

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39763 of 2017

Date of Decision: 01.11.2017

M.S. Walia

...Petitioner

VERSUS

Central Bureau of Investigation

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.S. Bhalla, Advocate
for the petitioner.

SURINDER GUPTA, J.(Oral)

The petitioner is facing trial for offence punishable under Section 13 of Prevention of Corruption Act in case bearing FIR No. 10 dated 03.02.1988, registered at Police Station North, Chandigarh.

2. It is submitted by learned counsel for the petitioner and learned counsel for CBI, who has appeared in connected petition that the case is fixed for final arguments on 02.11.2017.

3. In this petition petitioner has challenged order dated 11.10.2017 (Annexure P-23) passed by learned Special Judge, CBI Court on application of petitioner challenging the validity of sanction for his prosecution. Observations of learned trial Court while disposing of application of the petitioner are reproduced as follows:-

“Heard. From the perusal of the file, it reveals that vide order dated 02.11.2010 predecessor of this Court had decided the application for deciding the validity of sanction granted for prosecution of the applicant-accused before proceeding further for trial of the case by holding that the sanction order Ex. PW108/1 has been accorded by the competent sanctioning authority on due appreciation facts and circumstances of the

case and material produced before it. Against the said order, the accused approached the Hon'ble High Court by filing Revision Petition No. CRM-34307-M of 2010 for quashing of sanction order dated 9.12.1999 and order dated 2.11.2010. The Hon'ble High Court while dismissing the said petition vide order dated 2.12.2010 has held that "Even otherwise, no injustice has been caused in as much as the decision to prosecute the petitioner was taken in the Full Court meeting of the High Court. Recommendation to grant sanction was sent to the Government. Even though, the recommendation is binding as well settled by various pronouncements of the Apex Court, the said sanction has been granted by the Governor, who is the proper authority by passing a detailed order. A perusal of the same shows due application of mind. Thus, no injustice has been caused. The arguments of the petitioner have been dealt by the Special Court. Nothing wrong has been pointed out in the said order." In view of above, the present petition is dismissed being devoid of merit" and upheld the order dated 2.11.2010 passed by this Court. Against the order dated 2.12.2010 passed by the Hon'ble High Court the applicant-accused approached the Hon'ble Supreme Court where the SLP (Criminal) No. 26 of 2011 was disposed of vide order dated 8.2.2011 by passing following order:-

"Learned Senior counsel appearing for the petitioner seeks permission to withdraw the special leave petition with liberty to agitate the same before the trial Court. Permission is granted. The special leave petition is dismissed as withdrawn accordingly."

Thereafter, the applicant-accused again on 26.4.2011 moved application before this Court for fixing a date for hearing the applicant-accused on question of validity of sanction for prosecution stated to be in compliance of the order dated 8.2.2011 passed by Hon'ble Supreme Court in the SLP (Crl.) No. 26 of 2011 and trial Court dismissed the same vide order dated 16.8.2011 by passing the detail order. Then

the applicant-accused approached the Hon'ble High Court against the order dated 16.8.2011 by filing petition Criminal Miscellaneous No. 31268 of 2011 wherein the Hon'ble High Court vide order dated 8.12.2011 found no reason to interfere as the matter already stood adjudicated. Applicant-accused approached the Hon'ble Supreme Court by filing Special Leave to Appeal (Crl.) No. 3919 of 2012 and vide order dated 30.3.2016, the Hon'ble supreme Court has passed the following order:-

“We did not find any legal and valid ground for interference. The Special Leave Petition is dismissed. However, it will still be opened for the accused-petitioner to argue the issue of sanction at the appropriate stage of the trial against him.”

Thereafter, applicant-accused filed the present application on 25.5.2017 in the Court when the case was fixed for final arguments. Thus, in view of the above-discussion the point of sanction shall be considered during final arguments. The written arguments submitted by the applicant-accused on the point of validity of sanction shall be considered during the final arguments. Hence, the present application dated 25.05.2017 is dismissed.”

4. Though, the above observations are self-speaking still on perusal of paper-book, it appears that the petitioner earlier moved an application challenging sanction of prosecution, which was declined. He filed CRM-M-34307-2010 challenging that order of the trial Court, which was declined by this Court with the observations as follows:-

“In the present case also, the sanction order was challenged after the prosecution evidence is almost complete. The case is at the fag end. Even otherwise, no injustice has been caused in as much as the decision to prosecute the petitioner was taken in the Full Court meeting of the High Court. Recommendation to grant sanction was sent to the

Government. Even though, the recommendation is binding as well as settled by various pronouncements of the Apex Court, the said sanction has been granted by the Governor, who is the proper authority by passing a detailed order. A perusal of the same shows due application of mind. Thus, no injustice has been caused. The arguments of the petitioner have been dealt with by the Special Court. Nothing wrong has been pointed out in the said order.”

5. Against above order, the petitioner filed Special Leave Petition before the Hon'ble Apex Court, which was withdrawn with liberty to agitate the same before the trial Court.

6. The petitioner again filed application challenging the grant of sanction for his prosecution but the same was declined. He again filed the petition CRM-M-31268-2011 challenging order of the trial Court, which was dismissed by the coordinate Bench of this Court with the observations as follows:-

“Learned counsel for the petitioner has fairly contended that after dismissal of the petition by this Court by vide order (Annexure P-16) no further material has come on record to set aside the order (Annexure P-12) whereby, sanction was accorded to the prosecution to prosecute the petitioner by the State Government.”

7. The petitioner again approached the Hon'ble Apex Court and his application for Special Leave to Appeal was dismissed with the observations that *“We do not find any legal or valid ground for interference. The special leave petition is dismissed.”* The Hon'ble Apex Court, however, gave liberty to the petitioner to argue the issue of sanction at the appropriate stage of trial. The petitioner has been raking up the same issue time and again. The case is ripe for final disposal and learned trial

Court categorically observed that the point of sanction shall be considered during the final arguments and written arguments submitted by applicant-accused on the point of validity of sanction shall be considered during the final arguments.

8. Keeping in view facts as discussed above, I find no reason or legal ground to interfere with order of learned trial court. This petition has no merit and the same is dismissed.

November 01, 2017

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No