

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.3876 of 2014 (O&M)

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Date of decision: 03/6.2016

Nirmal Singh Kahlon

...Petitioner

v.

State of Punjab and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gurminder Singh, Senior Advocate with Mr. R.P.S. Bara,
Advocate for the petitioner.

Mr. P.S. Grewal, Deputy Advocate General, Punjab for the
respondent No.1-State.

Mr. Sukhdeev Singh Sandhu, Advocate for respondent
No.2-C.B.I.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned order dated 9.7.2010 passed by learned Special Judge, C.B.I. Punjab, Patiala, whereby the petitioner along with other accused have been summoned to face trial.

Notice of motion has been issued in this criminal revision petition. Mr. P.S. Grewal, learned Deputy Advocate General, Punjab has put in appearance on behalf of respondent No.1-State and Mr. Sukhdeev Singh Sandhu, learned Advocate has appeared for respondent No.2-C.B.I. and contested this petition.

From the record, I find that in this case challan was presented

under Section 173 Cr.P.C. and the learned Special Judge, C.B.I., Punjab after perusal of the report under Section 173 Cr.P.C. and the accompanying documents found that *prima facie* case is made out to the effect that accused Nirmal Singh Kahlon in his capacity as Minister Rural Development and Panchayats, Punjab along with accused Mandeep Singh, Pardeep Singh Kaleka, C.I Premi, J.P. Singla, Kanwalsher Singh, Peeyush Chander, Puran Chand, Baljit Singh, Jagjit Singh, Ajaib Singh Sooch, P.S. Sodhi, Rakesh Pal, J.S. Kesar and Vikas Sharma entered into conspiracy to select Panchayat Secretaries against monetary consideration; committed forgeries in the various records; used the forged documents as genuine and destroyed the evidence to justify their illegal acts and thus earned huge ill begotten money by abusing their official position as public servants and there are ground for summoning them to stand their trial for commission of offences under Sections 120-B, 465, 468, 471 and 201 IPC and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988.

The learned Special Judge, C.B.I. in the impugned order also held that as Nirmal Singh Kahlon had been Minister of Rural Development and Panchayat, Punjab and his public capacity had changed after becoming Speaker of Punjab Vidhan Sabha, therefore, sanction under Section 19(1) of Prevention of Corruption Act, 1988 is not required in view of ratio of law laid down by the Hon'ble Supreme Court in Prakash Singh Badal v. State of Punjab, 2007(1) R.C.R. (Criminal) 111 (SC), whereas accused C.L. Premi, J.S. Kesar, Vikas Sharma and P.S. Sodhi, who earlier had been public servants, were no more public servants of present and thus, no sanction for

prosecuting them was required. As there was no sanction for prosecuting accused Mandeep Singh, Pardeep Singh Kaleka, J.P. Singla, Kanwalsher Singh, Peeyush Chander, Puran Chand, Baljit Singh, Jagjit Singh, Ajaib Sooch, Rakesh Pal and therefore, accused Nirmal Singh Kahlon, C.L. Premi, J.S. Kesar, Vikas Sharma and P.S. Sodhi, were ordered to be summoned for 17.8.2010. Against this order, present criminal revision petition has been filed.

At the time of arguments, it is argued by learned counsel for the petitioner that the petitioner could not be summoned in the present case as no sanction under Section 197 Cr.P.C. had been obtained by the C.B.I. He further argued that rather the sanction so obtained by the C.B.I. has been declined.

On the other hand, learned counsel for the C.B.I. argued that in the present case no sanction under Section 197 Cr.P.C. is required and the fact that earlier the respondent applied for sanction, which was declined, has no effect in this case. He argued that as per the prosecution version, the allegations have been levelled regarding forgery of the documents and using of forged documents as genuine and destroying the evidence to justify their illegal acts. He argued that the forging of documents, in no way, can be held to be an act done in discharge of official duties. In no way, this act can be held as done by the public servant within the scope and range of his official duties for which protection is required under Section 197 Cr.P.C.

I have heard learned counsel for the petitioner as well as the learned State Counsel and the learned counsel for respondent No.2-C.B.I.

and have gone through the record.

From the record, I find that only disputed point in the present case is whether the sanction under Section 197 Cr.P.C. is required in this case or not. For this purpose, it is to be determined whether the allegations as levelled in the report under Section 173 Cr.P.C. show that the act or omission has been done in performing the official duties or there is reasonable connection in the act or omission during official duties. If the act or omission is done by performing the official duties and wrong decision has been taken with bona-fide intention or even through negligence, it will be treated as having reasonable connection with the performance of the official duties and sanction under Section 197 Cr.P.C. is necessary. Where the allegations of the prosecution are that the act has been done not with bona fide intention but with mala-fide intention or against the law or which amounts to commission of offence, then the sanction under Section 197 Cr.P.C. is not necessary.

In the present case my this view is supported by the law laid down in Criminal Appeal No.190 of 2003, Devinder Singh and others v. State of Punjab through C.B.I., where the Hon'ble Supreme Court has held that if the acts done by the public servant has reasonable connection with a purpose of official duty then Sanction under Section 197 Cr.P.C. is necessary. The Hon'ble Supreme Court also held that the trial Court *prima facie* to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or ,in any other manner, it comes to the notice of the Court that

there was a reasonable nexus of the incident with discharge of official duty, the Court shall re-examine the question of sanction and take decision in accordance with law.

Learned counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in State of Madhya Pradesh v. Sheetla Sahai and others, (2009) 8 SCC 617. In this case also, the Hon'ble Supreme Court has held that decision could be an error of judgment, but there was nothing to suggest that the authorities abused their position or took decision to cause any wrongful gain to themselves or to a third party or for causing wrongful loss to State or to provide pecuniary advantage to contractors without any public interest. From this judgment also, it is clear that if the decision of the public authority is an error in the judgment or wrong order has been passed with bona fide intention in performance of duties then the sanction is necessary and the act or omission should have a reasonableness in action.

On the other hand, learned counsel for respondent No.2-Central Bureau of Investigation placed reliance on the judgment of Hon'ble Supreme Court in Inspector of Police and another v. Battenapatla Venkata Ratnam and another, 2015 (3) R.C.R. (Criminal) 86, in which the Hon'ble Supreme Court has held that accused a public servant charged with offences under Sections 420, 467, 468 and 477-A IPC, sanction for prosecution is not required. It is also held that indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit

evasion of payment of duty and cause loss to the Revenue. I have gone through the law laid down in this judgment which fully applies to the facts of the present case.

Respondent No.2-C.B.I. also placed reliance on the judgment of Ajoy Acharya v. State Bureau of Inv. Against Eco. Offence, 2013 (4) R.C.R. (Cr.) 443, in which the Hon'ble Supreme Court held that corruption case against a public servant when charge-sheet was submitted, accused was not holding public office which he abused. Sanction for prosecution not required before proceeding to prosecute the accused for the offences alleged against him.

In view of the above legal position, I find that in the present case the FIR has been registered for the offences under Sections 465, 468, 471, 120-B and 201 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

As per report under Section 173 Cr.P.C., there are allegations that after entering into conspiracy to select Panchayat Secretaries against monetary consideration committed forgery in various records and used the forged record as genuine and destroyed the evidence to justify their illegal acts and thus earned huge ill-gotten money by abusing their official position as public servant. It is also in the report under Section 173 Cr.P.C. that Hand-writing Expert has confirmed forging of the documents. It is also in the report under Section 173 Cr.P.C. that the investigation further revealed that after the interviews were completed, the Chairmen of the Selection Committees in order to accommodate more candidates again got prepared

the duplicate sets of interview-sheets and got filled-up; columns No.5 to 17 from the assisting staff regarding marks on the basis of testimonials of the candidates. Subsequently, the Chairmen of all the four Selection Committees, allotted marks for the personality test in the relevant column of the second set of interview-sheets so as to include the names of additional candidates, who had been recommended by Shri Nirmal Singh Kahlon, Mandeep Singh, J.S. Kesar, Vikas Sharma besides their own candidates. Joginder Singh (Approver) stated that the interview-sheets were prepared again and again and the ones prepared earlier were destroyed by tearing out.

Keeping in view the allegations in the report under Section 173 Cr.P.C. these acts cannot be held as done in performance of the official duties nor it can be held that these acts are having reasonable connection in performance with the official duties.

Therefore, from the above discussion, the impugned order dated 9.7.2010 passed by learned Special Judge, C.B.I., Punjab, Patiala is correct as per law and no illegality has been committed and the same is upheld.

Finding no merit in the criminal revision petition, the same is dismissed.

Nothing stated herein shall be construed as an expression of opinion on the merits of the case and the learned trial Court shall consider the case on the basis of evidence and material as produced before it.

June 03/, 2016.

(Inderjit Singh)
Judge

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