

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 1520 of 2010

Chatter Singh

..... Petitioner

versus

State of Haryana

... Respondent

Crl. Revision No. 1786 of 2010

Yudhbir Singh and another

..... Petitioners

versus

State of Haryana

... Respondent

Date of decision : 24.08.2015

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. Lovekirat Singh Chahal, Advocate
for the petitioner (in Crl. Revision No. 1520 of 2010)

Mr. D.K. Bishnoi, Advocate and
Mr. Chander Singh, Advocate
for the petitioners (in Crl. Revision No. 1786 of 2010)

Mr. Deepak Sabharwal, Addl. A.G. Haryana

ANITA CHAUDHRY, J.

This order shall dispose of Crl. Revision Nos. 1520 and
1786 of 2010 titled as ***Chatter Singh vs. State of Haryana*** and
Yudhbir Singh and another vs. State of Haryana.

The petitioners were members of the Haryana Public Service Commission and FIR had been registered under Sections 420, 467, 468, 471, 120-B read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'the Act') against them and some others.

Challan has been presented. Two revisions have been filed assailing the order dated 06.05.2010 vide which the Additional Sessions Judge, Panchkula framed the charges against the petitioners and the beneficiaries (candidates). It would be necessary to briefly refer to the allegations.

The Haryana State Pollution Control Board (for short 'HSPCB') sent a requisition to the Haryana Public Service Commission (for short 'HPSC') for filling four posts of Environment Engineers and the age limit was stated to be 20-40 years. HSPCB wrote a letter to HPSC to sent a requisition through the Secretary of Department of Environment. On 14.09.2009, the Secretary Department of Environment, Haryana Government sent a letter to HPSC and requested it to proceed with the process. On receipt of the requisition, Haryana Public Service Commission issued an advertisement on 16.09.2004. The last date for submission of applications was 16.10.2004. The Commission advertised the posts in various newspapers on 16.9.2004 and the last date for submission of forms was 16.10.2004 in which the limit of age was 20-40 years and five years relaxation was given to SC/ST candidates. The application of Phool Kumar was submitted on 29.10.2004 and was received in the Commission on the same day. Shish Pal had

submitted his application on 29.09.2004 which was received in the Commission on 30.9.2004. Krishan Kumar submitted his application on 29.09.2004 which was received on 06.10.2004. The said persons were not eligible being overage. The allegations are that they still applied as there was some understanding between the said accused and accused Krishan Chander, Mahender Singh, Avtar Singh, Yudhbir Singh, Chhattar Singh and Krishan Kumar. Later on Phool Kumar, Shish Pal and Krishan Kumar were selected. The age limit for the candidates were 17 to 40 years vide letter dated 20.10.2004 and there were no instructions/rules in the Corporation, Board/Govt. of Haryana where five years relaxation in the age was to be given to the Government employees. Accused Krishan Chander (Ex. Chairman HPSC) prepared a Corrigendum on 26.10.2004 which was published in the newspaper on 29.10.2004 and the last date for submission of application was fixed as 2.11.2004. Vide this corrigendum, opportunity was given to only those candidates who have already applied for these posts but not to the other candidates. There were three gazetted holidays and only one day was left which was not sufficient for the candidates to submit their applications through their department and send it to the Commission on the same day after fulfilling the requirements. The allegations were that the corrigendum has been issued only to benefit some accused who were selected.

The matter was investigated and challan was presented and charge was framed. The petitioners approached this Court and their main grievance was that the Court could not take cognizance of

an offence punishable under Sections 7 or 13 of the Act without previous sanction of the Central Government. The contention is that petitioners being the members of the Public Service Commission could be removed by the President of India on the recommendation of the Supreme Court of India and according to Section 19(1)(c) of the Act, the Competent Authority who could accord sanction for prosecution, was the President of India whereas the sanction had been obtained from the Governor of the State who was not competent to grant sanction. The third question which was raised is whether in the absence of any sanction of prosecution granted by the Competent Authority i.e. the President of India, could it be termed as the error which had resulted in "failure of justice".

An application for interim stay had been filed by the petitioners seeking in Criminal Revision No. 1520 of 2014. While disposing of the petition, a Coordinate Bench vide its order dated 25.09.2010 had passed a detailed order and the concluding paragraph reads as under:-

"In view of the above discussion, taking of cognizance by the trial Court by framing charges against the petitioner despite a patent defect in the competency of the sanctioning authority, the Misc. application is allowed and it is ordered that the further proceedings qua the petitioner during the pendency of the revision petition will remain stayed, to the extent that he would not be required to appear in the Court in person but will be entitled to be represented through counsel as per provisions of Section 273 Cr.P.C. Any evidence produced prejudicial to the rights of the petitioner will be subject of the decision of the petition."

Against that order, SLP was preferred which was dismissed on 08.07.2011. The trial Court started the trial but one of the accused filed a petition assailing the order. There was no stay but the trial came to a standstill.

Learned counsel for the petitioners contends that the sanction had been granted by the Governor whereas the powers of removal vests in the President of India and had referred to ***State of Goa vs. Babu Thomas, (2005) 8 SCC 130, State Inspector of Police Visakhapatnam vs. Surya Sankaram Karri, 2006(4) RCR (Crl.) 53, Karnataka through CBI vs. C. Nagarjaswamy, 2005(4) RCR(Crl.) 511.***

Learned State counsel has placed on record a letter written by Chief Secretary to Govt. Haryana and the letter received from the Ministry of Personnel, Public Grievances and Pensions dated 04.06.2014 and the counsel urges that three Judges Bench in ***State of Madhya Pradesh vs. Virendra Kumar Tripathi*** had held that the accused can not be discharged at the stage of framing of charge even if there is an error, omission or irregularity in the grant of sanction to prosecute and there is no material to show that the sanction by the Governor has led to “failure of justice” due to any error or irregularity in sanction and it is a matter which has to be dealt with not at the interregnum stage and the prosecution can not be nullified. It was urged that the Apex Court in ***Manoranjan Prasad Choudhary's case (supra)*** had held that the sanction can be taken subsequently and they may be given liberty to approach for sanction.

It was urged that since there was order, they were advised to proceed with the matter only with the leave of the High Court.

Before adverting to the issue raised, it would be necessary to refer to the relevant provisions of *Section 19 of the P.C. Act and Section 465 of the Cr.P.C. should be embodied in the present order:-*

Section 19 of the PC Act

“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.”

Section 465 of Cr.P.C.

“465. Finding or sentence when reversible by reason of error, omission or irregularity.—

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

A perusal of the provisions contained in Section 19(1)(b) makes it amply clear that the competent authority would be the authority who has the powers of removal, who can grant sanction and it is not the Governor but the President who has been vested with the power as per Section 19(1)(c) read with Section 19(2) of the Act. No

Court can take cognizance of an offence punishable under Sections 7 or 13 of the PC Act, in case of member of the State Public Service Commission, without the previous sanction of the competent authority vested with the power of removal.

Article 317 of the Constitution of India provides that the Chairman or any other member of the Public Service Commission shall only be removed from his office by the order of the President on the grounds of misbehaviour after the Supreme Court, on reference being made to it by the President, on an enquiry held in accordance with the procedure prescribed in that behalf.

Learned counsel for the respondent had also pointed out that a reference was made and the Governor of Haryana had forwarded the same to the President of India and the President after examining the record had referred the matter of the petitioners to the Apex Court under Article 317(1) of the Constitution for enquiry and report and refers to Reference No. 2 of 2008 reported in 2010(13) SCC 586 and had urged that the Apex Court had given opportunity on all the articles of charge and after enquiry a finding was recorded against both the petitioners and the charges 8 and 9 had been established and the respondents were held guilty of misbehaviour and the reference was answered against them.

In ***State of Goa vs. Babu Thomas, (2005) 8 SCC 130***, the Special Judge had taken cognizance without there being any proper sanction order under the law. It was held that this was a fundamental error which invalidated the cognizance as being without jurisdiction. A direction was issued to get fresh sanction and proceed

afresh against the accused.

In ***State Inspector of Police Visakhapatnam vs. Surya Sankaram Karri, 2006(4) RCR(Crl.) 53***, the sanction for prosecution of public servant was accorded by an authority who was not the appointing authority but the power of appointment had been delegated to him. It was held that when sanction was granted by a person not authorized by law, the same would be without jurisdiction and it would be a nullity. The Supreme Court had relied upon the judgment in ***State of Karnataka though CBI vs. C. Nagarjaswamy, 2005 (4) RCR(Crl.) 511***, wherein it was held as follows:-

“Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard to sanction may be determined at an early stage.”

In ***Suray Sankaram Karri's*** case (supra) it was held as follows:-

“24. When a sanction is granted by a person not authorized in law, the same being without jurisdiction, would be a nullity.”

Three Judges Bench in ***Virendera Kumar Tripathi's case (supra)*** had taken a different view and it would be necessary to refer to para 6 which reads as under:-

6. A bare perusal of the paragraph shows that before giving approval for prosecution, advice of the concerned Department was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative. The State

government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an inter-departmental matter. Further the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of /or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the Court a failure of justice has in fact been occasioned thereby. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was lead. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [2004(7) SCC 763] and in Prakash Singh Badal v. State of Punjab [2007(1) SCC 1] need to be noted.

Yet later the issue again came up before the Apex Court in ***Rajmangal Ram's case (supra)***. The issue examined was whether the High Court could interdict criminal proceedings on the ground that the sanction in prosecution was not accorded by the competent authority.

Para 7 and 8 are relevant and read as under:-

7. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant

*sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in **State by Police Inspector vs. T. Venkatesh Murthy, 2004(4) RCR(Criminal) 388** wherein it has been inter alia observed that,*

“14.Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.”

*8. The above view also found reiteration in **Prakash Singh Badal and Another vs. State of Punjab and Others, 2007(1) RCR(Criminal) 1** 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, 2009(4) RCR(Criminal) 140**. In fact, a three Judge Bench in **State of Madhya Pradesh vs. Virender Kumar Tripathi, 2009(3) RCR(Criminal) 599** 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).

In ***Rajmangal Ram's case (supra)*** the view taken was that interdicting a criminal proceedings in the middle of the trial would not be appropriate unless the Court reaches the conclusion that failure of justice had been occasioned. 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.

Learned counsel appearing for the respondent was candid enough to admit that the sanction that was granted was not by the competent authority. He had placed on record the letter sent by the Government of Haryana for placing the record before the President of India for sanction. He states that the matter was returned in view of the interim order passed on 25.09.2010. He states that the State of Haryana had been advised to move an appropriate application to the Court.

The Authority competent to remove the members of Public Service Commission is the Authority who can accord sanction and admittedly it is the President of India. In that view of the matter since there is no sanction by the Competent Authority it would be

appropriate that liberty is granted to the respondent State to approach the competent authority for sanction and then proceed afresh against the petitioners from the stage of taking cognizance of the offence in accordance with law.

The State of Haryana wants to approach the Competent Authority for sanction. Liberty is granted. No finding is, thus, required to be given on the question whether it had resulted in any failure of justice. The impugned order is set aside.

Needless to mention if appropriate sanction is received from the competent authority, the matter can be proceeded against the petitioner.

The petitions are disposed of thus.

August 24, 2015

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**(ANITA CHAUDHRY)
JUDGE**