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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 357/2013

HIRA LAL ASWAL

..... Petitioner

Through: Petitioner in person .

versus

UOI & ORS.

..... Respondents

Through: Mr.Jasmeet Singh, CGSC for R-1, 2
and 4 with Mr.Srivats Kaushal,
Advocate.
Mr.Vikram Dhokalia, Advocate for
R-5 and R-9.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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10.03.2016

1. This writ petition has been filed by the petitioner Hira Lal Aswal aggrieved by the order dated 29.10.2012 passed by competent authority whereby his request for grant of sanction under Section 197 Cr.P.C. against the respondents in Complaint Case No.29/1/12 has been rejected.

2. In the writ petition, the petitioner has alleged that the questions raised by him in this petition are :

'A. Whether the then DGFT (an IAS officer) is above the law or law of the land is above all?

B. Whether giving free and fair views by the civil servants as expected, which examining the proposal is crime?

C. Whether there are two measuring yard sticks i.e. one for the high and mighty officers like the then DGFT and the other for the subordinate officers like the petitioner?

D. Whether the fundamental rights of equality and justice is not violated by shielding and protecting the guilty officials by the authorities and victimizing the petitioner for speaking truth?'

3. The petitioner has claimed that pursuant to the order dated 15.03.2011 passed by this Court in W.P.(Crl.) No.392/2010 (copy annexed as Annexure P3), he has filed a complaint under Section 200 Cr.P.C. against the respondents. Pre-summoning evidence was led and when the case was listed for orders, the learned MM passed the following order:-

'03.12.2012

Present : Complainant in person.

The case is listed for Orders on issuance of process against the respondents. As per record, the present case has originated from a written complaint filed under Section 200 of Cr.P.C. by the complainant against the seven respondents including 5 former Government servants. Upon filing of the complaint, the complainant was examined on Oath under Section 200 of Cr.P.C. on 26.05.2012 & 29.05.2012. During examination on Oath of the complainant, the complainant was directed to obtain sanction under Section 197 of Cr.P.C. against the aforesaid 5 respondents. In pursuance of the said directions, the complainant had approached the Hon'ble Commerce Minister through the Commerce Secretary, Udyog Bhawan, New Delhi vide letter dated 31.08.2012. In response to the said letter, Dr.Mala Iyengar, Director (Vigilance), Department of Commerce, Ministry of Commerce and Industry, Government of India has replied to the complainant vide letter no. C-13011/45/12-Vig and declined the grant of sanction under Section 197 of Cr.P.C.

In view of the aforesaid declining by the Government of India, I find that this Court does not have the jurisdiction to continue with this complaint against respondents No.1 to 5. In respect of the respondents. No. 6 & 7, the complainant does not disclose the commission of any offence under Section the Indian Penal Code, 1860. Consequently, the complaint is dismissed under Section 203 of Cr.P.C.

At the request of the complainant, it is noted that in the aforesaid letter, no detailed reasons have been given by Dr.Mala Iyengar qua the refusal of the Government of India to grant sanction under Section 197 of Cr.P.C. against the respondents No.1 to 5.

File be consigned to the Record Room. A copy of this Order be given dasti to the complainant.'

4. The request of the petitioner for grant of sanction under Section 197 CrPC was considered and rejected by the competent authority. The decision to reject the request for grant of sanction was communicated to the petitioner vide communication No.C-13011/45/12-Vig dated 29.10.2012 (annexure-P1).

5. Aggrieved by the decision of the competent authority refusing to grant sanction against the respondents in Complaint Case No.29/1/12, the petitioner has invoked the writ jurisdiction of this Court with the following prayers:-

(i) to quash and set aside the impugned rejection order No.C-13011/45/12-Vig. Dated 29.10.2012 issued by the Competent Authority denying the approval seeking sanction under Section 197 Cr.P.C. by the Metropolitan Magistrate to enable him to proceed in the matter.

(ii) to initiate contempt proceedings against the guilty officials including the present Commerce Secretary for committing fraud on the pretext of Apex Court's order and contrary to this Court's order passed in this matter and for showing disrespect to the order passed the Apex Court and instructions issued by the DO&PT to follow the laid down guidelines and procedure while examining the matter, as specifically cited by the Trial Court while seeking sanction under Section 197 Cr.P.C.

(iii) to direct respondents No.2 and 3 to conduct a thorough inquiry as to how these officials escaped the punishment and finding truth, take stern action against those officials who protected and shielded them and further take remedial measures to ensure that such incidents do not recur and persons like the petitioner is not harassed on account of giving free and fair views as expected from the civil servants.

(iv) to direct respondent No.4 to get the false affidavit submitted before NCSC for examination and finding merit, get an FIR registered against Sh.K.T.Chako for submitting such false affidavit as provided vide their clarification issued under Dy.Diary No.11326/-5-A dated 7.9.2005.

6. The petitioner, who has argued his case in person assisted by a lady Advocate (appearance not given), has submitted that due to his free and fair opinion expressed by him on the files, he was victimised and targeted resulting into recording of his ACR by his junior officers under whom he never worked. He got the relief in that regard only from the High Court of Delhi. He has further submitted that he filed Complaint Case No.29/1/12 before the Court of learned MM and despite there being sufficient material before the Court for summoning the accused persons, the summoning order could not be passed for want of sanction under Section 197 Cr.P.C. The petitioner has contended that his prayer to accord sanction has been rejected by the non-speaking order, hence the concerned authorities be directed to pass a speaking order giving reasons for rejection of his prayer.

7. Learned counsel for the respondent/UOI has submitted that all the notings and the decisions taken in this regard have been given to the petitioner. The copies of all the notings are annexed with this petition by the petitioner himself. The matter in issue has been examined at length by the

concerned authorities and thereafter decision was taken to reject the request of the petitioner.

8. I have perused the record. Annexure-P1 is the communication by the Director (Vigilance) to the petitioner that his request has been rejected. Annexure-P6 is another communication dated 24.01.2013 by Director (Vigilance) to the petitioner whereby the photocopies of all the file notings pertaining to the RTI application filed by the petitioner have been sent to him which are also annexed with this petition and these notings record the reasons as to why the competent authority did not consider it to be a fit case to grant sanction under Section 197 CrPC and rejected the request of the petitioner.

9. Sanction under Section 197 CrPC deals with the prosecution of public servants for the offences alleged to have been committed while acting or purporting to act in the discharge of their duties and lays down that no Court shall take cognizance of such offence except with the previous sanction either of the Central Government or the State Government, as the case may be.

10. The petitioner has been communicated about the order rejecting his request for grant of sanction. He has also been provided with all the notings which contained the reasons for rejection of his request. Thus, it is not open to the petitioner to argue before this Court at this Stage that the competent authority be directed to pass a speaking order when the reasons have been furnished to him by providing copies of all the notings on his request made under RTI Act.

11. It is settled law that scope of judicial review under Article 226 of the Constitution of India is not akin to that of an Appellate Court as the Court

does not have the expertise to correct the administrative decisions.

12. The power of judicial review is to be exercised for examining the question of legality of a decision. In the case ***Mansukhlal Vithaldas Chauhan vs. State of Gujarat (1997) 7 SCC 622*** the Apex Court, while reiterating the principles laid down in ***Tata Cellular vs. Union of India (1994) 6 SCC 651***, made the following observations :

‘The principle was reiterated in Tata Cellular vs. Union of India in which it was, inter alia laid down that the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality.’

13. The order passed by the competent authority rejecting the prayer of the petitioner for grant of sanction against the respondent in Complaint Case No.29/1/12 does not suffer from any legal infirmity. Hence no direction is required to be issued by this Court in exercise of its writ jurisdiction in respect of prayer (i) made in this petition i.e. to quash and set aside the rejection order No.C-13011/45/12-Vig. Dated 29.10.2012 thereby not granting the sanction under Section 197 Cr.P.C.

14. The other prayers made by the petitioner in this petition are question of facts which cannot be adjudicated in writ jurisdiction.

15. The writ petition is dismissed.

As prayed, copy of the order be given dasti to the petitioner.

PRATIBHA RANI, J.

MARCH 10, 2016

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