

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

CRM No.M-36390 of 2016 (O&M)
Date of Decision: November 22, 2018

Jaspal Singh

...Petitioner

VERSUS

The State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Aashna Gill, Advocate for
Mr.Aman Pal, Advocate
for the petitioner.

Mr.Pawan Sharda, Sr.DAG, Punjab
for the respondent-State.

Mr.Surinder Garg, Advocate
for the complainant

INDERJIT SINGH, J.

CRM No.41195 of 2018

This application is allowed, subject to all just exceptions.

Annexure P-7 is taken on record.

CRM No.M-36390 of 2016

Petitioner has filed this petition under Section 482 Cr.P.C. for
setting aside order dated 07.09.2016 passed by learned Addl. Sessions
Judge, Faridkot, whereby, the application filed by the petitioner for

discharging/dropping the charges under Sections 7 read with Section 13(2)

of the Prevention of Corruption Act (for brevity 'the PC Act'), on the basis of non-sanction under Section 19 of the PC Act, has been dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for the complainant appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that challan has been presented against the petitioner under Sections 7 and 13(2) of the PC Act. An application was filed by the present petitioner for discharging/dropping the charges for want of sanction under Section 19 of the PC Act. Learned Addl. Sessions Judge, Faridkot, vide impugned order dated 07.09.2016 dismissed the application by relying upon the law laid down by this Court in ***Amarjit Singh (Patwari) vs. State of Punjab, 2012(3) RCR (Criminal) 79.***

It is admitted at the time of arguments that no sanction has been granted in the present case to prosecute by the competent authority against the present petitioner. There is also no dispute that petitioner being Halqa Kanungo, is a public servant and this fact is also not contested by any of the party that petitioner is a public servant. Section 19 of the PC Act provides as under:-

Section 19 of the PC Act provides 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 1[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(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.”

It is settled law that sanction to prosecute a public servant under the said Act is mandatory requisite. Learned counsel for the petitioner has relied upon the law laid down by the Hon'ble Supreme Court in ***Surinderjit Singh Mand & Anr. vs. State of Punjab & Anr., 2016(3)***

of the PC Act is mandatory before the Court takes any cognizance. Admittedly, in the present case, no such sanction has been granted. As there is no sanction to prosecute present petitioner, therefore, the Court cannot take cognizance. The law laid down by the Hon'ble Supreme Court in *Surinder Singh Mand's case (supra)* will apply in the present case.

Therefore, finding merit in the present petition, the same is allowed. The application filed by the petitioner for discharging/dropping the charges is accepted and he stands discharged of the charges framed against him.

November 22, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No