

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

CRM No.M-29605 of 2013 (O&M)

Date of Decision: May 25, 2017

Kanwaljit Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Isha Goyal, Advocate
for the petitioner.

Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for setting aside the order dated 20.03.2013 passed in case FIR No.6 dated 12.04.2010 under Sections 7, 13 (2) of the Prevention of Corruption Act, 1988 (for brevity 'PC Act') registered at Police Station Vigilance Bureau, District Amritsar, whereby the trial Court directed framing of charges against the petitioner for commission of offence under Section 7 and 13(2) of the PC Act, despite there being no mandatory sanction under Section 19 of the Act as well as consequential charge-sheet framed by learned trial Court on 20.03.2013.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, FIR has been registered at the instance of complainant Baldev Singh, who stated that his mother died in the year 2006 and after death of his mother, one acre of land was transferred to his name as per Will in the year 2008. The Heritage land around 18 acres has not been divided till date and a common account is running till date. It is further stated that complainant requested the Tehsildar to provide him the details and also requested him to provide his legal opinion in the matter, as he came to know that sons of his uncle Sawinder Singh namely Hardial Singh and Avtar Singh and their mother Kulbir Kaur have sold the land to someone in excess from their share from the common account in the year 2005. The application of the complainant was marked to Registry Clerk by the Tehsildar. The complainant approached the Registry Clerk, who advised him to deposit a fee of ₹500/- first and then to come for getting the copies of the mutations. As per the advice, after 3-4 days, the complainant visited the Registry Clerk and he made excuse that map is not ready. After that complainant visited several times to his office. On 02.04.2010, the complainant again visited the office of Sub Tehsil Tarsika and met Kanwaljit Singh to get the copy of mutation and he told him that he shall not get the copy of the same and he has to grease his palms for the tune of ₹2000/-. The complainant told him that he is poor man and cannot afford ₹2000/-. Then Kanwaljit Singh told the complainant to pay him ₹1000/- and get the copy on Monday i.e. on 12.04.2010. Then the complainant approached Vigilance Office. A raid was conducted and accused was arrested. After necessary investigation,

challan was presented against the petitioner under Sections 7 and 13(2) of the PC Act.

From the record, I find that Annexure P-3 is the letter written by the Deputy Commissioner, Amritsar to Kanwaljit Singh Bal, Senior Clerk, dated 29.08.2009, which is an appreciation letter and in this letter, it has been stated that he has initiated legal action against the companies/persons during his duty hours and even after duty hours and has contributed a lot to increase the beauty of the city. Annexure P-4 is the letter written by the Deputy Commissioner, Amritsar to Senior Superintendent of Police, Vigilance Bureau, Punjab, vide which the detailed order has been passed and it is held that it is clearly established that complainant Baldev Singh entangled Kanwaljit Singh in a false case by disclosing wrong facts and the approval is not accorded because as per records of Joint Sub-Registrar, Tarsika, the action initiated by the Vigilance Bureau was found to be suspicious. Annexure P-5 is another letter dated 27.08.2012, vide which, again Deputy Commissioner, Amritsar refused to accord his approval as no new fact/proof has come into light. Annexure P-7 is the copy of the order dated 20.03.2013 passed by learned Addl. Sessions Judge, Amritsar, vide which the charges were framed against the present petitioner.

Therefore, from the perusal of the record, I find that the prosecution applied before the competent authority i.e. Deputy Commissioner, Amritsar, for the sanction to prosecute the present petitioner, which has been declined twice by the competent authority.

Section 19 of the PC Act provides as under:-

“19. Previous sanction necessary for prosecution.—(1) No

court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction 1[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

Section 2(c) of the PC Act defines public servant as under:-

“(c) “public servant” means—

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;*
- (ii) any person in the service or pay of a local authority;*
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;*
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;*
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;*
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;*
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;*
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;*
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;*
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any*

financial assistance from the Central Government or any State Government, or local or other public authority.”

The perusal of the definition itself shows that the present petitioner, who was a Registry Clerk, whose salary was paid by the Government and was performing public duty, is a public servant and under Section 19(1) (c) of the PC Act and sanction is required for prosecution from the authority, who is competent to remove him from the service.

The Hon'ble Supreme Court in ***Dr.Subramanian Swamy vs. Dr.Manmohan Singh and another, 2012(1) RCR (Criminal) 720***, held that sanction of competent authority is required under Section 19 of the PC Act. In the case in hand, sanction was applied but it was denied twice by the competent authority and a well reasoned order had been passed. Without sanction under Section 19 of the PC Act, present petitioner cannot be tried or charge-sheeted by the Court.

Resultantly, finding merit in the present petition, the same is allowed. The impugned order dated 20.03.2013 is not as per law and the same is set aside. The petitioner stands discharged.

May 25, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No