

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 2205 OF 2016

ORDER:

1). Heard the petitioner, who appeared in person and Sri V.Ravi Kiran Rao, learned counsel for the respondents.

2). The issue that arise for consideration in the present Revision is; "Whether the delay in granting sanction for prosecution of the accused amounts to deemed sanction under Section 197 of the Code of Criminal Procedure?"

3). The facts, which lead to filing of the present Revision, are as under :-

Originally, a case in Crime No.9 of 2007 of Thukaramgate Police Station, came to be registered for the offence punishable under Sections 419, 420, 468 and 471 of the Indian Penal Code against the petitioner herein. The said crime came to be registered on the basis of a report given by a Senior Personnel Officer, South Central Railways, Secunderabad alleging that the petitioner herein submitted a letter, during his personal interview, alleged to have been issued by Railway Board vide No.E(NG) 11202/RC/2/10(Pt), dated 02.12.2004, which on verification was found to be false and fake. Initially, Sri G.Rambabu, the then S.I. of Police registered a case in Crime No.9 of 2007 and investigated into the matter. He examined Sri T.Murahari

Rao, Senior Personnel officer, South Central Railways, Secunderabad and Sri Md.Akther, Chief Personnel Officer, S.C. Railways, Rail Nilayam, who witnessed the transaction and also the documents produced by the petitioner herein at the time of the interview. It is to be noted that in the year 2001, the petitioner herein approached the Hon'ble High Court by way of filing W.P.No.5617 of 2001 seeking a direction against Railway Administration. While the matter was pending before the Hon'ble Court, the petitioner herein is alleged to have submitted letter purported to have been issued by the Railway Officials, for the purpose of securing a job in Indian Railways. By an order dated 06.01.2010 in W.P.No.5017 of 2001 and in C.C.No.784 of 2003, the Hon'ble High Court directed the Railway Board, New Delhi not to initiate any action against the petitioner on the ground that the letter No.E (NG)/2001/RC-2/10(pt) dated 02.12.2004 is a forged one. Further, the petitioner tried to obtain employment in Railways through the Commissioner for Disabled Welfare, alleging that his brother(who is no more) was mentally retarded. In view of the directions given by the High Court in the Writ Petition and also in the Contempt Case, the police were forced to file a final report referring the case as lack of evidence since they were precluded from investigating into the matter and gather evidence. The said final report which was filed by the second respondent herein was accepted by the Court on 04.09.2010. Thereafter, the petitioner herein filed a

private complaint against the second respondent herein in the month of July 2012 vide C.C.No.761 of 2013 before the X Additional Chief Metropolitan Magistrate at Secunderabad, for the offences punishable under Sections 167, 201, 409, 420 and 218 IPC. After recording the sworn statement, the Court took cognizance of the same on 13.08.2013 for the above mentioned offences. The grievance of the petitioner in the said complaint appears to be that though the letter produced in Crime No.9 of 2007, was not a forged document, the second respondent herein deliberately established that the said letter is forged one. It is further alleged that the second respondent, who was the Investigating Officer in Crime No.9 of 2007, colluded with the informant therein and implicated the petitioner in the said case. Challenging the very filing of the private complaint, the second respondent herein filed Crl.P.No.10568 of 2014 seeking quashing of the proceedings in C.C.No.761 of 2013 before this Hon'ble Court. The main plea, which was taken in the said application, was that continuation of proceedings without a valid sanction is illegal and improper. After referring to various judgments of the Apex Court, the said Criminal Petition was disposed of holding that the criminal prosecution will not lie for want of sanction. However, the learned Judge observed that after obtaining sanction, the complainant can pursue the same. The Hon'ble court also held that the same will not take away the right of the accused in questioning the proceedings in

C.C.No.761 of 2013. Thereafter the petitioner herein filed Crl.P.M.P.(SR) No.196 of 2016 in Crl.P.No.10568 of 2014 to declare that the proceedings in C.C.No.761 of 2013 should continue as the sanction for prosecution of the second respondent should be deemed to have been granted as the authorities have failed to consider the application for grant of sanction for nearly four months. By an order dated 19.01.2016, the learned single Judge of this Court passed the following order which is as under :-

"The order of this Court in Crl.P.No.10568 of 2014 is very clear that if sanction obtained, the cognizance can be taken subject to any other legal bar by the Magistrate concerned. Once such is the case the remedy of the petitioner to approach the court concerned if it is a deemed sanction or a sanction, pursuant to which and not a petition under Section 482 Cr.P.C. that too as a miscellaneous petition in the earlier disposed of petition.

Having regard to the above, the petition is closed giving liberty to the petitioner to approach the concerned Court, if there is a valid sanction to proceed according to law."

Thereafter, the petitioner herein filed a memo before the trial court requesting the court to take cognizance of the matter on the ground that non-passing of any orders on an application made seeking sanction for prosecution even after four months, amounts to deemed sanction. Aggrieved by the orders passed therein, the present Revision is filed.

4). The only ground urged by the petitioner appearing in person is that he made an application seeking sanction for prosecuting the second respondent herein on 17.12.2014 to the Principal Secretary,

Home Department for the State of Telangana, which was forwarded to the Home Department in the month of January 2015 but till date no orders passed on the said application. Relying on the judgment of the Apex Court in **Subrahmanian Swamy v. Manmohan Singh and another¹**, the petitioner, who is appearing in-person, seeks a direction to the Court below to take cognizance of the matter.

5). The same is opposed by Sri V.Ravi Kiran Rao, learned counsel appearing for the respondents, contending that in the absence of any legislation, the question of taking cognizance basing on deemed sanction will not arise.

6). In **Lalu Prasad Alias Lalu Prasad Yadav v. State of Bihar through CBI (AHD) Patna²**, the Apex Court held that sanction under Section 197 Cr.P.C., and Section 19 of the P.C. Act operate in conceptually different fields. It has been held that in cases covered under the P.C. Act in respect of public servants the sanction is of automatic nature and the factual aspects are little or of no consequences. But in a case where sanction is required under Section 197 Cr.P.C., the Apex Court held that the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties.

¹ (2012)3 Supreme Court Cases 64

² (2007) 1 Supreme Court Cases 49

7). As referred to earlier, by an order dated 05.11.2014 a learned single Judge of this Court, while disposing Crl.P.No.10568 of 2014 granted permission to the petitioner to renew his request for taking cognizance of the matter after obtaining necessary sanction. Pursuant to the order passed, he is said to have applied for sanction on 17.12.2014 but till date no orders are passed. A memo filed on 14.09.2015 requesting the court to proceed with the case as no orders are passed as the application seeking sanction, was rejected on 29.12.2015. It is to be noted that in 1) **Vineet Narain v. Union of India**³ 2) **Superintendent of Police(CBI) v. Deepak Chowdhary**⁴ 3) **State of Bihar v. P.P.Sharma**⁵, the Apex Court laid down certain guidelines to be followed by the sanctioning authority, which are as under :-

"i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima-facie constitutes the offence.

ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

iii) When an offence alleged to have been committed under the P.C. Act has been investigated by the SPE, the report of the IO is invariably scrutinized by the

³ (1998) 1 SCC 226

⁴ (AIR 1996 SC 196),

⁵ AIR 1991 SC 1260

DIG, IG and thereafter by DG (CBI). Then the matter is further scrutinized by the concerned Law Officers in CBI.

iv) When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinized so many times at such high levels, there will hardly be where the Government would find it difficult to disagree with the request of sanction.

v) The accused person has the liberty to file representations when the matter is pending investigation. When the representations so made have already been considered and the comments of the IO are already before the Competent Authority, there can be no need for any further comments of IO on any further representation.

vi) A representation subsequent to the completion of investigation is not known to law, as the law is well established that the material to be considered by the Competent Authority is the material which was collected during investigation and was placed before the Competent Authority.

vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme court in Vineet Narain's case.

8). After referring to the above judgments and also the guidelines given by the Central Vigilance Commission, the Apex Court in **Subramanian Swamy's case** (one supra), held as under :-

"81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein "due process of law" has been read into by introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:

(a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.

(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution and the prosecuting agency or the private complaint will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit.

9). It has been categorically held that situation for grant of sanction under Section 19 of P.C. Act and Section 197 Cr.P.C., are different. Section 197 concerns a public servant who is alleged to have committed offence while acting or purporting to act in discharge of his official duty, whereas the offences contemplated under the P.C. Act are those which cannot be termed as acts either directly or even purportedly done in discharge of his official duties. It is to be noted that the cases which are referred to earlier by the Apex Court and the issue which fell for consideration before the Apex Court were mainly under Section 19 of the P.C. Act. Though there is a reference to Section 197 Cr.P.C., the Court only dealt with the material difference in the ambit of two provisions. In paragraph 81 of **Subramanian Swamy's case (one supra)**, which has been extracted

above, the Apex Court expressed that Parliament should consider introducing a time limit in Section 19 of the P.C. Act for its working in a reasonable manner. So saying, laid down certain guidelines for the Parliament to consider.

10). From the judgment referred to above, it is clear that there is no law or any amendment to Section 19 of the P.C. Act or any Legislation fixing any time limit for granting sanction. The sanction which is now sought to be required is one under Section 197 Cr.P.C. Granting sanction under Section 19 and under Section 197 Cr.P.C. operate in two different fields. As held by the Apex Court in *Lalu Prasad Yadav's* case sanction under Section 19 is automatic in nature whereas the one under Section 197 Cr.P.C. requires application of mind to the facts in issue. Since application of mind is *sine qua non* for giving sanction under Section 197 Cr.P.C., the sanction under Section 197 Cr.P.C., cannot be deemed to have been granted due to lapse of time. It is true that the acts of authorities in keeping the issue pending for years together is causing great hardship to the complainants, who have a right to prosecute Government Servants for their alleged acts of corruption, fraudulent acts etc. In view of the guidelines laid down by the Apex Court, it is only the Parliament which has to bring out suitable amendments to the Cr.P.C. and P.C. Act. At this stage, the petitioner submits that since 2014 his application for grant of sanction is pending and that a suitable direction need be

issued to the authorities for passing orders on his application. I am afraid, such a request cannot be granted since this Court while exercising its power under Section 397 and 401 Cr.P.C., cannot direct an authority to grant sanction or pass orders on an application made by the petitioner seeking sanction. In fact, it has been brought to the notice of this Court that the petitioner herein preferred W.P.No.23183 of 2016 seeking such a direction which is pending consideration. In view of the above, it is to be held that in the absence of any legislation or amendment till date, though the Apex Court in **Subrahmanian Swamy's case** has directed the Parliament to consider introducing a time limit under Section 19, the request of the petitioner to direct the trial court to take cognizance of the case on the ground that an application seeking sanction is pending since more than 200 days amounts to deemed sanction, cannot be accepted. Hence, I see no grounds to interfere in this Revision.

11). Accordingly, the Criminal Revision Case is dismissed. Miscellaneous Petitions pending if any in this Revision shall stand closed.

C. PRAVEEN KUMAR, J

Date:18.10.2016

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