

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 02nd September, 2014
Date of Decision: 10th September, 2014

+ CRL. M.C. 2067/2013

RAKESH KUMAR Petitioner

Through: Mr. Mukul Sharma, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Narender Mann, Special PP for
CBI with Mr. Manoj Pant, Advocate.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By this petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter after referred to as 'Cr.P.C.') read with Article 227 of the Constitution of India, the petitioner impugns the order dated 08.03.2013 passed by learned Special Judge (CBI), Dwarka Courts, New Delhi whereby the application dated 15.01.2013 filed on behalf of petitioner was dismissed.

2. Shorn off unnecessary details, it is suffice to mention that the petitioner is a former member of the Indian Foreign Services, having retired on superannuation. At the relevant time, the petitioner was on deputation with the Indian Council of Cultural Relations (in short 'ICCR'), as its Director General. The allegations against the petitioner, *inter-alia*, are that the petitioner, Mr. Rakesh Kumar along with Mr.

Madhup Mohta, Ms. Kehkeshan Tyagi and Mohd. Khaliq have been indulged in number of activities by misusing their official position. They were indulged in human trafficking and for that the petitioner has misused the official position, cheated the government and thus, mis-conducted himself for extraneous consideration. To facilitate such trafficking, the idea of empanelment of bogus cultural group 'Mahek Punjab Di' i.e. Bhangra Group with ICCR was established by the petitioner and other co-accused persons in violation of the established rules/ procedure.

3. On 14.09.2005, the Bhangra Group went to perform at Berlin in Indian Embassy which was attended by all the group members except Randeep Singh, who left with his uncle, immediately after arriving at Berlin airport. Another performance was made by the group at Museum of Indian Arts, Berlin on 15.09.2005. In the night of 15.09.2005, four members of this group escaped from their place of stay while other facilitated their safe escape. On 16.09.2005, three other members of the group also escaped. Thereafter, remaining members of the group were sent back to India. Out of fifteen members of the group, five individuals were professional artists while the others had been sent with a view to sending them to Europe illegally.

4. FIR bearing No.RC1(S)/2006/SIU-1 under Section 13(2) read with Sections 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 and Sections 420/468/471/120B IPC was registered against the petitioner and other co-accused persons.

5. During investigation, a sanction order dated 10.12.2007 under

Section 19 of the Prevention of Corruption Act, 1988 to prosecute the petitioner was granted by the Joint Secretary (CNV) & Chief Central Vigilance Officer, Government of India, Ministry of External Affairs. On completion of investigation, charge under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and Sections 420/468/471/120B IPC was framed against the petitioner and other co-accused persons on 08.06.2012.

6. The petitioner moved an application dated 15.01.2013 for dropping the proceedings as there is no requisite sanction for his prosecution as required under Section 19(1) of Prevention of Corruption Act, 1988. The said application was dismissed by learned trial court vide impugned order dated 08.03.2013.

7. Feeling aggrieved by the said order, the petitioner preferred the present petition.

8. Learned counsel for the petitioner contended that the petitioner was a public servant and sanction to prosecute a public service is a pre-requisite for taking cognizance for the offence under the Prevention of Corruption Act and the prosecution against the petitioner lacks the requisite sanction under Section 19(1) of the Prevention Act, 1988.

9. Learned counsel for the petitioner also urged that the sanction order dated 10.12.2007 was prepared and signed by one Mr. Debnath Shaw, Joint Secretary, (CNV) & Chief Vigilance Officer, who was not competent to grant sanction for prosecution. According to counsel for petitioner, the competent authority to issue sanction order was the

Ministry of External Affairs, who had not initiated or signed the sanction order. He also submits that there is no document to show that Mr. Debnath Shaw enjoyed any authority delegated to him by the Ministry of External Affairs for signing a sanction order on his behalf. Therefore, the sanction order is of no consequence in the eyes of law.

10. *Per contra*, learned Special PP appearing for the respondent/ CBI strongly refuted the submissions made by learned counsel for the petitioner and submitted that as per Article 77(1) of the Constitution of India, all executive action of the Government of India shall be expressed to be taken in the name of the President of India. He also submits that the business of Government of India is to be assigned amongst departments, secretariats and offices and the distribution of subjects among departments has been satisfied by the Government of India (Allocation of Business) Rules, 1961. Sub-rule (3)(a) of Rule 3 reads as under: -

“3. Distribution of Subjects –

- (3) Where sanction for the prosecution of any person for any offence is required to be accorded-
 - a) If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence.”

11. Another limb of argument of learned counsel for the respondent

is that in the context of above rule, the Ministry of External Affairs is the controlling authority for the Indian Foreign Services and the sanction order was passed by the competent authority and the said order was authenticated by Mr. Debnath Shaw. He also submits that as per the Authentication (Orders and other Instruments) Rules, 2002 all orders and other instruments made or executed in the name of the President shall be authenticated by the signature of a Secretary, Special Secretary, Additional Secretary, Joint Secretary, Director, Deputy Secretary, or under Secretary to the Government of India. Therefore, Mr. Debnath Shaw was competent to authenticate the sanction order.

12. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them.

13. At this juncture, it is relevant to reproduce the relevant provisions of Section 19 of the Prevention of Corruption Act, 1988, which reads as under: -

“19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

14. In the instant case, the respondent/ CBI has relied upon sanction order No.Q/Vig/843/24/2007 dated 10th March, 2008 issued by Joint Secretary (CNV) & Chief Vigilance Officer, Government of India, Ministry of External Affairs. Admittedly, the respondent has examined Mr. Debnath Shaw, who has accorded the sanction as PW-5 and has proved the sanction order as exhibit PW-5/A and he was cross-examined, at length, on behalf of the petitioner.

15. It is a settled law that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed

by a competent court unless in the opinion of the court a failure of justice has been occasioned.

16. A similar question cropped up before the Apex Court in the case of '**State of Bihar & Ors. Vs. Rajmangal Ram**', *AIR 2014 SC 1674* wherein it was observed as under: -

“4. Though learned counsels for both sides have elaborately taken us through the materials on record including the criminal complaints lodged against the respondents; the pleadings made in support of the challenge before the High Court, the respective sanction orders as well as the relevant provisions of the Rules of Executive Business, we do not consider it necessary to traverse the said facts in view of the short question of law arising which may be summed up as follows:-

“Whether a criminal prosecution ought to be interfered with by the High Courts at the instance of an accused who seeks mid-course relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction?”

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8. The above view also found reiteration in *Prakash Singh Badal and Another vs. State of Punjab and Others* wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In *Prakash Singh Badal (supra)* it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in *R. Venkatkrishnan vs. Central Bureau of Investigation*. In fact, a three Judge Bench in *State of*

Madhya Pradesh vs. Virender Kumar Tripathi while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19 (3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).”

17. In view of the dictum of Hon’ble Supreme Court of India in **Rajmangal Ram’s** case (supra), this Court is of the view that it is not appropriate to quash the proceedings on the ground of invalidity of the sanction during mid course of the trial proceedings. The same will be considered by the trial court after the evidence is adduced by both the parties.

18. In view of the above discussion, the petition is devoid of any merit and, same is hereby dismissed. Since the case was registered in the year, 2006 and the trial is pending, learned trial court is directed to expedite the trial as early as possible.

Crl. M.A. No.8115/2013

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

SEPTEMBER 10th, 2014/hs