

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.704 of 2013 (O&M)

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Date of decision:20.1.2015

Rajesh Kumar

...Petitioner

v.

State of Haryana and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajesh Arora, Advocate for the petitioner.

Mr. Deepak Grewal, Deputy Advocate General, Haryana
for the respondent-State.

Ms. Munisha Gandhi, Senior Advocate with Mr. Tarurag
Gaur, Advocate for respondent No.2.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned order dated 23.11.2012 passed by learned Additional Sessions Judge, Faridabad, whereby accused/respondent No.2 has been illegally discharged on untenable ground that the prosecution agency has submitted cancellation report and the petition moved on behalf of the complainant has been wrongly separated and asked for placing on record sanction order for prosecuting accused Sushil Kumar Gaur-respondent No.2 and further for a direction to

the lower and appellate Courts for continuing with the trial in the absence of any sanction in view of law settled by this Court.

Notice of motion has been issued in this case.

Mr. Deepak Grewal, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and Ms. Munisha Gandhi, learned Senior Advocate assisted by Mr. Tarurag Gaur, Advocate has appeared for respondent No.2 and contested this petition.

I have heard learned counsel for the petitioner, learned Deputy Advocate General, Haryana appearing for the respondent-State and learned senior counsel for respondent No.2 and have gone through the record.

A perusal of the impugned order dated 23.11.2012 passed by the learned Additional Sessions Judge, Faridabad shows that no illegality has been committed by the Court below. It is clear from the record that on 17.3.2010, on receipt of complaint from complainant Rajesh Kumar, FIR No.9 dated 17.3.2010 was registered for the offences under Sections 7 and 13 of the Prevention of Corruption Act (hereinafter referred to as 'PC Act') at Police Station Vigilance Bureau, Gurgaon against Sushil Kumar Gaur and Jagat Singh. Sushil Kumar Gaur was arrested on 17.3.2010. Jagat Singh expired on 28.1.2012. During investigation, accused Sushil Kumar Gaur, Excise and Taxation Officer was found to be innocent and accordingly, cancellation report was submitted for his discharge.

Notice was given to the complainant Rajesh Kumar, who sought time to file the protest petition.

Learned Additional Sessions Judge, Faridabad, found that as the prosecuting agency has submitted cancellation report, therefore, the same was accepted and accused Sushil Kumar Gaur, ETO was ordered to be discharged. It was also ordered that the protest petition moved on behalf of the complainant be separated and registered independently and the complainant was directed to place on record the sanction order for prosecuting accused Sushil Kumar Gaur, ETO. It is also clear from the order that the prosecution has not applied for sanction before filing the cancellation report.

From the record, it is clear that while giving cancellation report, there was no sanction order by the competent authority for the prosecution of Sushil Kumar Gaur, ETO. It is settled law that sanction under Section 19 of the PC Act is necessary for prosecuting any public servant. In the present case, as there was no sanction given by the competent authority, therefore, the prosecution cannot be launched against Sushil Kumar Gaur, ETO and the Court has correctly accepted the report.

As regards the protest petition, the order of the learned Additional Sessions Judge, Faridabad is again correct as that protest petition can be proceeded further only after obtaining the sanction from the competent authority as per Section 19 of the PC Act. Therefore, the Court has rightly separated the protest petition from the cancellation report and the Court has rightly directed the complainant to produce sanction order for prosecuting accused Sushil Kumar Gaur, ETO.

No illegality has been pointed out in the impugned order.

Therefore, finding no merit in the present criminal revision petition, the same is dismissed.

January 20, 2015.

(Inderjit Singh)
Judge

hsp