

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-25312-2010
Date of decision:14.10.2015**

Ramesh Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Parminder Singh, Advocate for the petitioner.

Mr. Daljeet Singh Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

The short but important question of law, that falls for consideration of this Court, in the present case, is whether competent authority-respondent No.2 in the instant case, has exceeded his jurisdiction, while passing the impugned order dated 8.8.2010 (Annexure P-6), whereby on reconsideration of the matter, sanction for prosecution of the petitioner was accorded.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 8.8.2010 (Annexure P-6) passed by the Deputy Commissioner, Sangrur, granting sanction for prosecution of the petitioner for the offence alleged against him, in FIR No.1 dated 9.1.2009 registered under Section 7 and 13 (2) of the Prevention of Corruption Act, 1988 ('the P.C. Act') at Police Station Vigilance Bureau, Patiala.

Notice of motion was issued vide order dated 30.8.2010 and further proceedings pursuant to the impugned order were stayed. Thereafter, vide order dated 31.3.2011, case was admitted and stay was ordered to continue. That is how, this Court is seized of the matter.

Learned counsel for the petitioner submits that petitioner was falsely implicated in the present FIR No.1 dated 9.1.2009 (Annexure P-1). After completion of the investigation, mandatory sanction for prosecution of the petitioner was sought vide communication dated 20.6.2009 (Annexure P-2). He further submits that the then Deputy Commissioner, Sangrur, vide his self-contained order dated 1.10.2009 (Annexure P-3) declined the sanction for prosecuting the petitioner, observing that complainant-Darshan Singh has filed a false case against the petitioner. Accordingly, investigating agency was informed in this regard vide communication (Annexure P-4).

After sometime, investigating agency again wrote to the competent authority-respondent No.2 vide communication dated 7.1.2010 (Annexure P-5), seeking sanction for prosecution of the petitioner. He further submits that this time respondent No.2 misdirected himself, while passing the impugned order dated 8.8.2010 (Annexure P-6), thereby granting sanction for prosecution of the petitioner, on reconsideration of the matter and that too without there being any fresh material against the petitioner. He would next contend that in the absence of any fresh material, respondent No.2 was not having any jurisdiction to review the earlier order passed by his predecessor.

In support of his contentions, learned counsel for the petitioner

places reliance on the judgment of this Court in **Mohammed Iqbal Bhatti v. State of Punjab, 2006 (2) RCR (CrI.) 430**. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State submits that the impugned order passed by the Deputy Commissioner, Sangrur-respondent No.2 was not without jurisdiction. The order was factually correct and legally justified, which deserves to be upheld. There was sufficient material against the petitioner for granting sanction. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the instant case, present one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., with a view to prevent any further abuse of process of Court and also to secure the ends of justice. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the order dated 1.10.2009 (Annexure P-3), passed by the Deputy Commissioner-respondent No.2, competent authority for granting sanction, would show that each and every relevant aspect of the matter was discussed before passing this self-contained order. The complainant was found habitual of collecting money from the public servants by black mailing them. He was having a stock shadow witness.

Said stock witness and the complainant were found involved in an earlier

case also.

After considering the factual as well as legal aspect of the matter, the then Deputy Commissioner, Sangrur came to the definite conclusion that it was not a fit case for granting sanction for prosecution of the petitioner. However, the next incumbent in the office of Deputy Commissioner clearly exceeded his jurisdiction, while passing the impugned order dated 8.8.2010 (Annexure P-6), on reconsideration of the matter and that too without there being any kind of fresh material against the petitioner. Having said that, this Court feels no hesitation to conclude that the impugned order has been found to be an order without jurisdiction and the same cannot be sustained.

It is not even argued case on behalf of the respondent-State that there was some fresh material available against the petitioner, which was not considered earlier, at the time of passing of the order (Annexure P-3). It is equally important to note that while passing the impugned order, the Deputy Commissioner, Sangrur-respondent No.2 did not refer to any fresh material against the petitioner. He also failed to assign any reason much less cogent reasons in support of the impugned order. Since the Deputy Commissioner, Sangrur-respondent No.2 has exceeded his jurisdiction, while passing the impugned order, which clearly runs counter to the law laid down by the Hon'ble Supreme Court and different High Courts including this Court, the same cannot be sustained, for this reason also.

The above-said view taken by this Court also finds support from the following judgments:-

1.Haridas v. State of Kerala, 2002 (1) CCR 131

(Kerala High Court);

2.State of Kerala v. Sudhir, 2003(2) RCR (CrI.) 454

(Kerala High Court);

3.Mohammed Iqbal Bhatti v. State of Punjab, 2006(2)

RCR (CrI.) 430 (P&H);

4.State of Himachal Pradesh v. Nishant Sareen, 2010

(14) SCC 527;

5.Mohan Singh and another v. State of Punjab and

another, 2013 (2) RCR (CrI.) 959 P&H); and

6.Ram Singh Dhall v. State of Punjab and another,

2015 (3) RCR (CrI.) 667 (P&H).

After reproduction of Section 19 of the P.C. Act, the observations made by the Hon'ble Supreme Court in paras 8 to 12 of its judgment in **Nishant Sareen's** case (supra), which can be gainfully followed in the present case, read as under:-

*“8. The object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The exercise of power under Section 19 is not an empty formality since the Government or for that matter the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof reach conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant. In **Mansukhlal Vithaldas Chauhan v. State of Gujarat, 1997(4) R.C.R. (Criminal) 236 : (1997)7 SCC 622**, this Court observed, 'Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent*

but not a shield for the guilty'. Section 19 or for that matter Section 197 of Code of Criminal Procedure, 1973 (for short, 'the Code') does not make any express provision regarding review or reconsideration of the matter by the sanctioning authority once such power has been exercised.

*9. In **Gopikant Choudhary v. State of Bihar and Ors., (2000)9 SCC 53**, initially the concerned Minister refused to accord sanction to prosecute the public servant therein and an order was passed to that effect. Subsequently, after retirement of the public servant, the matter was taken up by the Chief Minister and he granted sanction for prosecution of the concerned public servant. The question that arose for consideration before this Court was the correctness of the order passed by the Chief Minister. This Court set aside the order of the Chief Minister granting sanction to prosecute the public servant, inter alia, on the ground that the Chief Minister did not have any occasion to reconsider the matter and pass fresh order sanctioning the prosecution.*

*10. In **Romesh Lal Jain v. Naginder Singh Rana & Ors., 2005 (4) R.C.R.(Criminal) 835 : 2005(3) Apex Criminal 533 : (2006)1 SCC 294**, it was held by this Court that an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from non-application of mind, the same may be called in question before the competent court of law.*

*11. Recently, in the case of **State of Punjab and Anr. v. Mohammed Iqbal Bhatti, 2009(3) R.C.R.(Criminal) 861 : 2009(4) R.A.J. 605 : JT 2009(13) SC 180**, this Court had an occasion to consider the question whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code. This Court observed as under :*

"7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered."

This Court then noticed the opinion of the High Court which was recorded as follows :

"Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of

Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible."

While affirming the above opinion of the High Court, this Court held in paragraphs 22 and 23 of the Report as under :

"22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to."

"23. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."

12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been

exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.”

Reverting back to the peculiar fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as different High Courts including this Court, in the judgments referred to hereinabove, it is unhesitatingly held that the criminal proceedings cannot be permitted to go on against the petitioner, so as to prevent any further abuse of process of court and also to secure the ends of justice.

The answer to the question posed at the outset and is and has to be an emphatic no. It is held that the Deputy Commissioner, Sangrur-respondent No.2 was not having any jurisdiction to grant sanction for

prosecution of the petitioner, once the same had been declined by his predecessor and thereafter there was no fresh material against the petitioner. In this view of the matter, it can be safely concluded that the impugned order is an order without jurisdiction and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition deserves to be accepted. Accordingly, the impugned order dated passed by 8.8.2010 (Annexure P-6) is hereby ordered to be quashed. Consequences would follow.

Resultantly, with the above-said observations made, the present petition stands allowed, however, with no order as to costs.

14.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE