

CRM-M-41227-2015 (O&M)

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

**CRM-M-41227-2015 (O&M).
Decided on: January 13, 2016.**

Hem Singh Bharana

..... Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

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

**PRESENT Mr.J.S.Bedi, Sr. Advocate with
Mr.Vineet Sehgal, Advocate, for the petitioner.**

Mr.G.S.Salwara, DAG. Haryana.

**Mr.Chanchal K. Singla, Advocate,
for the victims.**

M.M.S. BEDI, J.

Petitioner through the instant petition under Section 482 Cr.P.C., has challenged the order dated 10.11.2015 passed by the Judicial Magistrate First Class, Gurgaon, dismissing the application of the petitioner for the grant of bail under Section 167 (2) Cr.P.C. and the order passed by the Additional Sessions Judge, Gurgaon, dated 30.11.2015, dismissing the revision petition against the above said order.

The short question which has been raised by the counsel for the petitioner is that the petitioner has been challaned for having committed offence under Sections 7 & 10 of the Haryana

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Development and Regulation of Urban Areas Act, 1975, (for short 'the Act') which also falls under the ambit of Sections 420 or 406 IPC, cannot be proceeded against unless and until a sanction under Section 11 of the Act for prosecution of the petitioner is accorded.

Section 11 of the Act reads as follow: -

“No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Director or any officer authorized in writing by him in this behalf.”

So far as the particulars pertaining to the arrest of the petitioner are concerned, he has been arrested on 11.7.2015 and was produced on the same day and remanded to police custody. The petitioner was remanded to judicial custody on 29.7.2015. He remained in judicial custody till 10.9.2015. He was granted concession of interim temporary bail on 9.9.2015. After having been released against interim bail bonds on 10.9.2015, he again surrendered on 16.10.2015. The petitioner moved an application under Section 167 (2) Cr.P.C. on 20.10.2015, but said application was withdrawn on 21.10.2015, with liberty to file a fresh. The date of presentation of challan against the petitioner is 24.10.2015.

Mr.J.S.Bedi, learned Senior Advocate, appearing on behalf of the petitioner has submitted that challan presented on 24.10.2015 was invalid and not permissible under Section 11 of the Act and that challan presented without sanction of the Director would

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be incomplete challan in the eyes of law. Application under Section 167 (2) Cr.P.C. filed on 9.12.2015 would be considered to be in continuation of the earlier application dated 20.10.2015. It has been urged by learned senior counsel appearing on behalf of the petitioner that the release of an accused under Section 167 (2) Cr.P.C. is on account of default on the part of the prosecution agency to present a valid and complete challan. He referred to the provisions of different statutes which require grant of sanction of the State government or any other authority prior to the taking of cognizance or for instituting any criminal proceedings. He sought to draw analogy from the provisions of Section 132, Code of Criminal Procedure, 1973, for protection against prosecution for acts done and under Sections 129, 130 and 131 Cr.P.C., and relied on case law in **Nagraj Vs. State of Mysore, AIR 1964 (SC) 269.** In the said case the Inspector had arrested an accused manufacturing illicit liquor and had also arrested one another person when a group of 20-30 persons rushed at the police party. The mob did not respect the command of the police officials and as such, Sub Inspector fired from his revolver in the air when people pelted stones on him and grappled with him. Two shots went off the revolver and injured two persons. Accused were committed to the Court of Sessions for trial of offence. The Sessions Judge made a reference for quashing of the commitment of the police officials observing that as the Inspector was discharging his duties and he had disbursed unlawful assembly by force as his own

life and that of his subordinates was in jeopardy as such, previous sanction of the Government under Section 197 Cr.P.C. was necessary before taking cognizance of the offence against him. As power of dismissing the Sub Inspector vested with the Government, it was observed that sanction under Section 132 Cr.P.C. was necessary. In the said case High Court held that Sessions Judge was at liberty to reject the complaint holding that it was barred under Section 197 Cr.P.C. Hon'ble the Apex Court had upheld the order passed by the Sessions Judge as well as the High Court holding that Section 132 Cr.P.C. applied and the complaint could not have been instituted without sanction of the Government and the proceedings on complaint so instituted would be void and the Court did not have any jurisdiction to take proceedings. It was held that proceedings in such circumstances may be dropped and complaint rejected. Similar is the ratio of **Ram Kumar Vs. State of Haryana, AIR 1987 (SC) 735, and Smt.Javitri Devi Vs. State, 1971 Crl.L.J. 1340**, in a case under Section 25 of the Arms Act. Following the judgment in **Nagraj (supra)**, the order of framing of charges and continuation of proceedings were quashed on the ground that prior sanction as required under Section 39 of the Arms Act, which bars institution of prosecution, had not been followed.

I have heard the learned counsel for the petitioner at length and appreciated his contention that when challan was presented, it was not accompanied by sanction order and also

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considered the argument that when complaint of District Town Planner (Enforcement) was made in this case on 13.3.2015, it was mentioned therein that sanction of the District Magistrate, Gurgaon, be obtained before putting the challan in the Court as required under Section 11 of the Act.

I have considered the ratio of the judgments cited by the learned counsel for the petitioner and examined its application to the facts of the present case.

State counsel, on the other hand, has relied upon the judgment in **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and another, (2013) 3 Supreme Court Cases, 77,** wherein the challan was presented within the period permissible under law without sanction. Hon'ble the Apex Court held that some failure of the prosecution to obtain sanction to prosecute the accused would not entitle the accused for grant of statutory bail under Section 167 (2) Cr.P.C. in a case of Prevention of Corruption Act. It was held that failure on the part of the prosecution to obtain sanction to prosecute would not entitle the grant of statutory bail as charge sheet had been filed within the period contemplated under Section 167 (2) Cr.P.C.

It may be pointed out here that no doubt sanction under Section 11 of the Act, was not appended along with the challan but the sanction order dated 17.11.2015, as granted by District Magistrate Gurgaon, in the criminal case, against the petitioner, has

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been appended with the supplementary challan which was presented subsequently.

The details of the allegations against the petitioner are not required to be considered in this petition but it is sufficient to mention here that the FIR in the present case was registered at the instance of District Town Planner, Gurgaon, who is not only complainant but also the sanctioning authority. When the sanctioning authority himself is the complainant, the presentation of challan without sanction in the peculiar circumstances of the case would not warrant any benefit on the basis of default.

It is also not out of place to observe here that the challan has been presented under Section 420 and 406 IPC. Though the offence of cheating and misappropriation are anti thesis to each other but commission of offence under any of the said Sections of Indian Penal Code did not require any sanction for instituting prosecution or taking the cognizance. The Courts below have rightly dismissed the application under Section 167 (2) Cr.P.C.

In view of above discussion, this petition is dismissed.

January 13, 2016.
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(M.M.S. BEDI)
JUDGE