HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.25903 of 2014

ORDER:

This Writ Petition is filed, under Article 226 of the Constitution of India, to declare that G.O.Ms.No.208, Revenue(Vig.V) Department, dt. 16.5.2014, issued by the first respondent as illegal, arbitrary and unjust and consequently, set aside the proceedings in C.C.No.10 of 2014 on the file of III Additional District and Sessions Judge-cum-Special Judge for ACB Cases, Visakhapatnam, Visakhapatnam District.

The Petitioner is working as Inspector, Prohibition and Excise Police Station, S.Kota, Vizianagaram District. On the allegations that certain irregularities were committed in conducting liquor business during the year 2011, more particularly, in conducting the auction of A.4's (in C.C.No.10 of 2014) Wine Shop in Vizianagaram District, the Anti Corruption Bureau registered a case against him. During the course of investigation, it is brought to the notice of the investigating agency that bribe was paid to the officials of the Excise Department by the liquor syndicate. After completion of investigation, respondent No.2 submitted a final report to the respondent No.1 against A.1 to A.5 for according sanction under Section 19 of the Prevention of Corruption Act, 1988 (for short 'PC Act') arraying the petitioner as Accused No.5. In the said final report, it is alleged that the petitioner, being a public servant, abused his official position, by corrupt and illegal means, conspired with liquor syndicate and received Mamuls as illegal gratification and thereby committed an offences punishable under Sections 7, 13(1) (a) and (d) r/w 13(2) of P.C. Act and under Section 120-B and 34 of Indian Penal Code (for short 'IPC').

While pleading innocence, learned counsel for petitioner mainly questioning the impugned G.O.Ms.No.208, Revenue (Vig.V)

Department, dt. 16.5.14, on the ground that second respondent by an Order dt. 9.10.2012, after considering the material on record, more particularly, by examining the final report and other evidence collected during the course of investigation, came to a conclusion that there was no *prima facie* case to accord sanction for prosecution against the petitioner. First respondent being satisfied with the report submitted by the second respondent that there is no *prima facie* material for prosecution, directed for enquiry by the Tribunal for disciplinary proceedings, as per rules, and he also further directed the concerned authorities to furnish all the relevant records and necessary material before the Tribunal for disciplinary proceedings to conduct an enquiry. Without waiting for the report from the Tribunal, surprisingly, first respondent issued G.O.Ms.No.208, referred above, according sanction for prosecution by exercising power under Section 19(1) (b) of P.C. Act, to prosecute the petitioner for the alleged offences punishable under Sections 7, 13(1) (a) and (d) r/w 13(2) of P.C.Act and under Section 120-B and 34 of I.P.C., without taking into consideration the final report submitted by the A.C.B. But, except referring to the final report and material annexed to it, no fresh material was referred in the G.O., However, passed the said G.O., without any fresh material collected after rejecting the sanction on earlier occasion during pendency of the proceedings before the Tribunal. In pursuance of the said sanction, third respondent filed Charge sheet against the petitioner and three others before III Additional District and Sessions judge-cum-Special Judge for ACB Cases, Visakhapatnam and the Court is going to proceed with the matter. Therefore, the above said G.O issued by the Government sanctioning prosecution against the petitioner is illegal and without any material and therefore, it is liable to be set aside. Hence, he prayed to set aside the above said G.O.

First respondent filed Counter, while admitting about filing of final report by the second respondent, stating that after consideration of the final report, he refused to pass an order of sanction for prosecution, but referred the matter to Tribunal for disciplinary proceedings directing the authorities concerned to produce entire record before it. While the proceedings are pending, first respondent issued the impugned G.O., based on the same final report submitted to first respondent by the second respondent without there being any fresh material collected during pendency of the disciplinary proceedings. However, first respondent recorded satisfaction about the finding of *prima facie* material to proceed against the petitioner and accorded sanction for prosecution and such *prima facie* case is sufficient to sanction prosecution, in view of the principles laid down in **Shiv Raj Singh v. Delhi Administration**[1] **and Raja Singh v. State**[2]. Therefore, the Government Order is not against the purport of the law declared by the Apex Court and it is totally in consonance with the law laid down by the Apex court and there are no grounds to quash the impugned G.O.

During the course of hearing, learned counsel for petitioner would contend that when no fresh material is collected during the pendency of the proceedings before the Tribunal for disciplinary proceedings, according sanction for prosecution against the petitioner for various offences is illegal and arbitrary and it is liable to be set aside. Whereas, the learned Government Pleader for Revenue, while reiterating the contentions urged in the Counter, drawn the attention of this Court to various judgments referred in the counter affidavit and on the strength of those principles laid down in the above judgments, he prayed to dismiss the Writ Petition.

Undisputedly, the respondent No.2 submitted a final report. But, first respondent initially refused to accord sanction for prosecution having dissatisfied about the *prima facie* material against the petitioner to proceed further. However, he referred the matter to the Tribunal, for disciplinary proceedings, while directing respondent Nos. 2 and 3 to place all the records before the Tribunal for disciplinary proceedings. But, during pendency of the proceedings before the Tribunal, the impugned G.O was passed by the first respondent according sanction for prosecution of the petitioner, without any fresh material, and came to a different conclusion than what he arrived earlier, based on the final report submitted by the respondent No.2. In fact, this Court directed the Government Pleader for Revenue, to produce the material, if any, collected after submission of final report by the second respondent and rejection of sanction but no material is produced before the Court to conclude that during further investigation, material was collected and on the strength of the same, first respondent came to conclusion that there is *prima facie* material to proceed further against the petitioner.

First respondent having found that there is no *prima facie* case, referred the matter to Tribunal, for disciplinary proceedings, but, later surprisingly, he found *prima facie* material on the strength of the same final report and accorded sanction. How the first respondent came to a different conclusion than what he arrived earlier was not explained anywhere, but in the counter, first respondent stated that there is *prima facie* material against the petitioner to prosecute him for the alleged offences.

Sanction is necessary to take cognizance of any offence punishable under Sections 7, 13(1) (a) and (d) r/w 13(2) of P.C. Act and under Section 120-B and 34 of Indian Penal Code (for short 'IPC') and mere filing of charge sheet itself is not enough and such sanction can be granted before the Court takes cognizance. But, in the present case, sanction was accorded even prior to filing of charge sheet and thereby completed the mandatory requirements. However, having found no *prima facie* material basing on the final report submitted by the 2nd respondent refused sanction earlier, first respondent ought not to have accorded sanction on the basis of same final report without any further material, unless there is some other material collected during the course of further investigation, if any, and this view is fortified by the Apex Court. As per the decision reported in **State of**

Himachal Pradesh v. Nishant Sareen[3], the Apex Court held in para No.13 of the Judgment as follows:

> " In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials, an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such a course".

Similarly, in **State of Punjab and another v. Mohammed Iqbal Bhatti**[4], the Apex Court expressed the same view in para No.21 of the Judgment is thus:

> " The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise".

In the present case on record, no material was collected after submission of final report by the second respondent, but the first respondent initially did not find any *prima facie* material to proceed further against the petitioner and referred the matter to Tribunal for disciplinary proceedings for further enquiry. But, surprisingly, based on the same material, changed his opinion and concluded that there is *prima facie* material to proceed further against the petitioner. Such change of opinion based on the same material appears to be non-application of mind while granting sanction for prosecution against the petitioner by the first respondent. In the absence of any fresh material that placed before first respondent for re-consideration of request for sanction by the second respondent to prosecute the petitioner for the alleged offences, the sanction accorded by the first respondent is illegal and arbitrary.

Learned counsel for respondent relied on judgments of various courts and drawn the attention of this Court to those judgments. In **Shiv Raj Singh** (1 supra), the Apex Court held that where the order of sanctions shows on the face of it, what were the facts constituting the offence charged and that *prima facie* was made out against the accused and the order further recites that the sanctioning authorities after fully and carefully examining the material before him in regard to the aforesaid allegations in the case, considers that a *prima facie* case is made out against the accused. But this principle has no application for the reason that at the first instance based on the same material, first respondent refused to accord sanction for prosecuting the petitioner as no *prima facie* case is made out against the petitioner.

In **Raja Singh** (2 supra), the **Madras High Court** held that where the sanction order gave the details of the records and statement about perusal of the records before granting sanction and at the top of the sanction order under the caption 'reference' it was mentioned that detailed investigation report and connected records were placed before him and the said authority stated in his order that he, after fully and carefully examining the materials placed before him with regard to the allegations and the circumstances of the case, was satisfied that the accused should be prosecuted in the court of law and such an order could not be said to be invalid.

He also drawn the attention of this Court to a judgment reported in **K. Srinivasulu Vs. Government of A.P**[5], wherein it was held that this Court is of the view that the Government instead of applying mind, issued a specific order though the material discloses a *prima facie* case for prosecution of accused, issued an order directing initiation of departmental enquiry against the accused and this Court quashed the impugned G.O and directed the government shall examine the

Bureau's report for sanction afresh and take a decision whether or not to accord sanction for prosecution.

In **Singh Badhal v. State of Punjab**[6], the Apex Court held that there is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind.

Similarly, learned counsel for respondent drawn the attention of this Court to a judgment reported in **K. Srinivasulu v. The Government of Andhra Pradesh**, **represented by its Principal Secretary, Home (SC.A) Department in W.P.No.14967 of 2009 and Superintendent of Police v. Deepak Chowdhary**[7] **and Dr. Subramanian Swamy v. Dr. Manmohan Singh and another** [8] **and Lalu Prasad Yadav v. State of Bihar**[9], wherein the Apex Court decided the validity of sanction which is an administrative function and the sanctioning authority is required to arrive at *prima facie* satisfaction that the relevant facts as discernible from the final report constitute the offence or not. But in **Subramanian Swamy's case** (8 supra), the Apex Court held that while considering the issue regarding grant or refusal of sanction, the only thing which the competent authority required to see is whether the material placed by the investigating agency *prima facie* discloses the commission of offence and the competent authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true.

There is no quarrel about the law laid down by various courts relied on by the learned counsel for Government Pleader for Revenue. In all the cases, the issue was application of mind while according sanction to prosecute the accused and the conclusion arrived by the sanctioning authority as to existence of *prima facie* material is sufficient to sanction the required permission under law to prosecute the accused, but the present case is totally on different footing than the facts of the decisions relied on by the learned counsel for respondent because the question before this Court is; according sanction on the basis of same material, which was declined on earlier occasion, but without collecting any fresh material and placing the same before the sanctioning authority to change its opinion.

Therefore, the law declared by the Apex Court and various High Courts i.e, Madras and A.P, referred above, relied on by the learned counsel for respondent, have no application to the present facts of the case. However, in view of the judgments referred by the learned counsel for petitioner, the sanction accorded by the first respondent by issuing G.O.Ms.No.208, Revenue (Vig.V) Department, dt. 16.05.2014 against the petitioner is illegal and arbitrary and without application of mind and consequently, the same is liable to be set aside as illegal and arbitrary.

Accordingly, this Writ Petition is allowed, declaring that G.O.Ms.No.208 issued by the first respondent as illegal and arbitrary and consequently, the proceedings in C.C.No.10 of 2014 on the file of III Additional District and Sessions Court-cum-Special Judge for ACB Cases, Visakhapatnam, Visakhapatnam District, are hereby set aside . No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 25-04-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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W.P.No. 25903 of 2014

Dt. 25-04-2016

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[1] 1969 Crl.L.J. 1

[2] 1995 Crl.L.J. 955

[3] (2010) 14 SCC 527

[4] (2009) 17 SCC 92

[5] 2010(2) ALT (Crl) 147 (DB) (AP)

[6] (2007) 1 SCC 1

[7] (1995) 6 SCC 255—AIR 1996 SC 186

[8] 2012 (1) SCC 577

[9] (2006 SC (Crimes) 4 - 419