

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-38176 of 2011
Date of Decision: 20.10.2015.**

Jaswant Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. D.S.Pheruman, Advocate
for the petitioner.

Mr. J.S.Sekhon, AAG, Punjab

.....

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 15.11.2011 (Annexure P-8) and charge sheet (Annexure P-9) arising out of FIR No. 21 dated 27.5.2009, under Section 7, 13(2) of Prevention of Corruption Act, 1988 ('Act' for short), registered at Police Station Vigilance Bureau, Amrtisar.

Learned counsel for the petitioner has submitted that vide Annexure P-6, sanction for prosecution of the petitioner was declined by the competent authority. Hence, the Trial Court could not take cognizance of the matter. In support of his arguments, learned counsel has placed reliance on '**Chittaranjan Das versus State of Orissa, 2011(3) R.C.R. (Criminal) 512**' wherein it was held as under:-

"We do not find any substance in the submission of Mr. Tripathy and the decision relied on is clearly distinguishable. Sanction is a devise provided by law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to

perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled for prosecution but not intended to shield the guilty. Here in the present case while the appellant was in service sanction sought for his prosecution was declined by the State Government. Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no prima-facie case of disproportionate assets against the appellant is made out. Notwithstanding that Vigilance Department chose to file charge-sheet after the retirement of the appellant and on that Special Judge had taken cognizance and issued process. We are of the opinion that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the [Prevention of Corruption Act](#) is necessary after the retirement of Public Servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary

and any exercise in this regard would be action in futility.”

Learned State counsel, on the other hand, has opposed the petition and has submitted that the petitioner was caught red handed while accepting bribe.

In the present case, FIR was registered at the instance of complainant Ashok Kumar. The complainant had made a statement before the vigilance authorities that the petitioner had demanded ₹ 10,000/- from him as bribe so that so that the shop of the complainant be not declared a defaulter and the lease of the shop be not cancelled. Complainant had paid ₹ 3,000/- to the petitioner on 25.5.2009 and he was required to pay another sum of ₹ 10,000/-. On the basis of the statement of the complainant, raid was organized and petitioner was caught red handed while accepting bribe. Vigilance authorities sought sanction for prosecution of the petitioner as the petitioner was working as a Clerk with Zila Prishad. Vide Annexure P-6, Chairman, Zila Prishad, Gurdaspur declined to grant sanction for prosecution of the petitioner.

Operative part of the order dated 21.7.2010 (Annexure P-6) reads as under:-

“Thus the aforesaid entire record has been perused and thereafter Jaswant Singh was heard personally and after hearing the concerned witnesses, the Committee has written that it has reached to the conclusion that Ashok Kumar S/o Narsingh Raj R/o Behrampur Road, Gurdaspur got falsely implicated Jaswant Singh, Clerk, Zila Parishad, District Gurdaspur

in FIR No. 21 dated 27.5.2009. This no case is made out for grant of sanction of prosecution of Shri Jaswant Singh, Clerk. In view of the aforesaid situation the undersigned is agreed with the aforesaid report and thus the sanction is refused against Jaswant Singh, Clerk for the prosecution. The entire record is attached and it is hereby sent for further action. ”

Thus, in the present case, sanction for prosecution of the petitioner was specifically denied by the competent authority.

Section 19 of the Act reads as under:-

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.

Thus, as per the above provision, no Court shall take cognizance of an offence punishable under Section 7, 13 of the Act except with the previous sanction of the competent authority.

Since the competent authority had refused to grant sanction for prosecution of the petitioner, the Trial Court could not take cognizance of the matter.

Accordingly, this petition is allowed. Order dated 15.11.2011 (Annexure P-8) whereby charge was ordered to be framed against the petitioner, is set aside. Consequently, the charges framed against the petitioner vide Annexure P-9 are also set aside and petitioner is ordered to be discharged.

**(SABINA)
JUDGE**

October 20, 2015
Gurpreet