

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225

CWP No.19935 of 2013 (O&M)

Date of Decision : 06.03.2017

Narata Ram Saini

..... Petitioner

Versus

Haryana State Federation of Consumer's Co-operative
Wholesale Stores Ltd. (CONFED)

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Namit Kumar, Advocate
for the petitioner.

Mr. Aseem Rai, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the order Annexure P-6 on the ground that the sanction for his prosecution was granted without noticing the fact that in departmental proceedings which was lodged on the same set of allegations he was exonerated.

On the other hand, learned counsel for the respondent-CONFED has argued that an FIR was lodged against the petitioner and other persons and in fact it has been clarified by the Supreme Court in *Punjab State Warehousing Corp. Vs. Bhushan Chander and Anr., Criminal Appeal No.159 of 2016 decided on 29.06.2016*, wherein it has been held as follows :-

“26. In Md. Hadi Raja v. State of Bihar the question arose whether Section 197 CrPC was applicable for prosecuting officers of the public sector undertakings or the Government

companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the submissions and eventually held that the protection by way of sanction under Section 197 CrPC is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are 'State' within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government.

28. In view of the aforesaid analysis, the irresistible conclusion is that the respondents are not entitled to have the protective umbrella of Section 197 CrPC and, therefore, the High Court has erred in setting aside the conviction and sentence on the ground that the trial is vitiated in the absence of sanction. Consequently, we allow the appeal and set aside the judgment and order passed by the High Court and remit the matter to the High Court to decide the revision petition in accordance with law.”

He has further relied upon the judgment of the Supreme Court in the matter of ***Mohd. Hadi Raja Vs. State of Bihar and another, AIR 1998 SC 1945***, wherein it has been held as follows :-

“Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the government and such instrumentality discharges the duties and functions which the State intends to do as indicated in Ajay Hasia's case (supra), such instrumentality or agency is none the less juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality

or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, Such action cannot be construed, as of rule, an action of the government by its employees or by an authority empowered by the government. It may be indicated here that it is not necessary that persons falling under any of the descriptions given in various clauses under [Section 21](#) of IPC need to be appointed by the government. If such person falls under any of the descriptions as contained in various clauses of [Section 21](#) of the Indian penal code, such person must be held to be a public servant. Explanation 1 of [Section 21](#) indicates that persons falling under any of the above descriptions are public servants whether appointed by the government or not Explanation 2 indicates that wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to held that situation. Sub clause (b) of clause twelve of [section 21](#) expressly makes the officers of local authority and corporation established by or under a Central, Provincial or [State Act](#) or a government owned company as defined in [Section 617](#) of the Companies Act 1956, public servants. But protection under [section 197](#) Cr. P.C. is not available to a public servant unless other condition indicated in that Section are fulfilled It will be appropriate to notice that whenever there was felt need to include other functionaries within the definition of 'public servant', they have been declared to be 'public servants' under several special and local acts. If the legislature had intended to include officers of instrumentality or agency for bringing such officers under the protective umbrella of [Section 197](#) Cr. P. C. It would have done so expressly.

Therefore, it will not be just and proper to bring such persons within the ambit of [Section 197](#) by liberally construing the provisions of [Section 197](#). Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by Court.

Therefore, in our considered opinion, the protection by way of sanction under [Section 197](#) of the Code of Criminal procedure is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are 'State ' within the meaning of [Article 12](#) of the Constitution on account of deep and pervasive control of the government. The appeals are disposed of accordingly.”

Learned counsel for the petitioner has not been able to cite any contrary judgment.

In the circumstances, it has to be held that no sanction was at all required for further prosecution of the petitioner and the order can at best be taken to be surplusage.

Ordered accordingly. Petition stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

06.03.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No