

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

**C.W.P. No. 807 of 2011 (O&M)
Date of Decision : 28.05.2015**

Mandeep Singh

..... Petitioner

versus

Union of India & others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sanjiv Bansal, Advocate
for the petitioner.

Mr. Vivek Singla, Advocate
for respondent No.1.

Mr. S.S.Sandhu, Advocate
for respondent No.2.

Ms.Amarjit Kaur Khurana, Addl. AG, Punjab.

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

AJAY TEWARI, J. (ORAL)

The petitioner has challenged the order of sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988. There were two cases registered, one by the Vigilance Bureau, Punjab (against officials of the Punjab Govt.) and one by the CBI against him. Vigilance Bureau of Punjab registered Case FIR No.13/2002

against Shri Nirmal Singh Kahlon, the then Minister, Rural Development & Panchayats for abusing his position as such, to recruit his favourites to the various posts of Tax Collector, Patwaris, Peons, Clerks and further Panchayat Secretary etc., against the receipt of bribe money by overlooking the deserving candidates and further for the allegation that he amassed assets disproportionate to his known sources of income and thereby committed offences punishable under sections 120-B, 420, 467, 468 IPC & Section 13(1)(d)(e) PC Act, 1988. After investigation, the Vigilance Bureau, Punjab filed a charge-sheet against accused Nirmal Singh Kahlon and J.P. Singla where Joginder Singh, Chairman of one of the Selection Committees constituted for recruitment of Panchayat Secretaries, was cited as a witness.

In a CWP No.5283 of 2003 titled Veero Devi Vs. State of Punjab and others, this court formed a prima facie opinion that irregularities in the selection process in respect of 909 Panchayat Secretaries had been committed and this Court ordered to get the matter probed by an officer not below the rank of Secretary to the Government vide order dated 03.04.2002. Apart from that in CWP No.20005/2002 by order dated 07.05.2003 this Court directed to get the scam involving selection of Panchayat Secretaries during the years 1996 to 2001, investigated by the Central Bureau of Investigation to which the concurrence of the State of Punjab was given and the present case RC-8(S)/2003/SIC-IV/CBI/New Delhi was registered.

During investigation of the case by CBI, accused Joginder Singh, the then Chairman of one of the Selection Committees, confessed self-incriminating role and also revealed the incriminating role of other accused persons u/s 164 Cr.P.C. He was granted pardon by the trial Court and was made an Approver in the CBI case. He revealed forgery of documents and illegal financial dealings of the accused persons including the petitioner. Sufficient oral as well as documentary evidence was collected during investigation to substantiate the commission of offences under sections 120-B r/w 468, 471 and 201 and 465 IPC and section 13(1)(d) r/w 13(2) PC Act 1988 against the accused persons including the accused-petitioner.

The precise argument of learned counsel appearing for the petitioner is that in the case registered by the Vigilance Bureau of the Punjab Government Joginder Singh made a complete turn around and denied that he had received any money as a conduit or otherwise. As per learned counsel this statement dated 22.04.2009 was not before the sanctioning authority. He has further argued that the CBI should have placed this statement before the sanctioning authority. Learned counsel for the CBI has stated that this fact was never to their knowledge and that is why it was never brought before the sanctioning authority. Learned counsel for the CBI states that since that was a different case neither CBI had any opportunity to have that information nor in fact did it have so.

However as per learned counsel later, on a representation filed by the petitioner, the sanctioning authority itself referred the matter to the CBI for reconsideration on this aspect but the CBI decided to go ahead with the prosecution illegally. The argument of learned counsel is two fold. First, that on the receipt of the representation made by the petitioner, the sanctioning authority itself reviewed the order. Second, the very fact that the matter was referred back by the sanctioning authority to the CBI leads to the conclusion that in fact the sanctioning authority was also convinced that the sanction had been wrongly granted and it felt that it may not have the power to review it and that is why it referred the matter to the CBI. For this proposition, learned counsel for the petitioner has placed reliance on ***V. Venkata Subbarao vs. State, (2006) 13 Supreme Court Cases 305***, wherein the Hon'ble Supreme Court has observed as under :-

“It is also accepted that before the sanctioning authority, the vital documents showing involvement of the MRO had not been produced. The sanctioning authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppressio veri deserves serious condemnation.”

In this case, the record had been summoned specifically to see whether the statement dated 22.04.2009 made by Joginder Singh was before the sanctioning authority. The record has been seen but it

does not reveal that this statement was ever before the sanctioning authority till the time of grant of sanction.

Learned counsel for the CBI states that the sanctioning order dated 06.08.2010 itself describes incriminating evidence against the petitioner in addition to the confession of the approver. He relies upon ***State of Maharashtra through CBI vs. Mahesh G.Jain 2013(4)ABR686, wherein Hon'ble Supreme Court*** has held as under :-

“13. From the aforesaid authorities the following principles can be culled out: -

a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.

c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

g) The order of sanction is a pre-requisite as it is intended to

provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.”

He further relies upon judgment titled ***State and another vs. Dr. R.C. Anand and another, AIR 2004 SC 3693***, wherein the Hon'ble Supreme Court has held as under :-

“14. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence including the transcript of the tape record have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. [See [Jaswant Singh v. State of Punjab](#) (AIR 1958 SC 124) and [State of Bihar v. P.P. Sharma](#) (1992 Supp(1) SCC 222)].”

He also relies upon the judgment titled ***Food Inspector, Ernakulam and another vs. P.S.Sreenivasa Shenoy, (2006) 6 SC 348***, wherein the Hon'ble Supreme Court has held as under :-

“20. That apart, what is the need for obtaining a fresh consent when the certificate of the Director of the Central Food Laboratory has reached the court? Shri Romy Chacko, learned counsel, contended that the authority consenting prosecution must apply his mind to the facts of the case for satisfying himself that the facts warrant a prosecution and a prima facie

case exists against the alleged offender. Learned counsel relied on the decisions in the State of Bombay v. Parshottam Kanaiyalal and A.K. Roy V. State of Punjab. The purpose of insisting that the consenting authority should seriously apply his mind before according consent for launching prosecution, is to prevent unnecessary or frivolous prosecution at the instance of any complainant against traders in food articles. But once prosecution is instituted validly the matter is in the hands of the judicial functionary and further proceedings can be controlled by such functionary. The authority granting consent for institution of prosecution is in no way more suited for preventing unnecessary prosecution than judicial functionaries. Therefore, a switch back to the pre-institution stage is unnecessary and hence unwarranted."

In view of the above discussed judgments it has to be held that the sanction was valid since the sanctioning authority had considered all the material placed before it at the time of grant. The forwarding of the representation of the petitioner to the CBI by the sanctioning authority does not amount to vitiation of the sanction, especially in view of the decision in ***Food Inspector, Ernakulam and another vs. P.S.Sreenivasa Shenoy (supra)*** wherein it was held that once prosecution is instituted validly, the matter is in the hands of the judicial functionary and further proceedings can be controlled by such functionary. It can not also be lost sight of that it is not as if there is no other evidence against the petitioner.

No other argument has been raised by the learned counsel for the petitioner.

In view of the aforesaid the present petition is dismissed.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

28.05.2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**