was appointed by the

(1) A.I.R. 1949 P.C. 112

Inspector-General of Police but was dismissed by the Deputy Inspector-General of Police before the rule was changed in regard to the power of appointments and dismissals and their Lordships of the Privy Council held that the dismissal was bad on that ground.

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In my opinion, the sanction given does not contravene the provisions of section 6 (1) (c) and I am of the view that the learned Judge took an erroneous view of the matter and no objection can be taken on the ground of sanction.

The other point which the learned Judge has taken is that the Police Act is not applicable to the State of Punjab. The Police Act no doubt was passed in 1861 when there was no representative Government in India, but all laws which were in force in the territory of India upon the commencement of the Constitution of 1950 continued to remain in force under section 372 (1) of the Constitution of India, and Article 246 does not apply to any Act which was already in existence. The Allahabad High Court in *Sagar Mal and others v. The State* (1), held that the distribution of legislative powers under Article 248 of the Constitution does not affect the laws which were in existence and in force previous to the coming into force of the Constitution. In that case it was the constitutionality of the Essential Supplies Act which was challenged on the ground that it being a central Act was not binding on the State of U.P., but this contention was negatived. Malik C. J. who delivered the judgment of the Court said at page 817—

“Article 246 of the Constitution distributes the legislative powers between the Parliament of the Union and the State

(1) A.I.R. 1951 All. 816

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Legislature. It has nothing to do with laws already made and, if those laws are not contrary to any provisions of the Constitution, it cannot be said that those laws are not valid. The words 'subject to the other provisions of this Constitution' in Article 372, do not mean that laws which had been passed by the Central Legislature before 26th January, 1950, automatically cease to have effect because the subject has now been made a State subject."

I am in respectful agreement with the decision of the Allahabad High Court and I would hold that the learned Judge has taken an erroneous view on this point also. I would therefore allow this petition, set aside the order of the Special Judge and remit the case for trial in accordance with law. I direct that the case be tried by the learned Sessions Judge Mr. Hans Raj Khanna himself.

The parties are directed to appear before Mr. Hans Raj Khanna on the 7th September, 1956.

HC-