

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28955 of 2015.
Decided on:-August 28, 2015.

Rajinder Kumar.Petitioner.

Versus

State of Punjab and anotherRespondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Pradeep Sharma, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner-complainant Rajinder Kumar son of Manohar Lal, resident of Amarpura, Tehsil Abohar, District Ferozepur has filed the present petition under Section 482 Cr.PC for setting aside the order dated 21.5.2014 (Annexure P-5) whereby learned Special Court, Ferozepur has accepted the cancellation/untraced report as the competent authority did not accord sanction in the case as provided under Section 19 of the Prevention of Corruption Act, 1988 (hereinafter mentioned as the Act).

Briefly stated, an FIR No.5 dated 21.4.2010 under Sections 7

and 13(2) of the Act was registered at Police Station (Vigilance Bureau), Ferozepur against respondent No.2 Ravinderpal Singh, who was posted as Manager, Punjab State Cooperative Agricultural Development Bank Limited, Abohar. He being a public servant had demanded illegal gratification of Rs.20,000/- from the petitioner-complainant for releasing the cheque of balance amount of Rs.1,80,000/- in favour of the petitioner. Finally, the matter was settled for Rs.10,000/- and on 21.4.2010, respondent No.2-accused was caught red handed while accepting illegal gratification of Rs.10,000/- upon a trap laid by the officials of the Vigilance Bureau, Ferozepur.

The Vigilance Bureau had investigated the matter and preferred cancellation/untraced report as the competent authority did not accord requisite sanction for the prosecution of the accused. However, learned special Court vide order dated 8.10.2011 disagreed with cancellation/untraced report and, rather, decided to take cognizance. Accordingly, notice was issued to the accused.

The said summoning order was challenged by respondent-accused before this Court and vide order dated 30.8.2013, this Court had set aside the order dated 8.10.2011 passed by learned special Court and the special Court was directed to pass a fresh order in accordance with law.

Learned special Court vide order dated 21.5.2015 had accepted the cancellation/untraced report as the competent authority had not accorded

the sanction as warranted by Section 19 of the Act.

It is this order dated 21.5.2015 passed by learned Special Court, Ferozepur which is the subject matter of challenge before this Court through the present petition.

Learned counsel for the petitioner has contended that the report of the Vigilance Bureau dated 26.7.2010 (Annexure P-1) is a mere construction of malafide and distorted facts with an object to mislead the court below and the entire proceeding is vitiated as the report under Section 173 Cr.C is based on misconceived facts. The sanctioning authority was handicapped in taking legal and factually sound decision regarding sanction for prosecution as the entire material was not placed before the sanctioning authority. So, the order of discharge of respondent No.2-accused is in clear violation of Section 19(3)(a) of the Act.

I have heard learned counsel for the petitioner.

Section 19 of the Act deals with sanction and reads as under:

“19. Previous sanction necessary for prosecution.

(1) No court shall take cognizance of an offence punishable under section 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,-

(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.”

The special Court while passing the impugned order has considered the contentions raised by the parties and had come to a conclusion that it was not competent to take cognizance of the offence for want of sanction, which was to be accorded by the competent authority for the prosecution of the accused. Section 19(1)(c) of the Act deals with the question of sanction of a person who is not employed in connection with the affairs of the Union or with the affairs of the State. It provides that in case of any other person i.e. the person who is neither connected with the affairs of the Union nor with the affairs of the State, the authority competent to remove from his office, is the competent authority to accord sanction for his prosecution.

Sanction of the competent authority was required for prosecution. The respondent No.2-accused, who was posted as Manager in

the Punjab Agricultural Cooperative Development Bank Limited, Abohar could have been removed only by the competent authority of the said bank or its head office. While considering the fact that the accused is neither connected with the affairs of the Union or of the State, a sanction from the authority which was competent to dismiss the accused from his services was, therefore, necessary to be obtained. In the absence of any such sanction, the Court is not competent to take cognizance of the offence.

In view of the above, I find no reason to interfere with the impugned order dated 21.5.2014 passed by learned special Court, Ferozepur.

Accordingly, the present petition, being devoid of any merit, is dismissed.

August 28, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE