

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.34918 of 2014

ORDER:

This Writ Petition is filed, under Article 226 of the Constitution of India, by the petitioner, who is a retired Deputy Tahsildar, to declare the impugned Memo No.3893/Vig.VI(2)/2009-6, dt. 24.04.2014, issued by the first respondent ordering for prosecution of the petitioner is contrary to its earlier order issued for dropping of the prosecution against the petitioner in G.O.Ms.No.1330, Revenue (Vigilance-VI) Department, dt. 4.11.2010, Memo No.3893/Vig.VI(2)/2009-3, dt. 1.3.2013 and Memo No.3893/Vig.VI (2)/2009-5, dt. 21.10.2013 respectively as illegal, arbitrary and in violation of Articles 14 and 19 and 21 of Constitution of India and consequently, set aside the impugned Memo dt. 24.04.2014.

The petitioner joined in service as Junior Assistant and thereafter promoted to different categories and finally he was promoted as Deputy Tahsildar in the year 2007 and set up an excellent career in different capacities and rendered unblemished services to the utmost satisfaction of higher authorities. Just 3 months prior to his attaining the age of superannuation, second respondent booked a case against him for disproportionate assets against the petitioner in Crime No.1/RCA-Kur/2009, dt. 16.01.2008, including the properties of his wife, who is having independent source of income and a income tax assessee and his son and daughter, who are working as Software Engineers, acquired with their income besides the agricultural lands possessed by the Petitioner himself through succession even before joining into service.

The petitioner has retired from service on 31.05.09 and made a representation to the first respondent—Government narrating all the facts pointing out illegally in inclusion of the properties of his family members i.e., wife and children, by abusing the process of law. After considering the representation submitted by the petitioner, first respondent was pleased to issue G.O.Ms.No.1330, Revenue (Vigilance-VI) Department, dt. 4.11.2010 as follows:

“ Accordingly, Government hereby dropped further action against J. Venkatarami Reddy, formerly Deputy Tahsildar (LA), O/o the Special Deputy Collector, Srisailem Project, Kurnool District, and now retired from service in the C.No.1/RCA-KUR/09 under Section 13(2) r/w 13 (i) (e) of Prevention of Corruption Act, 1988 (for short ‘PC Act’).”

After issuing of the said G.O., dropping all further proceedings, the District Collector, Kurnool, issued Proceedings Rc.A5.243/2009,

Dt.10.12.2010, permitting the petitioner to receive all pensionary benefits while releasing the properties from attachment. Thus, the proposed proceedings against the petitioner were dropped. But, to his surprise, second respondent/ACB Officials continued their investigation and filed charge sheet, which is registered as C.C.20 of 2011 on the file of ACB Court, Hyderabad, now transferred to ACB Court, Kurnool, which is re-numbered as C.C.No.63 of 2013. Filing of charge sheet by the second respondent against the petitioner is illegal, when all the proceedings initiated against the petitioner were dropped and the petitioner cannot be prosecuted due to change of their opinion that too after his retirement and such prosecution is contrary to the principles laid down by the Apex Court and therefore, he prayed to quash the Memo No.3893/Vig.VI(2)/2009-6, dt. 24.04.2014.

In support of his contentions, he relied upon a decision reported in **State of Himachal Pradesh v. Nishant Sareen**^[1] and **State of Punjab and Another v. Mohammad Iqbal Bhatti**^[2]

Respondent No.1 filed Counter affidavit while admitting about the dropping of proceedings for prosecution against the petitioner. As he was found in possession of disproportionate assets no sanction is required when the employee is retired from service, as per the decision reported in **Chittaranjan Dass v. State of Orissa**^[3] and that the prosecution of the petitioner in C.C.No.20 of 2011 is in accordance with law and finally he prayed to dismiss the Writ Petition.

Undisputedly, a crime was registered against the petitioner for the offence punishable under Sections 13 (2) r/w 13 (1) (e) of Prevention of Corruption Act, 1988. On the representation of the petitioner, the proceedings initiated against him were dropped, by G.O.Ms.No.1330, Revenue (Vigilance-VI) Department, dt. 04.11.2010, and thereafter the District Collector, Kurnool, issued Proceedings vide Rc.A5.243/2009, dt. 10.12.2010, permitting the petitioner to receive all the pensionary benefits and other retirement benefits while releasing the properties of him from attachment. Thus, the undisputed fact is that the proceedings against the petitioner were dropped.

The main contention of Sri K. Rathanga Pani Reddy, learned counsel for petitioner, is that when the proceedings initiated against the petitioner were dropped by issuing a G.O, the question of further proceedings by filing charge sheet before the competent court does not arise and that the alleged offences took place while the petitioner was in service and the sanction is

required to prosecute the petitioner while in service. After passing G.O.Ms.No.1330, dt.4.11.2010, dropping all further proceedings, no fresh material was collected during the course of further investigation, but based on the same material, respondent No.2 filed charge sheet before the competent Court. In the absence of fresh material after dropping all further proceedings, prosecution against the petitioner is illegal and arbitrary, as per the decisions reported in **State of Himachal Pradesh v. Nishant Sareen** (1 supra), wherein 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”.

Learned Government Pleader for Revenue while contending that no sanction is required after the employee retired from service and straight away Court can take cognizance, based on the charge sheet filed by the A.C.B Authorities and placed reliance on a judgment reported in **Chittaranjan Dass's** case (3 supra), wherein the Apex Court held as follows:

“ We are of the opinion that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under PC Act is necessary after the retirement of the public Servant”.

The Apex Court further held as follows:

“ Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in his regard would be action in futility”.

Even according to the law declared by the Apex Court in the above said

judgment that when a sanction for prosecution was rejected, the employee cannot be prosecuted but when no sanction was sought for while the employee was in service grant of sanction is an action in futility i.e., useless. Therefore, this principle will not come to the assistance of the respondent and on this strength of the same, the prosecution of the petitioner for various offences under PC Act is not justifiable. The principle laid down in the above judgment has no application to the present facts of the case.

Learned counsel for respondent relied on the judgments of various courts and drawn the attention of this Court to those judgments. In **Shiv Raj Singh v. Delhi Administration** ^[5], 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 after considering the application submitted by the petitioner, first respondent dropped all further proceedings by issuing the G.O.,

He further relied on a judgment reported in **Raja Singh v. State** ^[6], wherein 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.

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 **Dr. 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.

However, it is not the case of the respondent that sanction was refused to prosecute the petitioner while he was in service. But, the proceedings were dropped against the petitioner by the government based on the representation submitted by him. After dropping all further proceedings, the District Collector, Kurnool, in turn passed an Order permitting the petitioner to receive all the retirement benefits including pension while releasing the properties from attachment.

Learned counsel for petitioner would contend that after dropping all further proceedings, the question of proceeding further against the petitioner by filing a charge sheet before the competent court is in utter disregard of the Government order and thereby such action is irrational and unreasonable and prosecuting the issue further by the second respondent by filing of charge sheet is illegal and against the Government Order No.G.O.Ms.No.1330, Revenue(Vigilance-VI) Department, Dt. 4.11.2010.

Though the principles laid down in the above two judgments relied on by the learned counsel for petitioner is not directly applicable to the present facts of the case. In view of dropping of all further proceedings, the petitioner cannot be prosecuted for the alleged offences punishable under Section 13(2) r/w 13(i) (e) of Prevention of Corruption Act, 1988, in C.C.63 of 2013 basing on the Memo issued by the first respondent. Hence, the action of first respondent is illegal, arbitrary and the same is hereby set aside.

Accordingly, this Writ Petition is allowed, declaring that impugned Memo No.3893/Vig.VI(2)/2009-6, dt. 24.04.2014 issued by first respondent ordering for prosecution of the petitioner as illegal, arbitrary and consequently, the proceedings in C.C.No.63 of 2013 on the file of A.C.B Court, Kurnool, 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. 34918 of 2014

Dt. 25-04-2016

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[\[1\]](#) (2010)14 SCC 527

[\[2\]](#) (2009) 17 SCC 92

[\[3\]](#) (2011) Laws (SC) 75

[\[4\]](#) (2009) 17 SCC 92

[\[5\]](#) 1969 CrLJ.1

[\[6\]](#) 1995 CrLJ.955

[\[7\]](#) (1995) 6 SCC 255—AIR 1996 SC 186

[\[8\]](#) 2012 (1) SCC 577

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