

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

**CWP No.21112 of 2016
Date of decision:12.05.2017**

Rohit Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan Singh, Advocate
for the petitioner.

Mr. Pawan Girdhar, Advocate
for respondent No.2.

Mr. Ashit Malik, Advocate
for respondent No.3.

Mr. Namit Khurana, Advocate
for respondent No.4.

AMIT RAWAL J.

The petitioner has knocked the door of this Court seeking quashing of the order dated 19.07.2016 (Annexure P-5) passed by respondent No.2 – Managing Director, UHBVNL, refusing the sanction for prosecution of respondent No.3 in respect of FIR No.5 dated 03.07.2012 registered under Sections 7, 8, 13 of Prevention of Corruption Act, 1988 (hereinafter referred to as “1988 Act”) and Sections 420, 467, 468, 471 and 120-B of Indian Penal Code at Police Station State Vigilance Bureau Panchkula against respondents No.3 and 4.

Mr. Karan Singh, learned counsel appearing on behalf of the petitioner submitted that petitioner being complainant has locus standi to espouse the cause as he is the son of consumer and in this regard, he has relied upon paragraph 23 of the judgment of the Hon'ble Supreme Court rendered in **Surinderjit Singh Mand and another vs. State of Punjab and another 2016(3) RCR (Criminal) 654** to contend that no doubt, granting of sanction can only be assailed by the accused by taking recourse to judicial review but the same can similarly be assailed by the complainant or the prosecution.

On merits, he submitted that the petitioner moved complaint to the State Vigilance Bureau, Yamunanagar alleging that he is agriculturist and his mother namely, Smt. Salindro Devi, who owns 4½ acres of agricultural land in village Rattan Garh in the year 2007 moved an application for installation of transformer in the name of his mother in self finance scheme and in this regard, deposited a sum of ₹62,500/-. Thereafter, the complainant met respondent No.3-Balwan Singh, SDO Radaur in connection with his work for installation of transformer, who demanded a sum of ₹50,000/- as illegal gratification to be handed over to his contractor Shish Pal Mehta, who had been assigned work of installation of electricity transformer in that division. The petitioner though refused to do the same but wanted the parties to be caught red handed. Resultantly, while receiving a bribe of ₹50,000/-, on instructions of respondent No.3- SDO, contractor – respondent No.4 was caught. Even the complainant also recorded telephone

conversation in the CD and produced the same. Resultantly, the information was sent to the P.S. Vigilance Bureau, Panchkula and FIR was registered against respondents No.3 and 4 under 1988 Act (Annexure P-1).

The initial investigation was conducted by Het Ram, DSP, who recorded the statement of complainant, shadow witness and real contractor, Vijay Kumar Arora. However, private respondents were released on regular bail. After realizing that the private respondents were interfering in the investigation, an application was moved for transferring the investigating officer. Resultantly, the investigation was entrusted to Sh.Sibas Kavi Raj, Superintendent of Police, State Vigilance Bureau, Rohtak Division, Rohtak, even the Special Investigation Team was also constituted. However, the respondents managed the aforementioned investigation and after formal investigation, un-traced report dated 30.01.2013 (Annexure P-2) was submitted in the Court of Additional District and Sessions Judge, Yamuna Nagar which was not accepted by the Court vide order dated 03.06.2013 and ordered for further investigation.

Thereafter, further investigation was carried out but yet again a cancellation report (Annexure P-3) was submitted and the trial Court, vide order dated 05.03.2016 (Annexure P-4), while rejecting the cancellation report directed the prosecution to apply for sanction of public prosecution accused SDO Balwan and to submit further report on 22.04.2016. He has drawn the attention of this Court to the operative part of the order dated 05.03.2016 which reads as under:-

“The prosecution is now directed to apply for sanction of

public servant accused SDO Balwant Singh and to submit further report on 22.04.2016.

Before parting with this order, it is made clear that nothing expressed herein would be construed to be an expression on the merits of the case to affect rights of any of the parties at the time of final adjudication of case nor this order would be construed to give directions to sanctioning authority to accord sanction as sanctioning authority is to apply its his mind, in accordance with law. Papers be tagged with main case file.”

Resultantly, in pursuance to the order dated 05.03.2016 (Annexure P-4), an application was moved for seeking sanction which has erroneously been rejected, vide impugned order dated 19.07.2016 (Annexure P-5) and the same is not sustainable in the eyes of law on the ground that the Managing Director had ignored the fact that the conversation recorded in the mobile reveals that respondent no.3 called the complainant along with money at his office and was caught red handed along with respondent no.4 by the Vigilance Team. The granting of sanction to prosecute an employee is only a safeguard provided by the legislation so that the employees can work without any fear of false or malicious prosecution but the aforementioned safeguard has been used as a shield by the accused employee in order to save his skin.

He submitted that as per the provisions of Section 19 of 1988 Act, sanction for prosecution is only required in case of a person, who is

employed in connection with the affairs of the State and is not removable from his office save by or with the sanction of the State Government. The expression “*is not removable from his office save by or with the sanction of the State Government*” carry a significant intent meaning and are the most essential ingredients to invoke the protection as per the provisions of Section 19, *ibid*. There was no occasion for obtaining the sanction under Section 19 of 1988 Act.

He also submitted that as per the provisions of Section 197 of Cr.P.C., such a public servant must have committed offence while acting or purporting to act as public servant. Such a public servant can be said to act or purporting to act in the discharge of his official duties only if his act is such as to lie within the scope of his official duties.

He further submitted that the impugned order reveals that the authorities have passed the orders as if they were appellate authority or judicial authority. In support of his contention, relied upon the following case laws:-

- i) **Ram Kishan Fauji vs. State of Haryana and others**
2017(2) RCR (Criminal) 356 to contend that as per the provisions of Sections 19, 7, 8 and 13 of 1988 Act, on the basis of the complaint in a corruption case against public servant, in enquiry conducted by Lokayukta found that public servant having committed criminal offence and launching of prosecution on the basis of enquiry, sanction shall be deemed to

have been granted.

ii) **Puran Singh (ASI) vs. Surjit Singh and others 2014(4) RCR (Criminal) 395 and Amarjit Singh (Patwari) vs. State of Punjab 2012(3) RCR (Criminal) 79** to contend that as per the provisions of Section 19(1) (a) and (b) read in conjunction with provisions of Section 197 Cr.P.C., sanction for prosecution under Section 19 of 1988 Act, is not required and is only required in case of a person who is employed in connection with the affairs of State as the punishing authority of ASI was Superintendent of Police and not the State Government and therefore, the sanction under Section 19 of 1988 Act was not required to prosecute the petitioner.

He also relied upon the ratio decidendi culled out by this Court in **Davinder Singh vs. State of Punjab and others 2013(1) RCR (Criminal) 897** to contend that in a matter of post of Panchayat Secretary in the Department of Rural Development and Panchayats, whereby, the accused had challenged the order granting sanction for prosecution in terms of Section 19 of 1988 Act and Section 197 Cr.P.C on the premise that investigating agency was required to take sanction from the competent authority before prosecuting any Government employee and the same cannot be permitted to become a shield to protect corrupt officials and thus, urged this Court for setting aside the order under challenge.

Per contra, Mr. Pawan Girdhar, learned counsel appearing on

behalf of respondent No.2 submitted that mother of the petitioner had applied for a new tubewell connection of 5BHP load on 14.1.2007 in the office of Operative Sub Division, UHBVN, Radaur, whereby, a demand notice dated 19.3.2009 was issued. In compliance thereof, a sum of ₹20,000/- was deposited on 30.03.2009. Resultantly, junior engineer visited the site and prepared the estimate for the job vide estimate No.RDR/R-210/2008-09 of ₹60,446/-. She also deposited a sum of ₹7,000/- in addition to the above said amount on 16.04.2009. However, during the interregnum, the policy of UHBVNL was changed, vide circular No.U-10/2011 dated 16.05.2011, whereby, the concerned SDO issued a notice to the consumer for opting new policy, vide memo No.577 dated 08.06.2011 which was opted and consumer deposited a sum of ₹20,000/- as security and ₹7,000/- per span. Resultantly, the concerned Junior Engineer again visited the site and prepared the necessary estimate of LT line 2 span, vide estimate No.RDR/R-119/2011-12 of ₹31,156/-, a sum of ₹7,000/- for additional one span was also deposited.

He further submitted that before the connection could be released, again policy of UHBVNL vide circular No.U-16/2012 dated 11.06.2012 was amended, and demand notice dated 27.06.2012 for release of tubewell connection under the Self Execution Scheme was issued. The consumer submitted the relevant documents and accordingly, new estimate was prepared. According to which, the consumer had deposited a sum of ₹1,31,093/- and also supervision charges along with transformer costs of

₹64,400/- in the office of Operation of Sub Division, UHBVNL, Radaur. However, the team comprising of Vigilance Officials and others conducted a raid in the office of SDO, Operation Sub Division Radaur on 03.07.2012, whereas, release order is dated 02.07.2012.

Mr. Girdhar, further submitted that the writ petition is not maintainable in the absence of the challenge to the order dated 05.03.2016 (Annexure P-4). In support of his contention, relied upon the judgment of the Hon'ble Supreme Court rendered in **State of Punjab and another vs. Mohammed Iqbal Bhatti 2009(17) Supreme Court Cases 92** , wherein, the matter with regard to review of the order granting sanction has been held not maintainable, in essence, change of Government, order of refusal to grant sanction cannot be reviewed. It was a case where an FIR was lodged under Sections 7 and 13(2) of 1988 Act and the competent authority refused to grant sanction for prosecution. However, the matter was again placed before the competent authority to review the earlier order as the validity of an order of sanction would depend upon application of mind on the part of the authority concerned and consideration of all the material facts and evidence collected during investigation and placed before it.

The order refusing to grant sanction is perfectly legal and justified as it has dealt in extenso all the aspects because it would be too farcical exercise in case sanction is granted, much less the prosecution would not be able to prove the allegations made in the complaint.

Mr. Ashit Malik, learned counsel appearing on behalf of

respondent No.3 submitted that answering respondent has a unblemished clean record whereas the petitioner/complainant is a litigious person having litigations pending against numerous persons. No such amount was recovered from the answering respondent as it stood substantiated during the police investigation that money was recovered from the contractor, in essence, there is no material/evidence on record to show the involvement of his client. The order of installation of transformer had already been issued on 02.07.2012, whereas, the alleged raid was conducted on 03.07.2012.

He further submitted that prior sanction from the competent authority to prosecute a public servant is mandatory under Section 197 Cr.P.C and also under Section 19 of 1988 Act. In support of his contention, he has relied upon the judgment rendered in **Mansukhlal Vithaldas Chauhan vs. State of Gujarat 1997 AIR (SC) 3400** to contend that the Government has discretion to grant or not to grant sanction under Section 6. The sanctioning authority has to apply its own mind and then pass an order. The competent authority has not only the right to consider the question of grant of sanction but the order must reflect the application of mind, thus, the instant case falls within the ambit of aforementioned judgment.

He also relied upon paragraph 15 of the judgment rendered in **Nanjappa vs. State of Karnataka 2015(3) RCR(Criminal) 862 or 2015 (AIR) SC 3060** to contend that legal procedure regarding the importance of sanction under Section 19 of 1988 Act, is very clear. In fact, the statue

forbids taking of cognizance by the Court against a public servant.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Karan, learned counsel for the petitioner by holding as far as maintainability of writ petition is concerned, would lie in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Surinderjit Singh Mand's case (supra)**, therefore, the objection of the private respondents qua maintainability of the writ petition, is hereby, rejected.

Before I could give my reasons, I deem it appropriate to extract the relevant provisions of Section 19 of 1988 Act which read 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,—

(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.

On perusal of the aforementioned provisions, particularly Section 19(c) prescribes that no Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15, in case of any other person of the authority competent to remove him from his office. Concededly, the order of installation of towers and electricity connection was passed on 02.07.2012, whereas, the alleged raid was of 03.07.2012. The competent authority while rejecting the sanction has discussed in extenso the facts collected by the Investigating Team in respect of an FIR. The conversation between the contractor and SDO recorded by the complainant in CD to prove the alleged connivance qua acceptance and demand of bribe nowhere revealed the demand or acceptance of bribe. In fact, there is no specific demand of bribe and thus, the ingredient of demand was missing. It was also found in conversation that Balwan Singh, SDO respondent No.3 had not demanded any kind of bribe and the complainant himself is a witness. Even work of the complainant was never pending with respondent No.3.

The argument of Mr. Karan Singh with regard to launching of prosecution without grant of sanction pales into insignificance as there is no challenge to the order dated 05.03.2016, relevant portion of which has been extracted above. Had though the aforementioned order been challenged or set aside, there would have been some force.

The law on the grant of sanction as referred above by the counsel for the parties is no longer *res integra*. In paragraph 7 of the judgment rendered by the Hon'ble Supreme Court in *State of Punjab's* case (supra), it has been held that the validity of an order of sanction would

depend upon application of mind on the part of the authority concerned and the material placed before it, which must be examined and considered. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. This is what has been held in the aforementioned judgment rendered in **Mansukhlal Vithaldas Chauhan's case (supra)**, in essence, it has been held that the authority concerned cannot also pass an order of sanction subject to ratification of a higher authority. For the sake of brevity, paragraph 7 of the judgment reads as under:-

“7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a

statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See Mansukhlal vithaldas [Chauhan v. State of Gujarat](#)]. The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority.”

No doubt, power of this Court under Article 226 of the Constitution of India has very wide and can issue direction and writs in the nature mentioned therein for enforcement of any of the rights conferred by Part III of Constitution of India or for any other purpose, in essence, person other than claiming violation of fundamental rights can also approach the High Court seeking a relief thereunder. The aforementioned view is derived from the ratio decidendi culled out by the Five Bench Judges constituted under provisions of Article 145(5) of Constitution of India of the Hon'ble Supreme Court in **Calcutta Gas Company (Proprietary) Ltd. vs. State of W.B and others 1962 AIR (SC) 1044**, in essence, I would have definitely embarked upon the aforementioned path by looking into the allegations made in the written statement and as well as the findings rendered in the impugned order, in case of challenge to the order dated 5.3.2016 but the fact remains that once the competent authority while refusing to grant sanction had taken into consideration all possible evidence and found that cognizance by the Court, much less prosecution launched would not entail

into any logical end, in my view, would be a farcical exercise.

It has been held by the Hon'ble Supreme Court in Ram Kishan Fauji's case (supra) that recommendation of the Lakayukta for registration of FIR and in respect of matter under the provisions of 1988 Act, the criminal proceedings have been quashed under Article 226 of the Constitution of India. The question of law raised in the aforementioned judgment was whether LPA against the order of Single Judge passing an order under Article 226 in respect of the matters having criminal trappings, would not lie.

From the cumulative reading of the aforementioned findings referred herein-above, I am of the view that no ground is made out for interference in the impugned order dated 19.07.2016 (Annexure P-5) which is perfectly legal and justified, much less cannot be said to be fallacious or bad in law.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 12, 2017

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No