

***IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH***

CRR No.1999 of 2013 (O&M)

Reserved on:06.05.2015

Date of decision:29.05.2015

Ram Singh Dhall

... Petitioner

Vs.

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Ritu Pathak, Advocate for the petitioner.

Mr. Nikhil K. Chopra, DAG, Punjab.

Mr. J.S. Bedi, Senior Advocate with
Mr. Sapan Dhir, Advocate for respondent No.2.

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the order dated 30.01.2013 passed by the Special Judge, Patiala in terms of which the untraced report filed by the Vigilance Bureau, Patiala pertaining to FIR No. 32 dated 06.08.2007 under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 (hereinafter to be referred to as 'the 1988 Act') registered at Police Station Vigilance Bureau, Patiala Range Patiala has been accepted.

Facts in brief may be noticed. Baldev Singh Sandhu, while serving as Professor, Department of Psychology, Punjabi University, Patiala was handed over charge of the post of Registrar till filling up of the post on regular basis vide order dated 17.07.2007. Ram Singh Dhall, the present petitioner had submitted a complaint to DSP, Sh. Anil Joshi against Baldev

Singh Sandhu with regard to demand of illegal gratification to reconsider the case as regards recognition of Punjab Law College and to file the notice issued by the Punjabi University, Patiala for cancellation of recognition of the college. On such complaint, FIR No.32 dated 06.08.2007 under Sections 7, 8, 13(2) of the 1988 Act was registered with Police Station Vigilance Bureau, Patiala against Baldev Singh Sandhu. Apparently, a trap was laid by DSP, Anil Joshi along with other members of a police party at the residence of Baldev Singh Sandhu i.e. House No.219, Urban Estate, Near Radio Station, Patiala and he was allegedly caught red handed while accepting bribe money of Rs.1 lac from the complainant, Ram Singh (petitioner herein) by DSP Anil Joshi. Vigilance Bureau is stated to have applied for sanction to prosecute accused Baldev Singh Sandhu but in terms of communication dated 07.02.2009 issued by the Vice Chancellor, Punjabi University, Patiala sanction of prosecution was declined in anticipation of endorsement by Syndicate of the university. Placed on record at Annexure P-8 is the relevant extract of the proceedings of the meeting of Syndicate held on 12.06.2009 whereby a decision was taken by the Syndicate as regards non grant of sanction for prosecution of Baldev Singh Sandhu (Ex-Registrar). Also placed on record is a letter dated 29.09.2009 at Annexure P-9 issued from the office of Chief Secretary, Department of Higher Education, State of Punjab and addressed to Director, Vigilance Bureau, whereby it was conveyed that even the State Government in terms of the proceedings of the Syndicate dated 12.06.2009 has declined to permit sanction of prosecution against official concerned i.e. Baldev Singh Sandhu.

Based upon the investigation having been conducted, Vigilance Bureau submitted the challan under Section 173 Cr.P.C. before the

Competent Court. Vide order dated 09.02.2012 at Annexure P-11, the Additional Sessions Judge, Patiala returned the challan to the Vigilance Authorities for further investigation and with a direction that the final report be furnished within a period of four months from the date of passing of the order. Perusal of such order would reveal that observations had been made that inspite of the Investigating Officer holding a view that a case for taking cognizance against accused had been made out and the sanction had been declined without passing a reasoned order, the Investigating Agency had simply presented the challan in the Court instead of calling upon the Competent Authority to furnish reasons for not granting sanction and without opting to seek judicial review as regards validity of the order declining sanction.

Thereafter an untraced report was filed by the Vigilance Bureau, Patiala on 07.06.2012 and the same has been accepted vide order dated 30.01.2013 passed by the Special Judge, Patiala. It is against such factual backdrop that the instant revision petition has been preferred by the complainant, Ram Singh.

The order dated 30.01.2013 passed by the Special Judge, Patiala has been assailed on the following grounds:

(i) It has been contended that the learned Special Judge has erred in overlooking a vital aspect that since accused/respondent No.2 was not continuing to hold the office of Registrar which had allegedly been misused by him and was presently posted and working as Professor of Psychology, there was no requirement to obtain sanction for prosecution under Section 19 (1) of the 1988 Act even though he continued to remain a public servant but in a different office. Heavy reliance in support of such contention has

been placed upon a judgment of the Hon'ble Supreme Court of India in **Ajoy Acharya Vs. State Bureau of Investigation against Economic Offences, 2013 (4) RCR (Criminal) 443.**

(ii) It has been argued that the Investigating Agency has acted illegally in not having applied to the Competent Authority to grant fresh sanction to prosecute inspite of there being cogent and sufficient evidence against respondent No.2. Argument raised is that it was open for the Competent Authority to re-assess the evidence already collected on record and which itself was sufficient to grant sanction for prosecution.

(iii) The order declining the sanction for prosecution was stated to be totally non speaking and with no reasons having been assigned and the same itself being reflective of non application of mind with regard to material adduced by the Investigating Agency. It was vehemently contended that the sanctioning Authority is obliged to examine the material placed on record and on appreciation thereof to reach a conclusion fairly as also objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant.

Counsel for the parties have been heard at length.

Section 19 of the 1988 Act reads as follows:

“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 object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous or unsubstantiated allegations. In **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, 1997 (4) RCR (Criminal) 236**, the Apex Court had observed that 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 guilt.

Hon'ble Supreme Court in the case of **R.S. Nayak Vs. A.R. Antulay (1984) 2 SCC 183**, while examining the corresponding provision of the Prevention of Corruption Act, 1947 i.e. Section 6 with regard to requirement of sanction in a case where the accused public servant had ceased to hold the office which he is alleged to have misused or abused even though holding a different office at the time when the Court is called upon to take cognizance of the offence held that it is implicit in the provision itself that sanction of that competent authority alone would be required which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motives for which a prosecution is intended to be launched against him. It was further held that if the accused had ceased to hold that particular office by the date the Court is called upon to take cognizance of the offence alleged to have been committed by such public servant, no sanction under Section 6 of the Act would be necessary despite the fact that he may be holding any other office on the relevant date which may make him a public servant as understood

under Section 21 of the Indian Penal Code. Such view was thereafter affirmed even in the case of ***Parkash Singh Badal & another Vs. State of Punjab 2007(1) RCR (Criminal) 1.***

The afore noticed two decisions were rendered in relation to parties, who had held office like Chief Minister or M.P. or M.L.A. etc. on different points of time.

The question that however would arise in the present case as to whether the dictum of law laid down and as noticed herein above would be applicable to public servants, who while being members of a service or a cadre hold different posts on transfer or promotion at different points of time in the course of their service.

An answer to such poser can be found by making a detailed reference to the judgment of the Apex Court in ***Ajoy Acharya's case (supra)***. In this case, investigation into the affairs of the Madhya Pradesh State Industrial Development Corporation (hereinafter to be referred to as MPSIDC) was initiated on the allegations that functionaries of MPSIDC had permitted investment by way of inter corporate deposits through a resolution of the Board of Directors dated 19.04.1995. The accusation in a nutshell was that the Board of Director's resolution dated 19.04.1995 was passed in disregard of an earlier decision taken in the Cabinet Review Meeting held on 28.01.1994, wherein a decision was taken that MPSIDC would not extend financial assistance to industries. Ajoy Acharya was a member of IAS cadre belonging to the 1976 batch and while holding the charge of the office of Industries Commissioner, Government of Madhya Pradesh, he was nominated as a Director of MPSIDC in 1993. He continued as such till 1998 and in June, 1998, he was transferred as Joint Secretary,

Department of Heavy Industries, Government of India, whereupon he ceased to be on the Board of Directors of MPSIDC. The case set up by Ajoy Acharya was that it was mandatory for the prosecution to obtain sanction before initiating prosecution against him as he held a Government post namely the post of Industries Commissioner, Government of Madhya Pradesh. It was contended on his behalf that he was a public servant and the President of India was his appointing authority as also his dismissing authority. His nomination on the Board of MPSIC co-existed with his appointment as Industries Commissioner and such nomination as a Director with MPSIDC was an outcome and consequence of holding the office of Industries Commissioner, Government of Madhya Pradesh. The Apex Court while negating such contention examined the memorandum and articles of association of MPSIDC and against the backdrop of clause 89 took a view that the Governor of the State had absolute discretion to nominate anyone suitable as per his wisdom as Nominee Director to the MPSIDC. Accordingly, the contention as regards Ajoy Acharya's nomination as Director of MPSIDC being the outcome of his holding the office of Industries Commissioner, Government of Madhya Pradesh or on account of his being a member of the IAS Cadre was not accepted. Accordingly, it was concluded that there would be no necessity of seeking prior sanction for prosecution from the President of India and such sanction if at all was only to be obtained from the hands of the Governor of the State of Madhya Pradesh. Even such pre-requisite was negated on the basis of the ratio laid down in the judgments of **R.S. Nayak's case (supra) and Parkash Singh Badal's case (supra)** by noticing that well before filing of the first charge sheet, Ajoy Acharya had relinquished charge of the office which he is

alleged to have misused i.e. officer of the Nominee Director of MPSIDC.

The facts of the present case however are distinct. The argument that had been raised on behalf of Ajoy Acharya in the afore noticed decision and which had been negated by the Apex Court would however sustain insofar as the private respondent herein is concerned.

Undisputedly, respondent No.2 was called upon to take charge of the post of Registrar till the filling up of the post on regular basis while serving as Professor, Department of Psychology in the university. Learned senior counsel appearing for private respondent has referred to the relevant provision contained in the Punjabi University Calendar, Volume I, whereby the Syndicate may in the absence of the Registrar or other administrative officers on leave or otherwise, assign as a temporary arrangement their duties to such officer or officers of the university as it may think proper. Clearly, it was in exercise of such power that the charge of the post of Registrar came to be vested with the private respondent on account of his being in service of the university and holding the post of Professor. Vesting of charge of post of Registrar in favour of the private respondent was on account of and co-existed with his holding the post of Professor Psychology. It has also gone uncontroverted that while holding the charge of the post of Registrar, private respondent continued to hold the substantive post of Professor, Department of Psychology. Even as per order dated 17.07.2007 at Annexure P-13, while vesting the charge of the post of Registrar, it was made clear that the private respondent would continue to retain a lien with the Department of Psychology although he would have right to receive the perks of the post of Registrar. The Appointing and Dismissing Authorities of both the posts of Registrar as also Professor is the

Syndicate of the university. As such, pertaining to allegations of abuse or misuse of the office of the Registrar, it was imperative for sanction of prosecution to have been sought from the Syndicate of the university even though on the relevant date i.e. when the Court was called upon to take cognizance, private respondent may not have been holding the charge of the post of Registrar. Concededly, such sanction having been declined, there would be no infirmity insofar as the impugned order is concerned, whereby cancellation report has been accepted. The contention raised on behalf of the complainant (petitioner herein) as regards there being no requirement of obtaining sanction is, as such, rejected.

Even the question as regards extent of power vested in the Government or the Competent Authority to review its order or refusing sanction to prosecute a public servant in terms of Section 19 of the 1988 Act is no longer *res integra*. In **State of Himachal Pradesh Vs. Nishant Sareen, 2011 (1) RCR (Criminal) 193**, the Hon'ble Supreme Court had categorically held that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code of Criminal Procedure has been exercised by the Competent Authority, it is not permissible for the Sanctioning Authority to review or reconsider the matter on the same material/s again. It is only in a case, where fresh material has been collected by the Investigating Agency subsequent to the earlier order declining the sanction that the matter is open for reconsideration and in the light of such fresh material/s an opinion may be formed granting sanction to prosecute the public servant.

Admittedly, in the present case in the untraced report filed by the Vigilance Bureau, Patiala on 07.06.2012 and which has been accepted by passing of the impugned order dated 30.01.2013, it had been specifically

mentioned by the Investigating Agency that no fresh material has come into picture after the first final report under Section 173 Cr.P.C. having been returned by the Competent Court. As such, by applying the dictum laid down in **Nishant Sareen's case (supra)**, no occasion for review or reconsideration is made out.

As regards the order declining sanction to be bereft of reasoning and showing non application of mind is concerned, suffice it to observe, the Court in the present revision petition while exercising its revisional jurisdiction is not examining the validity of such order declining sanction but is only going into the correctness of an order passed by the Competent Court, whereby a cancellation report has been accepted. The Investigating Agency upon entertaining a grievance as regards an order declining sanction even on the material already collected had the option to challenge the order of Sanctioning Authority and which apparently has not been done.

In view of the discussion above, this Court does not find any infirmity in the impugned order and accordingly, the instant revision petition is dismissed.

Dismissed.

29.05.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether referred to the Reporter?

Yes