2023 LiveLaw (SC) 823

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

DR. D.Y. CHANDRACHUD; CJI., A S BOPANNA; J., M.M. SUNDRESH; J., J.B. PARDIWALA; J., MANOJ MISRA; J.

CRIMINAL APPEAL NO 451 OF 2019; September 20, 2023

Sita Soren *versus* **Union of India**

Constitution of India, 1950; Article 105(2) and 194(2) - Powers, privileges and immunities of the members of the Houses of Parliament and the State Legislatures. Do MPs/MLAs have immunity from criminal proceedings when they take bribes for votes? The judgement in *P.V. Narasmiha Rao v. State (CBI/SPE), (1998) 4 SCC 626* had held that legislators enjoyed immunity from prosecution in cases of bribery in relation to parliamentary vote and speech. However, the immunity would only be extended if the legislators carried out the act that they had taken the bribe for. In other words, if a legislator took a bribe to vote for a particular candidate but later decided to not go ahead with the same and voted for someone else, the immunity would not be extended to them. Held, the correctness of the majority view in *P.V. Narasmiha Rao* should be reconsidered by a larger Bench of seven judges. *(Para 24)*

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O R D E R

1 The Criminal Appeal arises from a judgment and order dated 17 February 2014 of the High Court of Jharkhand in Writ Petition (Criminal) No 128 of 2013.

2 An election was held on 30 March 2012 for two members of the Rajya Sabha representing the State of Jharkhand. The appellant was a member of the Legislative Assembly belonging to the Jharkhand Mukti Morcha. The allegation against the appellant is that she accepted a bribe from an independent candidate for casting her vote in his favour. However, as borne out from the open balloting for the Rajya Sabha seat, she did

not cast her vote in favour of the alleged bribe giver and instead cast her vote in favour of a candidate belonging to her own party. The round of election in question was rescinded and a fresh election was held at which the appellant voted in favour of the candidate belonging to her own party.

3 The appellant moved the High Court for quashing the charge-sheet and the criminal proceedings instituted against her. The appellant relied on the provisions of Article 194(2) of the Constitution. The High Court by the impugned judgement declined to quash the criminal proceedings on the ground that the appellant had not cast her vote in favour of the alleged bribe giver and thus, is not entitled to the protection under Article 194(2).

4 The judgment of the High Court has given rise to the present appeal.

5 On 23 September 2014, when the proceedings were placed before a bench of two judges of this Court, the Court was of the view that since the issue arising for consideration is "substantial and of general public importance", it should be placed before a larger bench of three judges of this Court.

6 On 7 March 2019, when a Bench of three judges of this Court took up the appeal, it noted that the gravamen of the charge against the appellant is that she had accepted a bribe to vote in favour of a particular candidate in the Rajya Sabha election for a member representing Jharkhand. The precise question, as the three Judge Bench observed, was dealt with in a judgment of a Bench of five judges in ***PV Narasimha Rao Vs State (CBI/SPE)***[1]. Two judges on the Bench, Justice S.C. Agarwal and Justice A.S. Anand, took the view that the immunity granted under Article 105(2) and correspondingly, under Article 194(2) of the Constitution would not extend to cases where bribery for making a speech or voting in a particular manner in the House is alleged. However, the view of the majority was to the contrary.

7 The three-judge Bench hearing the present appeal was of the view that "having regard to the wide ramification of the question that has arisen, the doubts raised and the issue being a matter of public importance", it required to be referred to a larger Bench, as may be considered appropriate. Accordingly, the matter has been placed, pursuant to the administrative directions of the Chief Justice of India, before this Bench of five judges.

8 Before proceeding further, it would be appropriate to note that prior attempts to challenge the correctness of the constitutional position in ***PV Narsimha Rao*** have not borne fruit. Review petitions (Review Petition Nos. 2210-27/1998) were instituted before a Bench of five judges of this Court questioning the correctness of the decision in ***PV Narsimha Rao***. The petitions for review were dismissed on 18 July 2002 on the ground of a delay of 179 days in filing the review petitions, reported as ***State (CBI/SPE) Vs PV Narasimha Rao***[2].

9 In addition to the above, a petition under Article 32 of the Constitution (Writ Petition (Civil) diary No 7490/99) seeking a declaration on the correctness of the position in ***PV Narsimha Rao*** was instituted before this Court. By an order dated 1 May 2000 in ***Centre for PIL & Anr Vs Union of India***[3], a Bench of three judges of this Court referred the petition to a Bench of five judges while noting a submission regarding the maintainability of the petition. Eventually, by an order dated 18 July 2002, the petition was dismissed on

[1] (1998) 4 SCC 626
[2] (2001) 9 SCC 249
[3] (2000) 9 SCC 393

the ground of maintainability in view of the judgment in ***Rupa Ashok Hurra Vs. Ashok Hurra & Anr***[4].

10 Mr. Raju Ramachandran, senior counsel appearing on behalf of the appellant submitted that a reference of the correctness of the decision in ***PV Narsimha Rao*** (supra) may not strictly speaking be necessary in the facts of the present case. Mr. Ramachandran, in his written submissions dated 17 September 2023, as well as in the course of the oral arguments, submitted that none of the contesting parties has challenged the ratio in ***PV Narsimha Rao*** (supra). On the contrary, it is urged that the contesting parties are *ad idem* on the ratio and what is sought to be contested is the applicability of the judgment. The appellant is of the view that the Judgement in ***PV Narsimha Rao*** applies squarely to the instance case. However, the respondent has contended that the judgment does not apply as polling for the Rajya Sabha election was held outside the precincts of the House and cannot be considered as a proceeding of the House in a manner similar to a No-Confidence Motion. On this basis, Mr. Ramachandran has submitted that the reference would not be warranted.

11 Mr. R Venkataramani, Attorney General for India agrees with Mr. Raju Ramachandran that a reference is not warranted, though they disagree on the applicability of the judgement in ***PV Narsimha Rao*** to the present case. According to Mr. Venkataramani, the correctness of ***PV Narsimha Rao*** does not arise as an election to the Rajya Sabha cannot be considered as a "proceeding of the House". Mr. Venkataramani primarily relies on the decisions of this Court in:

(i) ***Pashupati Nath Sukul Vs Nem Chandra Jain & Ors;***[5]

(ii) ***Madhukar Jetly Vs Union of India & Ors***[6]***; and***

(iii) ***Kuldip Nayar & Ors Vs Union of India & Ors.***[7]

12 Apart from the significance of the issues raised, which shall be explained in brief a little later in the course of this order, we are not inclined to accept the plea that the correctness of the decision in ***PV Narasimha Rao*** (supra) does not arise in this case. Firstly, it is common ground that the impugned judgment of the High Court relied on the judgment of the majority in ***PV Narasimha Rao***. Secondly, it is beyond doubt that the defence itself relies on the decision of the majority. The correctness of the view which has been propounded in the judgment of the majority in ***PV Narasimha Rao*** would, therefore, have to be enquired into during the course of the hearing of the present case.

13 It is a settled position of judicial discipline that only a bench of coequal strength may express an opinion doubting the correctness of a view taken by an earlier Bench of coequal strength. If such a doubt is expressed, the matter may be placed before a Bench consisting of a quorum larger than the one which the pronounced the decision in challenge.[8] Having determined that the correctness of the decision in ***PV Narasmiha Rao*** does arise in the present case, it becomes necessary for us to determine as to whether *prima facie* reconsideration of the judgment in ***PV Narasimha Rao*** is warranted, and if the matter should be placed before a larger bench.

14 The controversy in ***PV Narasimha Rao*** and the present case, turns on the interpretation of the provisions of Article 105(2) of the Constitution and the equivalent

[4] (2002) 4 SCC 388
[5] (1984) 2 SCC 404
[6] (1997) 11 SCC 111
[7] (2006) 7 SCC 1
[8] (2019) 3 SCC 39, paragraph 10 at page 79.

provision, Article 194(2) of the Constitution. The former deals with the powers, privileges and immunities of the members of the Houses of Parliament, while the latter confers a similar immunity to members of the State Legislatures.

15 Article 105(2) of the Constitution provides as follows:

"105(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

16 The language of Article 105(2) indicates that the immunity attaches to a Member of Parliament "in respect of anything said or any vote given by him" in Parliament or any committee thereof. The expression "anything said, or any vote given" would postulate that the immunity is attached with respect to conduct, namely, a vote which has been given or a speech which has been made in Parliament or any committee of Parliament. The expression "in respect of anything said or any vote given" arose for consideration before the Constitution Bench in ***PV Narasimha Rao***. The charge in that case was that the bribe takers had taken a bribe to secure the defeat of a No Confidence Motion on the floor of the House. In analysing the above expression, Justice SP Bharucha, took the view that Article 105(2) would have to be interpreted broadly so as to protect Members of Parliament against proceedings in Court that relate to or are concerned with or have connection or nexus with anything said or vote given by them in Parliament (Paragraph 133 at page 729). Justice Bharucha was of the view that the nexus between the alleged conspiracy/bribe and the No Confidence Motion was explicit, the charge being that the alleged bribe takers had received bribes to secure the defeat of the No Confidence Motion in Parliament.

17 The Attorney General for India, in that case, had urged before the Constitution Bench that though the words "in respect of" must receive a broad meaning, the protection under Article 105(2) of the Constitution is limited to court proceedings that impugn the speech that is given or the vote that is cast or anything that arises therefrom. Noting that the object of the protection was to enable Members of Parliament to speak their minds in Parliament and vote in the same way without the fear of being made answerable, the judgment of Justice S.P. Bharucha contains the following observations (Paragraph 136 at pg. 730):

"… 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. It is for that reason that a Member is not "liable to any proceedings in any court in respect of anything said or any vote given by him". Article 105(2) does not say, which it would have if the learned Attorney General were right, that a Member is not liable for what he has said or how he has voted. While imputing no such motive to the present prosecution, it is not difficult to envisage a Member who has made a speech or cast a vote that is not to the liking of the powers that be being troubled by a prosecution alleging that he had been party to an agreement and conspiracy to achieve a certain result in Parliament and had been paid a bribe."

18 The learned Judge observed that he was conscious of the seriousness of the offence which the alleged bribe takers were said to have committed and that by reason of the lucre that they have received, they enabled the Government to survive. But the judgment opined, "our sense of indignation should not lead us to construe the Constitution narrowing, impairing the guarantee to effective parliamentary participation and debate." However, it is significant to note that despite the above observations, the majority was of

the view that the immunity which covers bribe takers did not protect a particular Member of Parliament (Mr Ajit Singh) in the case, as ultimately, he did not cast his vote in the No Confidence Motion.

19 The contrary view of two judges in ***PV Narasimha Rao*** was elucidated in the judgment of Justice S.C. Agarwal. The learned Judge observed that the expression "in respect of" would have to be construed in its true perspective. The minority recognized that while the object and purpose of Article 105(2) of the Constitution is to enable Members of Parliament to speak freely or to cast their votes without fear of consequences an interpretation that places Members of Parliament above the law would be repugnant to the healthy functioning of a parliamentary democracy. In this context, the divergence in the views of Justice S C Agarwal (speaking for two judges) with that of Justice S.P Bharucha (speaking for two judges) emerges from the following extract (paragraph 47 at page 673):

"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 basic 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 basic 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 basic structure of the Constitution. (See: Sub Committee on Judicial Accountability v. Union of India [(1991) 4 SCC 699] SCC at p. 719.) The expression "in respect of" precedes the words "anything said or any vote given" in Article 105(2). The words "anything said or any vote given" can only mean 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 be 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? As per the wide meaning suggested by Shri Rao for the expression "in respect of", the immunity for prosecution would be available to the Member who has received illegal gratification under such an agreement for speaking or giving his vote and who has spoken or given his vote in Parliament as per the said agreement because such acceptance of illegal gratification has a nexus or connection with such speaking or giving of vote by that Member. If the construction placed by Shri Rao on the expression "in respect of" is adopted, a Member would be liable to be prosecuted on a charge of bribery if he accepts bribe for not speaking or for not giving his vote on a matter under consideration before the House but he would enjoy immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner. It is difficult to conceive that the framers of the Constitution intended to make such a distinction in the matter of grant of immunity between a Member of Parliament who receives bribe for speaking or giving his vote in Parliament in a particular manner and speaks or gives his vote in that manner and a Member of Parliament who

receives bribe for not speaking or not giving his vote on a particular matter coming up before the House and does not speak or give his vote as per the agreement so as to confer an immunity from prosecution on charge of bribery on the former but denying such immunity to the latter. Such an anomalous situation would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of". If the expression "in respect of" is thus construed, the immunity conferred under Article 105(2) would be confined to liability that arises out of or is attributable to something that has been said or to a vote that has been given by a Member in Parliament or any committee thereof. 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 the 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 gives 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 Member 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."

20 Significantly, Justice Agarwal, in the course of his judgment also dwelt on the issue as to when the offence of bribery is complete. According to the view of the learned Judge, the offence of bribery is complete against the receiver of a bribe, if he takes or agrees to take money for a promise to act in a certain way. The offence would be complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even if he were to default in the performance of the bargain. Hence, it was Justice Agarwal's view that for proving the offence of bribery, all that is required to be established is that the offender had received or agreed to receive money for a promise to act in a certain way and it was not necessary to prove further that he had actually acted in the way as promised.

21 The third judgment in the case was delivered by Justice G.N. Ray. A reading of the judgment of Justice GN Ray indicates that the learned Judge concurred with Justice S.C. Agarwal in concluding that:

(i) A Member of Parliament is a public servant under Section 2(c) of the Prevention of Corruption Act 1988; and

(ii) Since there is no authority competent to grant sanction for the prosecution of a Member of Parliament under Section 19(1) of the Prevention of Corruption Act 1988, the Court can take cognizance of the offences mentioned in the provision but the prosecuting agency must obtain the permission of the Chairperson of the Rajya Sabha or, as the case may be, the Speaker of the Lok Sabha before filing a charge-sheet against the Member of Parliament in a criminal court.

22 On the above two issues, Justice G.N. Ray concurred with the judgment of Justice SC Agarwal. However, on the interpretation of Article 105(2), Justice G.N. Ray concurred with the judgment of Justice S.P Bharucha speaking for two judges. Hence, the judgment of Justice S.P. Bharucha, on the interpretation of Article 105(2) represents the view of the majority of three learned judges.

23 We may note, at this stage, that besides Mr. Raju Ramachandran, senior counsel and Mr. R Venkataramani, Attorney General for India, we have also heard Mr. P.S. Patwalia, senior counsel who has been appointed as *Amicus Curiae* to assist the Court,

Mr. Gopal Sankarnarayanam, senior counsel, appearing on behalf of the intervener and Dr. Vivek Sharma, counsel appearing on behalf of the intervener.

24 We are inclined to agree with the submission of the *Amicus Curiae* and Mr Gopal Sankarnarayan, senior counsel that the view which has been expressed in the decision of the majority in ***PV Narasmiha Rao*** requires to be reconsidered by a larger Bench. Our reasons *prima facie* for doing so are formulated below:

(i) Firstly, the interpretation of Article 105(2) and the corresponding provisions of Article 194(2) of the Constitution must be guided by the text, context and the object and purpose underlying the provision. The fundamental purpose and object underlying Article 105(2) of the Constitution is that Members of Parliament, or as the case may be of the State Legislatures must be free to express their views on the floor of the House or to cast their votes either in the House or as members of the Committees of the House without fear of consequences. While Article 19(1)(a) of the Constitution recognises the individual right to the freedom of speech and expression, Article 105(2) institutionalises that right by recognising the importance of the Members of the Legislature having the freedom to express themselves and to cast their ballots without fear of reprisal or consequences. In other words, the object of Article 105(2) or Article 194(2) does not *prima facie* appear to be to render immunity from the launch of criminal proceedings for a violation of the criminal law which may arise independently of the exercise of the rights and duties as a Member of Parliament or of the legislature of a state;

(ii) Secondly, in the course of judgment in ***PV Narasmiha Rao***, Justice S.C. Agarwal noted a serious anomaly if the construction in support of the immunity under Article 105(2) for a bribe taker were to be accepted: a member would enjoy immunity from prosecution for such a charge, if the member accepts the bribe for speaking or giving their vote in Parliament in a particular manner and in fact speaks or gives a vote in Parliament in that manner. On the other hand, no immunity would attach, and the member of the legislature would be liable to be prosecuted on a charge of bribery, if they accept the bribe for not speaking or for not giving their vote on a matter under consideration before the House but they act to the contrary. This anomaly, Justice Agarwal observed, would be avoided if the words “in respect of” in Article 105(2) are construed to mean ‘arising out of’. In other words, in such a case, 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 for the cause of action for the proceedings giving rise to the law; and

(iii) Thirdly, the judgment of Justice SC Agarwal has specifically dwelt on the question as to when the offence of bribery would be complete. The judgment notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the bribe would be treated to have committed the offence even when he fails to perform the bargain underlying the tender and acceptance of the bribe. This aspect bearing on the constituent elements of the offence of a bribe finds elaboration in the judgment of Justice Agarwal but is not dealt with in the judgment of the majority.

25 We have already noted above that efforts in seeking a review of the judgment in ***PV Narasmiha Rao*** and later in proceedings under Article 32 of the Constitution were not successful. One of us (Justice Dr. D.Y. Chandrachud), while delivering a concurrent opinion for a Bench of five judges in ***Kalpana Mehta Vs Union of India***[9] (para 221) had occasion to observe that should the correctness of the view in ***PV Narasmiha Rao*** fall for

[9] (2018) 7 SCC 1

reconsideration in an appropriate case, a larger bench may have to consider the issue. The view of the majority has serious ramifications for the polity and the preservation of probity in public life.

26 For the above reasons, *prima facie* at this stage, we are of the considered view that the correctness of the view of the majority in ***PV Narasmiha Rao*** should be reconsidered by a larger Bench of seven judges.

27 We accordingly request the Registry to place the papers before the Chief Justice for constituting a larger Bench of seven judges.