

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

**CRR No.1764 of 2016 (O&M)
Date of Decision: September 27, 2018**

Rajender Singh

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sumit Sangwan, Advocate
for the petitioner.

Mr.B.S.Virk, DAG, Haryana
for the respondent-State.

Mr.A.P.S.Deol, Senior Advocate with
Mr.Himmat Singh Deol, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner against respondents State of Haryana and Inderjeet Malik, challenging the order dated 04.04.2016 passed by learned Addl. Sessions Judge (Vacation Judge), Bhiwani, vide which application moved by the police/investigating agency for discharge of accused-respondent was allowed in case FIR No.32 dated 31.07.2013 under Sections 7, 13 and 49 of the Prevention of Corruption Act (for brevity 'PC Act'), registered at Police Station SVB, Hisar.

The brief facts of the case as noted down in the impugned order passed by learned Addl. Sessions Judge (Vacation Judge), Bhiwani, are as

“2. The brief facts of the prosecution case, relevant for the disposal of this discharge application are that on dated 31.07.2013, Sh. Phool Singh, Deputy Superintendent of Police, State Vigilance Bureau Haryana, Hissar was present in the office situated at Bhiwani. At the relevant time, complainant Rajender Singh son of Sardara Ram, caste Jaat, resident of village Ruddol, Tehsil Charkhi Dadri, District Bhiwani (Haryana) submitted before him one complaint alleging therein that he used to sell sprinklers of Nimbus Pipe Limited, Jaipur and Nagarjun Fertilizer Chemical Limited, Hyderabad, in the capacity of their dealer. He runs his business in the name and style of M/s Vijayaranya Fruit Plant Nursery. His firms are associated with the office of District Horticulture Officer, Bhiwani. During the year 2012, he had installed sprinklers in the fields of landowners. His 12/13 files were pending in the office of District Horticulture Officer, Bhiwani. Shri Inderjeet Singh demanded money of ₹20,000/- for releasing the subsidy of the files pertaining to him. He did not want to pay the bribe. Deputy Superintendent of Police made his endorsement on the complaint of complainant and forwarded the same to police station State Vigilance Bureau, Hissar through EHC Sanjay Kumar No.282 for registration of the case under Section 7 of the Act.

3. Thereafter, DSP Shri Phool Singh organized a raiding party comprising of HC Manoj Kumar No. 760 Narnaul, HC Naveen Kumar No.2050 Gurgaon, EHC Sukhwinder No.451 Narnaul, constable Bhagwan Dass No.1388 Hissar. And DSP himself headed the above stated organized police party. They reached the office of Deputy Commissioner, Bhiwani in a government vehicle being driven by Shiv Kumar. Deputy Commissioner appointed Sh. Ramanand Naib Tehsildar as Duty Magistrate. The police party reached the office of Naib Tehsildar, Bhiwani and joined him in the raiding party. Complainant and Sandeep-shadow witness were introduced to the Duty Magistrate. Complainant Rajender Singh delivered 20 currency notes of the denomination of 1000/- rupee each to DSP Sh. Phool Singh. On those currency notes shadow witness and Naib Tehsildar appended their initials. Then Phenolphthalein Powder was applied on the currency notes. The complainant Rajender was not carrying any material in his possession. Then, those currency notes of 20,000/- rupees each denomination of 1000/- were delivered to the complainant. The complainant was directed to handover/delivered the amount to the accused Inderjeet Singh Malik and shadow witness was directed to give the fix signal after the delivery of the bribe amount. The raiding party reached the office of District Horticulture Officer. The DSP followed the complainant and shadow witness. DSP hide himself and waited for the signal of the shadow witness. On the receipt of the signal of the shadow witness the raiding party

reached the office of District Horticulture Officer and apprehended one person sitting in the room of Assistant Project Officer. On interrogation, said person disclosed his name as Inderjeet Singh. From one register, which was lying on the table currency notes bearing initials of DSP and Duty Magistrate, were recovered. These currency notes were same which had been delivered to the complainant for delivery to the accused Inderjeet Singh Malik. The register in which the currency notes were found lying had been recovered and it was paged marked. Accused was asked to dip his hands in the water containing sodium carbonate. The colour of the solution became light pink. All the packets and parcels were taken into the police possession vide separate memos and the same were sealed with the seal of SVB(H). Thereafter, the seal after use was handed over to Duty Magistrate.

4. Accused was interrogated in respect of the file pertaining to complainant's firm M/s Vijayaranya Fruit Plant Nursery. One file pertaining to Smt. Mati @ Bhati wife of Ratan Singh, resident of village Bilawal was produced before the Deputy Superintendent of Police. The same was also taken into police possession. The statements of the witnesses were recorded. After due inquiries, accused Inderjeet Singh Malik, was arrested on 01.08.2013 as per rules/procedure.

5. Accused Inderjeet Singh Malik, was produced before the Court on 01.08.2013. On 14.08.2013, his remand papers were entrusted to the Court of Dr. Abdul Majid, the then learned Additional Sessions Judge, Bhiwani. Accused was admitted to concession of bail by the Court of Dr. Abdul Majid, the then learned Additional Sessions Judge, Bhiwani vide order dated 10.09.2013."

As per impugned order, on 06.01.2015, the then learned Addl. Sessions Judge, Bhiwani directed Inspector Gian Singh, SVB Unit, Bhiwani to make the position clear in respect of the filing of the challan. In response of the said order, on 05.08.2015, the application for the discharge of the accused along with the untraced (final report) under Section 173 Cr.P.C. was submitted in the Court. Investigating agency prepared the final report on 23.08.2013 against the accused. Thereafter, the case was sent to the competent authority for seeking sanction for the prosecution of the accused under the provisions of Corruption Act. The Additional Chief Secretary

Haryana vide office memo dated 24.02.2015 declined for the prosecution of the accused. The police along with discharge application submitted the final report under Section 173 Cr.P.C. in the shape of untraced report coupled with all the documents and evidence collected during the course of the investigation. Notice of the application was issued to the complainant, who submitted his reply under his signatures through his counsel. Learned Public Prosecutor along with counsel for the complainant contended that the accused had retired from the services on 31.01.2015. Additional Chief Secretary, declined for his prosecution on 24.02.2015. The matter was again taken up for reconsideration before the competent authority. However, competent authority vide order dated 24.05.2015 again declined the permission for the prosecution of the accused. Learned Public Prosecutor argued before the Court below that permission for the prosecution of the accused under the provision of Section 19 of the Act is not necessary after his retirement. The Court may take the cognizance and chargesheet the accused, in view of the contents mentioned in the final report under Section 173 Cr.P.C. along with its complete documents.

On the other hand, case of the accused before the Court below was that the investigating agency applied for seeking the permission for prosecution of the accused under Section 19 when the accused was in service. Competent authority applied its brain twice and refused to give permission for the prosecution of the accused. Both the orders of the competent authority dated 24.02.2015 and 14.05.2015 are detailed and speaking one. Learned counsel for the accused further contended that investigating agency failed to prove on the record that accused is prima

the tainted currency was ever effected from the possession of the accused. There is no material evidence that at the relevant time any matter was pending with the accused. The accused was not apprehended from his office room. The regular departmental inquiry was conducted and he was not found involved in accepting the bribe. Permission for the arrest of accused was sought for some Satpal Saini. The office of Deputy Commissioner was also kept in dark at the time of getting the Duty Magistrate appointed.

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

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

From the record, I find that it is settled law that when the public servant retires from the service, then sanction is not required by the Court for taking cognizance against that retired public servant. Even, if it is taken that sanction was applied when the public servant was in service, even then, it is of no consequence. Sanction is required only for the purpose of taking cognizance by the Court and when the public servant has retired, then no sanction is required under Section 19 of the PC Act. Though, sanction is otherwise required under Section 197 Cr.P.C. if the case is under IPC but in the present case, the case FIR is under provisions of PC Act.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***State of Punjab vs. Labh Singh, 2015(1) CCC 501 (SC)***, in which it is held as under:-

“7. In the present case the public servants in question had retired on 13.12.1999 and 30.04.2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13.09.2000 and later on 24.09.2003. The public

*servants having retired from service there was no occasion to consider grant of sanction under section 19 of the POC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the POC Act is not required if the public servant had already retired on the date of cognizance by the court. In **S.A. Venkataraman v. State 1958 SCR 1040** while construing section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with section 19(1) of the POC Act, this court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in **S.A. Venkataraman** (supra) was adopted by this court in **C.R. Bansi v. State of Maharashtra 1970(3) SCC 537** and in **Kalicharan Mahapatra v. State of Orissa 1998(2) Apex Court Journal 271 (S.C.) : 1998(6) SCC 411** and by the Constitution Bench of this court in **K. Veeraswamy v. Union of India 1977 (3) SCC 440**. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the POC Act was concerned.”*

It is held by the Hon'ble Apex Court that sanction for prosecution of retired public servant is not required for the offence under the PC Act, if public servant is already retired on the date of cognizance by the Court. It is also held that however, sanction is required for the offences under IPC even if public servant had retired. The above-cited judgment fully applies to the facts of the case in hand.

On the other hand, learned counsel for accused-respondent No.2 also cited judgment passed by the Hon'ble Supreme Court in case **State of M.P. vs. Ram Manohar Pandey, 2015(1) RCR (Criminal) 252**. I have gone through the above-cited judgment and find that, nowhere Hon'ble Apex Court has held that sanction is required for retired public servant for taking cognizance by the Court, therefore, the above-cited judgment does not apply in the present case.

Now, coming to the findings by learned Addl. Sessions Judge,

recovered from the personal search of the accused and these were recovered from the register lying on the table placed in the office of Assistant Project Officer; or that DSP Phool Singh has his personal motive to falsely implicate the accused; or the arguments of learned counsel for the accused that accused was not apprehended from his office room; or in the departmental enquiry, he was exonerated, on these grounds, the accused cannot be discharged. At the stage of framing of the charge, the Court is only to see whether prima facie case, from the material collected in the report under Section 173 Cr.P.C., is made out against the accused or not. The version of the accused that he has been falsely implicated in this case is defence version, which is to be proved by the accused by leading defence evidence. It is a trap case. At this stage, the statement of the witnesses and investigation of the case cannot be discarded outrightly. Further, it is settled law that at the time of framing of the charge, the Court is not to weigh the evidence for the purpose of conviction. The finding of learned Addl. Sessions Judge, Bhiwani, in the impugned order that if this evidence remains unrebutted, it will not lead to conviction, is totally against the law. The charge can be framed even on strong suspicion. The Court cannot appreciate the evidence collected by the Investigating Officer minutely at this stage, which learned trial Court has done while passing the impugned order.

In view of the above discussion, I find that the impugned order dated 04.04.2016 passed by learned Addl. Sessions Judge (Vacation Judge), Bhiwani, is not as per law and the same is set aside.

Therefore, finding merit in the present revision petition, the same is allowed. The parties are directed to appear before learned trial

Court. Learn trial Court is directed to re-consider the case for the purpose of framing of charge and to see whether any charge is made out or not, independently, without being influenced by any finding given above by this Court.

September 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes