

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

**CRM No.M-6930 of 2015 (O&M)
Date of Decision: September 21, 2018**

Amrit Lal

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Satwant Mehta, Advocate
for the petitioner.

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

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing of FIR No.02 dated 09.02.2010 under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 (for brevity 'PC Act') registered at Police Station Vigilance Bureau, Amritsar, impugned order dated 29.08.2014 passed by learned Addl. Sessions Judge, Amritsar, charge-sheet dated 29.08.2014 along with all consequential proceedings arising therefrom.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

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

From the record, I find that in the present case, FIR has been registered on the statement of complainant Davinder Singh Bhullar, who stated that in the year 2009, he had purchased 16 marls of land at Gehri Mandi, Amritsar and after constructing the building on the same, he gave it to Axis Bank on lease. He went to the office of Municipal Council, Jandiala, where Surinder Kumar, S.O. and Amrit Lal, Clerk, Inspector House Tax met him and told that they can demolish the building or can recover the house tax and told the complainant that if he wanted to save himself, he has to pay ₹50,000/- as bribe and the matter will be settled. It is further stated in the FIR that Amrit Lal agreed to take ₹20,000/- as bribe and rest amount in the first week of next month and told the complainant that he will talk to SO himself. Accused was arrested. After necessary investigation, challan was presented against the petitioner under Sections 7 and 13(2) of the PC Act.

The perusal of the record shows that SSP, Vigilance Bureau, Amritsar wrote a letter to Executive Officer, Municipal Council, Jandiala for sanction, who vide letter dated 23.08.2012 refused the sanction for prosecution according to Resolution No.36/12 dated 21.07.2012 of the Municipal Council in the meeting of the house. Again, SSP Vigilance Bureau, Amritsar, wrote a letter to the Executive Officer requesting him to pass speaking order and the Executive Officer, Jandiala Guru, vide letter dated 04.02.2013 refused the sanction for prosecution by passing speaking order.

Therefore, from the perusal of the record, I find that the prosecution applied before the competent authority i.e. Executive Officer,

Municipal Council, Jandiala Guru, for the sanction to prosecute the present

petitioner, which has been declined twice by the competent authority.

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.”

Section 2(c) of the PC Act defines public servant as under:-

“(c) “public servant” means—

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;*
- (ii) any person in the service or pay of a local authority;*
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;*
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;*
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;*
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;*
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;*
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;*
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any*

University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.”

The perusal of the definition itself shows that the present petitioner, who was a Clerk, whose salary was paid by the Government and was performing public duty, is a public servant and under Section 19(1) (c) of the PC Act, sanction is required for prosecution from the authority, who is competent to remove him from the service.

The Hon'ble Supreme Court in ***Dr.Subramanian Swamy vs. Dr.Manmohan Singh and another, 2012(1) RCR (Criminal) 720***, held that sanction of competent authority is required under Section 19 of the PC Act. In the case in hand, sanction was applied but it was denied twice by the competent authority and a well reasoned order had been passed. Without sanction under Section 19 of the PC Act, present petitioner cannot be tried or charge-sheeted by the Court.

Resultantly, finding merit in the present petition, the same is allowed. FIR No.02 dated 09.02.2010 under Sections 7, 13(2) of the Prevention of Corruption Act, registered at Police Station Vigilance Bureau, Amritsar, along with all subsequent proceedings are hereby quashed qua the petitioner.

September 21, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No