

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.233 of 2015 (O&M)

Date of Decision: January 23, 2015

Jaswinder Pal

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ankur Mittal, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this revision petition under Section 401 Cr.P.C. against State of Punjab respondent challenging the impugned order dated 25.11.2014 passed by learned Special Judge, Gurdaspur vide which charges under Section 7 and Section 13(2) of the Prevention of Corruption Act have been framed against the petitioner.

At the time of arguments, learned counsel for the petitioner has only argued that in the present case, earlier the competent authority has refused sanction and then without any fresh material, granted the sanction. Therefore, the order of learned Special Judge, Gurdaspur is not as per law and liable to be set aside.

I have heard learned counsel for the petitioner and have gone through the record.

As per the prosecution version, in this case the petitioner

Jaswinder Pal, Senior Executive Engineer has been caught red handed while taking bribe of ₹1 lac. The brief facts of the case are that on 10.05.2012, SDO, PSPCL South Batala had conducted checking in the showroom of complainant and after checking had sent notice of fine vide memo No.309 dated 11.05.2012 in the name of wife of the complainant on 12.05.2012, in which a fine of ₹6,51,372/- was imposed on them. Then complainant along with an application dated 14.05.2012 written by his wife Balwinder Kaur met Senior Executive Engineer Jaswinder Pal at his office on 15.05.2012 in order to get reduced the amount of fine. Then, Senior Executive Engineer said to him that a fine of ₹6,51,372/- had been imposed and he will use his power and by saying the SDO, he will get his fine amount reduced to around ₹1 lac and will also give permission to deposit ₹1 lac in six installments but in lieu of this work, the complainant has to pay an amount of ₹2 lacs to accused as bribe. Senior Executive Engineer Jaswinder Pal told complainant that ₹2 lacs may be paid to him in two installments. An application was given by the complainant and SDO sent revised notice vide memo No.318 dated 16.05.2012 to the complainant for an amount of ₹96,828/-. Then on 21.05.2012, complainant met Jaswinder Pal to order the SDO to allow him to pay the amount of fine in six installments. Then accused told complainant to give first installment of bribe on 22.05.2012 at Electricity Board Rest House, Batala and further told him to bring application from his wife and he will allow six installments. The matter was then reported to the Vigilance Bureau, Gurdaspur. Raid was conducted and the

present petitioner was apprehended while taking amount of ₹1 lac.

As per Annexure P-8 order dated 30.01.2013, Sh.K.D.Chaudhary, CMD, PSPCL refused to give the sanction stating that in this case, SDO had reviewed the amount of fine being competent authority. Again, Vigilance Officer moved an application for re-consideration. Then, competent authority CMD, PSPCL after four days, passed the order granting sanction. The above-said order has been passed in detail by reconsidering the case as a whole as the new fact was also found that instructions regarding checking the temporary connection along with other temporary connections of Balwinder Kaur were given by Jaswinder Pal Senior Executive Engineer. As per the checking report, Balwinder Kaur, for being unauthorized use of energy, was issued provisional notice memo No.309 dated 11.05.2012 for ₹6,51,372/- by the SDO office. The application of the consumer regarding reviewing the provisional notice was sent by Senior Executive Engineer to the SDO office. The amount of fine was re-assessed and final notice regarding ₹96,826/- was issued to Balwinder Kaur. The installments of this amount were made due to role of this officer (petitioner) in case and he was held by the Vigilance on the allegation of taking bribe of ₹1 lac. Hence permission/sanction was granted.

The perusal of Annexures P-8 and P-9 shows that earlier CMD, PSPCL, who is competent authority, has rejected the permission only on the ground that it was the SDO, who reviewed the order regarding final penalty. When new facts were brought to the

notice of CMD, PSPCL that the application was sent by Senior Executive Engineer Jaswinder Pal to the SDO, only then amount has been reduced and the competent authority found the role of Senior Executive Engineer in this matter and then the sanction was granted.

So, perusal of these documents shows that earlier permission was declined by not discussing whole material facts and it was held by the competent authority that accused has no role whereas after these facts were brought to its notice, finding role of the accused, therefore, competent authority granted the permission. In no way, it can be held that the competent authority reviewed its order without any material on record.

Learned counsel for the petitioner has cited judgment passed by the Hon'ble Supreme Court in ***State of Punjab and another vs. Mohammad Iqbal Bhatti, 2009(3) RCR (Criminal) 861***, in which it is held that no fresh material was placed before Sanctioning Authority and there is also nothing to show as to why reconsideration became necessary and on what premise such a procedure was adopted is not known. In these circumstances, order of sanctioning prosecution was set aside. I have gone through this cited judgment and the same will not apply in the present case as in that case, sanction was earlier refused after examining all the relevant records and then after change of the government, Vigilance again applied for sanction after nine months and then the State government granted the permission but in the present case, these are not the facts. It was only brought before the competent authority that Senior

Executive Engineer has role and the application has been given to him by the consumer which was forwarded by him to SDO and Senior Executive Engineer has been caught red handed while taking bribe of ₹1 lac from the complainant.

Learned counsel for the petitioner further cited judgment passed by the Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Nishant Sareen, 2011 AIR (SC) 404***, in which it is held that it is not permissible for the sanctioning authority to review the order by reconsidering same material again. As already discussed, new material was put before the competent authority in this case showing role of the accused. Learned counsel for the petitioner also cited judgment passed by the Hon'ble Supreme Court in ***Romesh Lal Jain vs. Naginder Singh Rana and others, 2005(4) RCR (Criminal) 835***. I have also gone through the above-cited judgment, the same having distinguished facts, will not apply in the present case.

In view of the above discussion, I find that the impugned order dated 25.11.2014 passed by learned Special Judge, Gurdaspur is correct and as per law and no illegality has been committed by the Court below and the same is upheld.

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

January 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE