

CASE NO.:
Appeal (crl.) 555 of 1999

PETITIONER:
RAKESH KUMAR JAIN

Vs.

RESPONDENT:
STATE THROUGH CBI

DATE OF JUDGMENT: 08/08/2000

BENCH:
K.T. Thomas & R.P. Sethi.

JUDGMENT:

SETHI, J.
L...I...T.....T.....T.....T.....T.....T.....T.....T..J

The criminal complaint under Section 5(4) read with Sections 5(2) & (3) of the Official Secrets Act, 1923 (hereinafter called "the Act") was filed against the petitioner in the Court of Chief Metropolitan Magistrate, Delhi by the Union of India through Deputy Superintendent of Police, Central Bureau of Investigation, SPE, Anti Corruption Unit, New Delhi. The petitioner filed an application under Section 245 of the Code of Criminal Procedure in the Trial Court for being discharged on the grounds that the order of the prosecution had not been passed by an appropriate authority and that the cognizance could not have been taken as according to him the complaint was barred by limitation. The Magistrate rejected the application by his order dated 17.3.1995 and the revision filed in the High Court was dismissed vide the order impugned in this appeal. Relying on the provisions of Section 13(3) of the Act, the Trial Magistrate as well as the High Court held that Section 13(3) of the Act provided the taking of previous consent or sanction of the appropriate Government and the time required for obtaining such consent or sanction was to be excluded in terms of Section 470(3) of the Code of Criminal Procedure. It may be noticed at this stage that limitation in the instant case is stated to have started from 24th April, 1985 and the complaint was filed in the Court on 19th May, 1988 apparently beyond 25 days of the period of limitation prescribed. The plea of the complainant was that period of 79 days required for obtaining the sanction order should be excluded in computing the period of limitation. Pointed reference was made to the order of sanction dated 21st April, 1988, copy of which has been placed on the paperbook of this appeal. Accepting the plea of the complainant, the complaint filed against the petitioner was held to be within time.

Mr.Vijay Bahuguna, Senior Advocate appearing for the petitioner submitted that as no sanction or consent was provided to be taken from the Government under Section 13(3)

obviously refers to such consents and sanctions and not the order or authority as required under the Act. Consent or sanction as are referred to in the Prevention of Corruption Act, Prevention of Food Adulteration Act, various Foodgrains Control Orders, and other similar enactments envisage the application of mind before the grant of such consent or sanction which is a quasi-judicial function, whereas the passing of order, individual or general, or conferment of authority individually or generally, or empowering a person for the purposes of filing a complaint is only an administrative action facilitating in identifying the complainant before the court for the purposes of filing and prosecuting the case under the Act. The Legislature, in its wisdom, thought it appropriate to exclude only such period which is required for obtaining the previous consent or sanction of the Government for institution of any prosecution of an offence and not obtaining of orders or authority or naming a person for the purpose of filing the complaint.

This Court in Electrical Manufacturing Co. Ltd.'s case (Supra) while dealing with Section 6 of the Import and Export (Control) Act, 1947 which provided that no Court

shall take cognizance of any offence punishable under the Act except upon complaint in writing made by an officer authorised in that behalf by the Central Government, by general or special order, held that the principles applicable to cases requiring sanction have no application to filing of complaints under the Act. Section 6 of that Act only insisted that complaint was to be made in writing and must have been filed by an officer authorised in that behalf. In that case the Court relied upon the observations made in S.A. Venkataraman v. The State [1958 SCR 1037] wherein it was held:

"In construing the provisions of a statute it is essential for a court, in the first instance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a court is entitled to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration other matters and the circumstances which led to the enactment of the statute."

Though Sub-Section (3) of Section 13 of the Act is not pari materia to Section 6 of the Import and Export (Control) Act, 1947, yet we find that the insistence of the order or authority is intended to ascertain the filing of the complaint under the Act without requiring giving consent or sanction to prosecute. Learned Additional Solicitor General wanted to impress upon us that Sub-section (3) was in two parts - one dealing with the passing of the order which necessarily meant consent or sanction and the second dealing with the person authorised to file the complaint. On critical examination of the plain words of the sub-section and the object underlying it, we do not agree that the aforesaid sub-section has two parts, as argued. We conceive no doubt that sub-section (3) of Section 13 envisages only the filing of the complaint, by order of or under authority from the appropriate government or by an officer empowered by such Government. If the intention of the Legislature was

proceedings in any court wherein the complaints, under the Act, have been filed after obtaining sanction and the courts have given remission of the period in terms of Explanation to Sub-Section (3) of Section 470 Cr.P.C. All such extensions shall be deemed to be valid even under Section 473 Cr.P.C.

There is no merit in this appeal which is dismissed with the direction to the Trial Magistrate to deal with the case in accordance with law and expedite the disposal of the complaint.

