IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CRM M-22976 of 2016

Date of Decision: July 13, 2016

Jagroop Singh

…..Petitioner

Vs.

State of Punjab

…..Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Vikram Jain, Advocate
for the petitioner.

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M.M.S. BEDI, J.

The petitioner has questioned the legality and propriety of the order annexure P-6 dated June 4, 2016 in FIR No. 5 dated February 12, 2015 under Sections 7, 13 (2) of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau Range, Jalandhar, dismissing the application of the petitioner for discharging the accused as the Special Court is not competent to take the cognizance of the offence against the petitioner without a valid sanction of prosecution from the competent authority. He has also sought the quashing of order framing charges on June 4, 2016 vide annexure P-7.

The petitioner had filed an application under Section 207 read with Section 91 Cr.P.C. claiming that the sanction to prosecute the petitioner was accorded by Chairman, Market Committee, Hoshiarpur but at the time of presentation of final report, neither the proceedings wherein the sanction was accorded, nor the law in which the Chairman had power to accord the sanction were supplied to the accused. The Punjab State Agriculture Marketing Committee Service (Punishment and Appeal) Rules, 1988, provides that the appointing authority of the petitioner is the Committee itself and not the Chairman as such in the absence of any regulation, permitting the Chairman to accord sanction, is an act of granting sanction causing prejudice to the accused as such a prayer was made directing the prosecution to supply the documents to the petitioner.

The prosecution agency filed reply raising objections that the application was not maintainable. It was averred in the reply that copies of all the documents relied upon by the prosecution stand supplied to the accused and that the petitioner is not entitled to ask the prosecution to provide the regulation or rules empowering the Chairman to accord the sanction for the prosecution of the petitioner and that the question regarding the validity of the sanction can be considered only at the time of final stage of the case.

The trial Court while considering the said application observed that a supplementary report under Section 173 (8) Cr.P.C. with fresh sanction accorded by the Committee itself for the prosecution of the accused was placed on record. In view of said circumstances, a plea had been raised by the petitioner that prosecution was not competent to submit the supplementary report along with the fresh sanction accorded by the Committee as the right had accrued to the petitioner to be discharged in the absence of valid sanction. In view of the earlier sanction by Chairman being illegal, the petitioner claimed that he had a right to be discharged. The trial Court in view of such circumstances has dismissed the application under Section 207 read with Section 91 Cr.P.C. and opted to frame the charges.

Learned counsel for the petitioner has vehemently contended that the final report filed under Section 173 (2) Cr.P.C. without a valid sanction would not entitle the trial Court to proceed in the case and right had accrued to the petitioner to be discharged for want of sanction by the competent authority. He contended that a specific plea had been raised in his application that--

> "the Constitution Bench of the Hon'ble Supreme Court in case of **Baij Nath Tripathi Vs. The State of Bhopal**, reported as AIR 1957 SC 494 was the case of Sub-Inspector of police, who was prosecuted by the Special Judge, Bhopal. It was held that since no sanction according to law has been given for prosecution of the accused as Special Judge has no jurisdiction to take

> cognizance of the case so that trial was held to be invalid and void ab-initio."

but said plea has not been considered by the trial Court. He has placed reliance on the judgment of **Nanjappa Vs. State of Karnataka**, 2015 (3) RCR (Crl.) 862 in support of his contention that grant of valid sanction is essential for taking cognizance by Court and the question of validity of order of sanction could be raised at any stage. He argued that if the trial proceeds despite the invalid sanction order, the same shall be deemed to be nonest in the eyes of law and it would be for the second trial for the same offence as per the observations made in **Nanjappa's** case (supra).

I have carefully considered the contentions of learned counsel for the petitioner and the observations made in para 15 of the **Nanjappa's** case (supra), which is reproduced as under:-

> "15. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence

of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."

The facts of the present case are that when report under Section 173 (2) Cr.P.C. was filed, it was accompanied by a sanction which as per the counsel for the petitioner was not a valid sanction but before the consideration of charges a supplementary challan under Section 173 (8) Cr.P.C. was filed along with a fresh sanction claiming to be that of competent authority. Whether in said circumstances the petitioner deserves to be discharged, is the short question required to be determined?

The reliance has been placed by counsel for the petitioner on the judgment of **Baij Nath Tripathi Vs. The State of Bhopal**, AIR 1957 SC 494, which was a case of a Sub Inspector of Police who was prosecuted by Special Judge and convicted for offence under Section 161 IPC and Section 5 of the Prevention of Corruption Act, 1947 and sentenced to undergo 9 months RI on each count. It was held that in the said case that since no sanction according to law had been given for prosecution of the accused, the Special Judge had no jurisdiction to take the cognizance of the case and that the trial was invalid and void ab-initio, as such the proceedings were quashed relegating the parties to the position as if no legal charge-sheet had been submitted against the accused. The accused was then tried for the second time before another Special Judge to which prosecution, the accused took exception on the ground that second trial was impermissible in view of Article 20 (2) of the Constitution of India and Section 403 Cr.P.C. (amended Section 300 Cr.P.C.). It was held that the second trial was legally permissible, the first being non-est. The Apex Court while considering the judgment of **Baij Nath Tripathi's** case (supra) had relied upon the judgments of **State of Goa Vs. Babu Thomas**, 2005 (4)) RCR (Crl.) 349 and **State of Karnataka Vs. C. Nagarajaswamy**, 2005 (4) RCR (Crl.) 511 and held that grant of proper sanction by competent authority is a sine qua non for taking cognizance of the offence and it is desirable that the question as regards sanction may be determined at an early stage but even if the cognizance of the offence is taken erroneously and the same comes to the Court's notice at a later stage a finding to that effect is permissible and such a plea can be taken for the first time even before an Appellate Court.

I have carefully gone through the judgment cited by learned counsel for the petitioner in **Nanjappa's** case (supra). In the said case the trial Court had acquitted a Bill Collector of Sabbanakruppe Grama Panchayath, in S.R. Patna Taluk of the State of Karnataka on merits as well as on the ground that the sanction for prosecution had not been granted by the competent authority and was not in accordance with Section 19 of the Prevention of Corruption Act. The order of acquittal passed by the trial Court was set aside by the High Court and the accused was convicted under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act and sentenced to imprisonment for 6 months and 1 year, respectively, besides fine. The Hon'ble Supreme Court taking into consideration the judgments of **Babu Thomas** case (supra) and **Nagarajaswamy's** case (supra) ultimately given a finding as follows:-

> "In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by this Court in Baij Nath Prasad Tripathi's case (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an

> incompetent Court was bound to be invalid and non-est in law."

The ratio of the above said judgment is that in case of sanction having not been given by the competent authority, the accused should have discharged rather than acquitted on merits, as the absence of sanction would imply that the Court was not competent to take cognizance but at the same time the judgment in **Babu Thomas** case (supra) was followed in para 19:--

> "In Babu Thomas (supra) also this Court after holding the order of sanction to be invalid, relegated the parties to a position, where the competent authority could issue a proper order sanctioning prosecution, having regard to the nature of the allegations made against accused in that case."

The Apex Court finally formed an opinion that the accused in **Nanjappa's** case (supra) could have been tried by putting the clock back by giving liberty to the competent authority to issue fresh orders of sanction but in view of the incident being of year 1998 and the accused having retired, the judgment of the High Court was set aside and discretion was used by the Apex Court dispensing the fresh trial of the accused. The operative part of the judgment reads as follows:-

> "20. The High Court has not, in our opinion, correctly appreciated the legal position regarding the need for sanction or the effect of its invalidity. It has simply

glossed over the subject, by holding that the question should have been raised at an earlier stage. The High Court did not, it appears, realise that the issue was not being raised before it for the first time but had been successfully urged before the trial Court.

21. The next question then is whether we should, while allowing this appeal, set aside the order passed by the High Court and permit the launch of a fresh prosecution against the appellant, at this distant point of time. The incident in question occurred on 24th March, 1998. The appellant was, at that point of time, around 38 years old. The appellant is today a senior citizen. Putting the clock back at this stage when the prosecution witnesses themselves may not be available, will in our opinion, serve no purpose. That apart, the trial Court had, even upon appreciation of the evidence, although it was not required to do so, given its finding on the validity of the sanction, and had held that the prosecution case was doubtful, rejecting the prosecution story. It will, therefore, serve no purpose to resume the proceedings over and again. We do not, at any rate, see any compelling reason for directing a fresh trial at this distant point of time in a case of this nature involving a bribe of

> Rs.500/-, for which the appellant has already suffered the ignominy of a trial, conviction and a jail term no matter for a short while. We, accordingly, allow this appeal and set aside the order passed by the High Court."

In view of the above said circumstances, the reliance on the judgment of **Nanjappa's** case (supra) by the counsel for the petitioner is misconceived and the said judgment does not help the petitioner, in any manner especially in view of the fact that the prosecution agency has opted to present a supplementary challan under Section 173 (8) Cr.P.C. along with appropriate sanction given by the Committee whereas earlier sanction questioned by the accused in the present case was invalid having been given only by Chairman.

The present petition deserves to be dismissed in view of the above said circumstances as well as for the another reasons that the provisions of Section 19 (3) of the Prevention of Corruption act will not permit this Court to enter into the controversy that it is a case of any error, omission or irregularity in the sanction required under Section 19 (1) of the Prevention of Corruption Act or failure of justice occasioned on account of said sanction.

This petition is dismissed without prejudice to the rights of the petitioner during trial.

July 13, 2016 (M.M.S.BEDI)
sanjay JUDGE