IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRL. MISC. No.M-34590 OF 2011

DATE OF DECISION : *11th* OCTOBER, 2017

Hardev Singh

…. Petitioner

Versus

State of Punjab & others

…. Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. P.K.S. Phoolka, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. D.A.G. Punjab.

Mr. Ramandeep Singh, Advocate for respondents No.2 & 3.

Mr. Aminder Singh, Advocate for respondent No.5.

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A. B. CHAUDHARI, J.

By way of present petition, the petitioner who is original complainant has put to challenge the action of respondent No.2-Punjab State Corporation Limited, Patiala (hereinafter referred as "Corporation") in refusing to grant sanction against respondent No.5 the Junior Engineer working with the Corporation for sanction to prosecute him under the Prevention of Corruption Act and for quashing letters dated 06.09.2010 and 20.01.2011 Annexures P-3 and P-5 in the matter of case FIR No.4 dated 21.05.2010 for offence under Section 7, 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Bathinda.

In support of the petition the learned counsel for the petitioner-complainant vehemently argued, inviting my attention to Annexures P-3 and P-5, the orders refusing sanction, that respondent No.2-Corporation had absolutely no reason to decline sanction for prosecution of respondent No.5 who was caught in the raid with an amount of ₹8,000/- in the currency notes of denomination of ₹500/- each, pursuant to the demand made by him for the bribe. There is contemporaneous recording of the facts about the first demand and second demand and acceptance of tainted money by him and the raid and procedure about turning of colour of the clothes of respondent No.5 and so on and so forth. According to him perusal of order dated 06.09.2010, declining the sanction, does not show that any doubt has been cast on the raid conducted by the police officers and the witnesses and then the arrest of the petitioner red-handed with the bribe money. On the contrary, in the order refusing sanction possible defences of respondent No.5 have been incorporated that too without any basis. The said order is as vague as it could be. Further the sanctioning authority has also recorded a finding that no motive was proved against respondent No.5 for taking the bribe and that the complainant had planned conspiracy for indicting respondent No.5. All these findings are without any basis. He, therefore, submitted that attempt of the Corporation is to save respondent No.5 from being prosecuted that too in a serious offence of corruption. According to him if such a course of action is allowed the corruption would continue.

Per contra, learned counsel for respondent No.2-Corporation as well as learned counsel for respondent No.5 vehemently opposed the petition and submitted that the petition at the behest of the complainant is not maintainable in the first place and secondly the counsel submitted that to grant or decline of sanction order is the prerogative of the sanctioning authority and the same can not be subject to the judicial review nor the complainant has any right to challenge the said order as he has no *locus* to do so once the investigation is completed and the case is sent for sanction of the authority. In the alternative he contended that in accordance with the decision rendered by the Apex Court in the case of ***Mansukh Lal versus State of Gujarat, 1997(4) RCR (Criminal) 236,*** there is no occasion for the High Court to ask the authority to grant sanction and it is a prerogative of the sanctioning authority to decide whether to grant or not to grant the sanction. He then contended that in the absence of any fresh material, the issue of sanction cannot be re-examined as held in the case of ***State of Himachal Pradesh versus Nishant Sareen, 2011 AIR (SC) 404***. He therefore prayed for dismissal of the petition.

I have heard learned counsel for the rival parties at length and perused the paper book.

At the outset, ***Nishant Sareen (supra)*** would not be applicable because the very first order declining sanction is challenged on its own merits and therefore the question of requirement of fresh material does not arise. However, this court is required to examine whether the order granting sanction is perverse and the same is passed in view to protect a corrupt employee. This Court also has no difficulty in agreeing with the proposition of law that the court cannot direct the sanctioning authority to grant the sanction but it can definitely direct the authority to take into consideration the entire material facts on record as well as the investigation papers and the law.

Now coming to the present case, it is seen that the petitioner farmer lodged a complaint about respondent No.5 demanding the bribe from him. Accordingly the demand was recorded and thereafter the raiding party was constituted, since the amount that was to be paid was ₹8,000/- i.e. sixteen notes of ₹500/- denomination, was arranged by the complainant. Thereafter, a raid was conducted and respondent No.5 was caught red handed and accordingly the contemporaneous record was prepared. The bribe was demanded by respondent No.5 for installing the transformer of electricity department away from the land of the petitioner and for which total amount demanded was ₹12,000/- and ultimately the deal stuck at ₹8,000/-.

All the above facts have been incorporated in the investigation report. Instead of reproducing the entire report I would reproduce the relevant portion from the first information report, which reads thus:

> xxx.. That now yesterday on dated 20.05.2010 in the evening, Sham Lal Sharma J.E., Electricity Department Sangat Mandi along with other employees came to my above mentioned land and was digging earth for installing poles and wires, to whom I showed copy of orders passed by the Court, then above mentioned Sham Lal, J.E. asked me that I do not believe Court orders. If you would have to get installed transformer away from your land, then

I will take Rs.12,000/- as bribe. If you will not give me bribe, then I will install the transformer here itself. xxx… xxx…

xxx… xxx… I the D.S.P. got registered a case against above mentioned Sham Lal, J.E., Electricity Department, Sangat Mandi at police Station Vigilance Bureau, Bathinda and after conducting raid upon above mentioned Sham Lal J.E. as per rules, was arrested at the spot. xxx… xxx…

Then on my demand, in the presence of all the witnesses, abovesaid Sham Lal J.E. after taking out all 16 notes having denomination of Rs.500-500/- total amounting to Rs.8000/- of Indian currency bearing number 5 A.S. 069101, 8 N.A. 299214, 0 A.S. 662010, 3. A.C. 440606, 2. D.W.745623, 8. C.E. 298777, 4. D.F. 905970, 6. M.R. 828378, 7. L.Q. 210315, 8. C.T. 193176, 1. M.M. 310018, 8. C.S. 001724, 3. B.N. 079235, 5. N.D. 350908, 4. H.B. 366926 and 3. A.B. 803451 along with stay order from the front pocket of his shirt of colour maroon having checks, produced the same before me. After handing over these notes to the government witnesses named Sh. Satpal Singla A.E. and Sh. Harjit Singh A.E. and handing over the recovery memo and memo as to referred currency notes and stay order, tallied the numbers of notes

> mentioned in the memo with the numbers of the notes recovered, then they found same and correct. These recovered notes were took in police possession vide separate memo and the signatures of the witnesses were taken on the memo. xxx… xxx…"

Above is the record of the entire incident regarding conduct of raid etc.

Section 20 of the Prevention of Corruption Act (in short, PC Act) reads thus:

> "20. Presumption where public servant accepts gratification other than legal remuneration.—
>
> (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without

consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

The prosecution is entitled to prove the acceptance of bribe as above and once it is proved before the Court, Section 20 of the PC Act raises presumption in law. This being the legal position, the sanctioning authority could not have ignored Section 20 of PC Act. However, the sanction order does not even refer to the facts regarding acceptance of the bribe, conduct of raid and then the accused being caught red handed and thereafter the recovery of money from him nor any explanation was asked from respondent No.5. But then in my opinion, the sanctioning authority has no power to hold that the presumption stood rebbuted as that is the power of the Court. Apart from that, reading of the sanctioning order shows that not even a doubt has been cast on the raid that was conducted and so also on the demand and the acceptance of bribe. But in the order refusing sanction what has been stated is that separate enquiry reports were collected from its own officers by the Corporation but then the facts stated in para (I) to (IV), not even a single enquiry report has been referred from which paras (I) to (IV) have been quoted and what are the enquiry reports. Similar is the case in the last paragraphs of the impugned order which I reproduce below:

> "xxx.. So like this no motive is proved against the employee to take bribe and complainant some well planned conspiracy had implicated the employee.
>
> So after minutely perusing the reports of Chief Engineer perusing the reports of Chief Engineer/Enforcement Punjab State Power Corporation Patiala and Senior Executive Engineer, Distribution Circle Punjab State Power Corporation, Bathinda, in my view that sanction should not be given in this case."

Perusal of the above paragraphs show that the sanctioning authority says that no motive is proved as against the complainant but the motive was to shift the installation of transformer away from the field of the complainant. On the contrary, the sanctioning authority has drawn a conclusion that the complainant made a well planed conspiracy to indict the respondent No.5. That is totally baseless and nothing but the figment of imagination on the part of the sanctioning authority. In the absence of legal and proper evidence, the sanctioning authority does not have any business to charge the petitioner with conspiracy merely because the sanctioning authority is interested in saving its corrupt employee from being prosecuted. That is an act of irresponsibility for which it must pay compensatory cost. It is also seen that sanctioning authority has stated that it has perused the reports of Chief Engineer and other officers but with what report it was satisfied is not mentioned nor specified therein.

To sum up, it is clear case of respondent No.2-Corporation making desperate attempt to save its corrupt employee. This case demonstrates how the provision for sanction is being abused by the government departments. This must be deprecated.

Since this Court has held that this Court cannot direct the sanctioning authority to grant sanction, I think the following order would subserve the interest of justice:

ORDER

(i) CRL. MISC. No.M-34590 OF 2011 is allowed.

(ii) Impugned orders dated 06.09.2010 and 20.01.2011 (Annexures P-3 and P-5) are quashed and set aside.

(iii) The sanctioning authority is directed to take decision on the issue of sanction within a period of six weeks from today and communicate the same to the petitioner-complainant immediately thereafter by registered post AD.

(iv) Respondent No.2-Corporation shall identify the Deputy Chief Engineer (sanctioning authority) mentioned in Annexures P-3 and P-5 and recover compensatory cost in the sum of ₹20,000 from his salary/pension and pay the same to the petitioner within eight weeks from today; and shall also proceed against him departmentally; and submit compliance report to this Court within six months from today.

11th **OCTOBER, 2017** **(A. B. CHAUDHARI)**
'raj' **JUDGE**

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No.