

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(CR) No. 302 of 2017**Judgment reserved on : 30.07.2018Judgment delivered on : 07.08.2018

Gorelal Thakur, S/o. Late Ramadhin Singh Thakur, Aged About 57 Years,
R/o. Shivesh Sadan, In Front Of Balaji Temple, Main Road Kota, Raipur
Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through the Additional Director General Of Police, Economic Offences Wing / Anti Corruption Bureau, Raipur, Chhattisgarh.
2. Anil Bakshi, S/o. Late Gopal Prasad Bakshi, Currently Posted As Inspector, Special Economic Offences Wing / Anti Corruption Bureau, Raipur, Chhattisgarh.
3. Superintendent Of Police, State Economic Offences Wing / Anti Corruption Bureau, Raipur, Chhattisgarh.
4. Managing Director, Chhattisgarh Tourism Board, Udyog Bhawan, Second Floor, Ring Road - 1, Telibandha, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Kanak Tiwari, Sr. Advocate with Ms. Richa Shukla, Mr. Faiz Kazi & Mr. Apurv Goyal, Advocates for the Petitioner.
For State/Respondents No.1 & 3	:	Mr. Ashish Shukla, Dy. A.G.
For Respondent No.2	:	Mr. Aman Tamboli, Advocate appears on behalf of Mr. R.S.Marhas, Advocate
For Respondent No.4	:	Mr. Animesh Tiwari, Advocate

Hon'ble Shri Justice Goutam Bhaduri**CAV ORDER****07.08.2018**

1. Challenge in this petition is to quash the criminal prosecution lodged against the petitioner in Special Sessions Trial Case No.174/2007 pending before the Court below. The prayer is made that investigation conducted by Town Inspector, authorized by the Superintendent of Police on 14.01.2016 be quashed and it is prayed further the sanction for prosecution by order Annexure P-4

dated 17.02.2017 be quashed on the ground that it is without jurisdiction. Further, it has also been prayed that the properties of the wife of the petitioner which has been illegally clubbed with the properties of the petitioner be segregated by fresh investigation to evaluate the property of petitioner.

2. Mr. Kanak Tiwrai, learned Sr. Counsel assisted by Ms. Richa Shukla, Mr. Faiz Kazi & Mr. Apurv Goyal would submit that the petitioner had initially worked from 13.12.1985 to. 24.08.1994 at Chhattisgarh State Industrial Development Corporation, thereafter, his services were transfered to Chhattisgarh Tourism Board in the year 1994 wherein he worked there up till 2014 and subsequently was absorbed and thereafter he was sent on deputation to Indira Gandhi Agriculture University in the year 2014 till the prosecution was lodged. It is contended that the allegation of committing the offence under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (*for short "P.C. Act"*). The check period has been shown from 01.01.1985 to January, 2016 and during this period the petitioner had worked in three Departments. It is stated that in December, 1985 the petitioner was not in job and the reference was made to Annexure P-15 and it was stated that from January, 1985 when the petitioner was private person not in any job his property could not have been taken into consideration to prosecute under Section 13(2) & 13(1) (e) of the P.C. Act.
3. Learned counsel further referred to Section 17 of the P.C. Act and stated that the offence referred to in clause (e) of sub-section (1) of section 13 could not be investigated without the order of a police officer not below the rank of a Superintendent of Police and it is stated in this case the same was not adhered too. It is

contended that investigation has been defined under Section 157 of Cr.P.C. Referring to document, it is stated that the First Information Report in this case was lodged by one Anil Bakshi and he was authorized by a letter dated 14.01.2016 though it was received at a later date therefore the investigation from very inception is without jurisdiction. It is stated that the police officer being the complainant too he could not have investigated the offence. The reliance was placed in case of ***Megha Singh v. State of Haryana***¹, ***Bhagwan Singh v. The State of Rajasthan***², ***State Represented By Inspector OF Police, Vigilance & Anti-Corruption, Tiruchirapalli, T.N. v. V.Jayapaul***³, ***State By Inspector Of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu v. Rajangam***⁴, and counsel would submit that the person who is a complainant cannot investigate the offence as it causes prejudice. The submission is also made on the basis of ***State of Haryana & Others v. Bhajan Lal & Others***⁵ and would submit that the Superintendent of Police here in this case has asked for registration of the case without application of mind as it would show in the charge sheet that only on presumption the investigation started. It is further stated that the Superintendent of Police could not have directed to register the FIR as it can only be done by the Station Incharge under Section 154 of Cr.P.C. The submission was made that Anil Bakshi having been authorized by the Superintendent of Police, the same was received by Anil Bakshi on 14.01.2016 as per Annexure P-2, therefore, prior to that date investigation could not have been carried out by him and further continued.

1 (1996) 11 SCC 709

2 (1976) 1 SCC 15

3 (2004) 5 SCC 223

4 (2010) 15 SCC 369

5 1992 Supp (1) SCC 335

4. Referring to the sanction for prosecution given by the document dated 24.05.2016 issued by the Law Department, counsel would submit that the Law Department could not have asked for sanction as it had no role to play as the petitioner was not the servant of the State but he was serving under the Tourism Board. It is further stated that the Chhattisgarh Tourism Board in turn by a letter dated 04.07.2016 has refused to grant sanction under Section 19 of the P.C.Act by Annexure P-23 and therefore since the sanction could not have been granted by the State, the prosecution in this case could not be continued. The reference was also made to the letter dated 19.10.2016 issued by the State Economic Offences Wing / Anti Corruption Bureau and it is contended that ADGP has tried to interfere in the investigation and created pressure to grant sanction, therefore, as per the law laid down in case of ***Kedar Narayan Parida & Others v. State of Orissa & Another***⁶ pressure could not have been exerted for like nature. Also the reference was made to Annexure P-31 dated 20.06.2017 wherein the M.D. Tourism Board has asked for certain clarification with respect to the representation made by petitioner explaining the nature of the property held by the petitioner, therefore, it is stated whether the property was/is accumulative mass whether exclusively belonged to the petitioner or not, to clarify a preliminary enquiry should have been conducted as per the law laid down in case of ***P. Sirajuddin, ETC v. State of Madras, ETC***⁷, ***Ashok Tshering Bhutia v. State of Sikkim***⁸ & ***Lalita Kumari v. Government of Uttar Pradesh & Others***⁹. It is contended that to calculate the fact whether disproportionate

6 (2009) 9 SCC 538

7 1970 (1) SCC 595

8 (2011) 4 SCC 402

9 (2014) 2 SCC 1

property otherwise than in known source of income existed or not should have been primarily enquired. It is contended that property belonged to all the family members were included so as to calculate the property of this petitioner. It is stated that the sanction which was granted by the Tourism Board in respect of the property prior to joining of the petitioner to Tourism Board is also suffers with defect as Tourism Board could not have accorded sanction for prosecution for a property, if any acquired prior to the joining of services of Board, therefore, the entire prosecution is bad and need to be quashed.

5. Per contra, learned State counsel opposes the argument and would submit that the sanction in this case was granted by the Chhattigarh Tourism Board on 17.02.2017 and the petitioner was working there only before filing of the charge sheet, therefore, the sanction was validly granted under Section 19(1)(c) of the P.C. Act. It is stated that the sanction could not be questioned unless and until prejudice have been caused to the petitioner. It is stated that after the FIR was lodged on 14.01.2016, the premises of the petitioner was searched and thereafter different properties were found. The properties as against the income derived were found to be 173% more to the known source of income of petitioner and unless it is proved that the error on sanction has resulted any failure of justice, the same cannot be put to question.
6. Perused the documents filed along with the petition. Perusal of the record would show that the Superintendent of Police, ACB, Chhattisgarh, by a letter dated 14.01.2016 in exercise of power vested in him under Section 17 of the P.C.Act allowed one Anil Bakshi, T.I. to investigate the offence. The communication was made on 14.01.2016 wherein the FIR was registered on that date

by one Laurence Khes, Incharge of EOW/ACB, Raipur and the offence under Section 13(2) read with Section 13(1)(e) of the P.C. Act was registered on the basis of primary information received. The FIR would reveal that the petitioner was suspected in hold of amassed property over and above the known source of income and description of the properties were also given. Consequently, the offence under Section 13(2) read with Section 13(1)(e) of the P.C. Act was registered. At this stage, the submission that authorising investigation was received on the basis of the marking made on the letter dated 14.01.2016 (Annexure P-2), it cannot be accepted that investigation started prior to authorisation by Superintendent of Police. It is only presumption. The facts what prevailed at the relevant time is a matter of evidence along with fact as to what was the date on which actual investigation started. Prima facie the documents shows that the order was granted by the Superintendent of Police to investigate the offence against the petitioner on 14.01.2016 thereafter the FIR was registered.

7. With respect to the submission that complainant could not have investigated, the Supreme Court in case of ***Surender alias Kala v. State of Haryana***¹⁰ has clarified the application of said proposition. In that case the earlier ratio of Supreme Court was considered in case of ***Megha Singh***¹, the parent case on the ratio of law. The ratio as is laid down prescribes when the investigation officer was not alone involved in the investigation then the fact that the investigation was carried out by the complainant himself and as such faulty cannot be applied. In the instant case, as on today it is not clear that whether investigation was solely carried out by the single investigation officer or not. It is still to come on record at the

¹⁰ AIR 2016 SC 508

time of the raid and investigation whether the complainant police officer was alone or other police officers were also present in the scene. Subsequent investigation how it passed through hands of different officers is a matter of evidence. Consequently, the submission made by the petitioner will not come to his rescue at this stage.

8. Furthermore, the submission made on the basis of ***Bhajan Lal***⁵ that the Superintendent of Police should not have given order for investigation unless the reasonable reason to suspect exists, cannot be applied at this stage. The ratio laid down in the aforesaid case is that the statutory right to investigate a cognizable offence is subject to the fulfillment of a pre-requisite condition, contemplated in Section 157(1) of Cr.P.C. It is laid down that the condition is that the officer in charge of a police station before proceeding to investigate the facts and circumstances of the case should have “reason to suspect” the commission of an offence which he is empowered to investigate under Section 156 of Cr.P.C. At this stage, this Court considering the documents filed with the charge sheet cannot sit on appellate over such power exercised by the concerned investigation officer, who thought it proper to arrive at a finding that there was sufficient reason to believe to investigate the complaint. Reading of the FIR and the sanction order would reflect that the information was received that the petitioner was holding sufficient properties over and above his known sources of income and has accumulated mass and particular of properties at different places were shown. Therefore, the “reason to suspect” prima facie existed to investigate the offence.

9. The principles as has been in case of ***State of Madhya Pradesh v. Surendra Kori***¹¹, the Court reaffirmed the law laid down in case of ***Eicher Tractor Limited & Others v. Harihar Singh & Another***¹² and held as under :

“13.....8.....When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.”

In case of ***Eicher Tractor Limited & Others v. Harihar Singh & Another***, the Court reiterated the view taken in ***R.P. Kapur v. State of Punjab***¹³ as under :

“8.....When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.”

In ***Dinesh Dutt Joshi v. State of Rajasthan***¹⁴, while explaining the object and purpose of Section 482 Cr.P.C, the Supreme Court had observed as under :

"6.....The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the

11 (2012) 10 SCC 155

12 (2008) 16 SCC 763

13 AIR 1960 SC 866

14 (2001) 8 SCC 570

section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

Further the Supreme Court in case of **CBI v. A. Ravishankar Prasad**¹⁵ relied upon by learned counsel for the CBI, referring to several earlier decisions on the point, including *R.P. Kapur*; *State of Haryana v. Bhajan Lal*, *Janata Dal v. H.S. Chowdhary*, *B.S. Joshi*; *Nikhil Merchant*, etc. has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. It has been further observed that the inherent powers should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material.

10. Further submission is that the petitioner was on deputation on the Tourism Board and the M.D. of Tourism Board had asked the prosecution to enquire certain facts on the basis of the document supplied by the petitioner cannot be appreciated at this stage. Whether it was necessary to the wisdom of investigation officer or not can be established only during evidence. The FIR would show that it is the case of the prosecution that he petitioner was holding properties over and above 173% to the known sources of income. As has been held in **State of Bihar & Others v. Rajmangal Ram**¹⁶ that to evaluate the sanction order whether it was passed

15 (2009) 6 SCC 351

16 (2014) 11 SCC 388

mechanically or without considering the relevant facts on records, the appropriate stage for reaching the said conclusion would have been only after the evidence in the cases had been led on the issue in question.

11. Further, likewise in case of ***R. Venkatkrishnan v. Central Bureau of Investigation***¹⁷ it was laid down that even if a person who is not competent to pass the order of sanction, the prosecution would still rely on the said sanction under Section 19(3) of the P.C. Act as the petitioner has to show there has been a failure of justice in a particular case or there is error in the orders.
12. It may happen in a particular case that a person may accumulate mass in a Department 'A' over and above his source of income and thereafter on transfer or absorption to Department 'B', he do not accumulate any property over and above his source of income. Then in such situation, will it be the Department A, which could alone grant sanction for prosecution ? The answer certainly would be in negative. To clarify the situation relevant part of Section 19 of the P.C. Act which deals with part of sanction are reproduced here under :

19. Previous sanction necessary for prosecution – (1)

No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 & 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

¹⁷ (2009) 11 SCC 737

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.

Reading of aforesaid section makes it clear that where a public servant is working lastly the authority competent to remove him from the office can also be the authority who can grant a sanction for prosecution.

13. It has been contended by the respondent No.4, Chhattisgarh Tourism Board, that the petitioner was absorbed in the Department of Tourism on 19.02.2008. The document prima facie has been also placed on record. In the light of aforesaid absorption letter if the provisions of Section 19(1)(c) are looked into it lays down that sanction can be given for prosecution under the P.C. Act when the authority was competent to remove and the sanction can be granted under Section 19 of the P.C. Act. The petitioner having absorbed in the Tourism Department, the petitioner could have been removed by the authority i.e. Managing Director. This can also be looked from the other angle. If a particular person passes through different departments on deputation or otherwise and during such tenure of job in different department accumulates properties more than from his known source of income, which gives rise to the setting into motion, Section 13(2) of the P.C. Act then in such case it would be too technical to hold that no department could allow the sanction under Section 19 of the P.C. Act as different tenure was at different department were spent and the department could not ascertain during which tenure the properties were gathered. In such analogy the entire object of P.C. Act would be defeated.

14. The argument that DIG investigation had exerted pressure by the letter to the Tourism Board to grant a sanction cannot be inferred only by reference to a communication made. It is a matter of evidence and whether such facts existed on the particular time is to be evaluated and judged from the deposition of witness which is yet to be led before the Court. At this stage, it will be too premature to hold that there was no application of mind before sanction was granted for prosecution under the P.C.Act. The petitioner shall still be at liberty to strengthen his submission after the evidence is led and the cross-examination of the witnesses are made before the Court below. At this stage, the petition is premature and based only on the presumption, therefore, I am not inclined to quash the criminal proceedings initiated against the petitioner.
15. Accordingly, the petition being devoid of merit is liable to be and is hereby dismissed.

Ashok

Sd/-
(Goutam Bhaduri)
Judge