

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

**CRR No.728 of 2016 (O&M)
Date of Decision: October 26, 2018**

Sukhwinder Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Rai, Sr. Advocate with
Mr.Abhinav Sood and Ms.Amanpreet Kaur, Advocates
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner against respondent State of Punjab, challenging the order dated 19.01.2016 passed by learned Judge, Special Court, Sri Muktsar Sahib, vide which the charges were framed against the petitioner under Sections 7 and 13(2) of the Prevention of Corruption Act (for brevity 'PC Act').

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

From the record, I find that report under Section 173 Cr.P.C. was filed in case FIR No.8 dated 15.07.2008 under Sections 13(2) of the PC Act, registered at Police Station State Vigilance Bureau, Ferozepur. On

consideration of the documents, the Court framed the charges under

Sections 7 and 13(2) of the PC Act by holding that the petitioner being public servant demanded and accepted illegal gratification from complainant Binder Singh and have massed assets disproportionate to his income.

Learned counsel for the petitioner contended that Administrative Authority of the petitioner refused to grant the sanction to prosecute for the first time vide communication dated 12.03.2009. The challan was presented in the Court. The report under Section 173 Cr.p.C. does not at all indicate how exactly that delay occurred in the presentation of the challan. Learned counsel for the petitioner further submitted that the Court returned the challan vide order dated 15.10.2010 for further investigation but no further investigation was conducted. Then, as there was no sanction, therefore, again report under Section 173 Cr.P.C. was filed with a report of 'adam pata', which was again returned by the Court vide order dated 10.04.2015 with direction for further investigation. In the meantime, the petitioner retired from the service on 30.09.2015. The sanction which was applied to the Administrative Department was again declined for the second time vide communication dated 12.11.2015 but the report under Section 173 Cr.P.C. was filed on 08.01.2016.

Learned State counsel argued that as the petitioner has already retired on 30.09.2015, therefore, sanction was not required on 08.01.2016 i.e. when the challan was presented.

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

It is settled law that to prosecute public servant for the offence

under Section 19 of the PC Act is mandatory. In the present case, sanction has been refused when the petitioner, who was public servant, was in service and cancellation report was filed, which was returned by the Court for further investigation. Again, the cancellation report was filed, which was again returned by the lower Court for further investigation. Though, the petitioner retired on 30.09.2015, even then, sanction was again declined by the competent authority vide order dated 12.11.2015. It is not the intention of the law that if the sanction is declined by the competent authority to prosecute the public servant under the PC Act, then challan can be presented when the public servant retired from service. It would have been the different scenario, if the sanction applied was not considered by the competent authority and before passing the final order for grant/refusal of sanction, public servant retired and challan is presented but in the present case, for the first time, the competent authority declined permission on 12.03.2009 and cancellation report was filed two times and even, after the retirement of the present petitioner, the order refusing the sanction has been received.

As sanction has been declined by the competent authority to prosecute public servant on 12.03.2009 and no sanction was granted till 30.09.2015 when the public servant retired and even after that, sanction has not been granted by the competent authority, therefore, taking cognizance by the Court below, is not as per law.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in *Louis Peter Surin vs. State of Jharkhand, 2010*

(3) RCR (Criminal) 932, in which, corruption case was registered against a

competent authority twice and accused retired in the year 1997. In that case, charge-sheet was filed in the Court in the year 2001 as sanction of authority was not required after retirement of accused. It was held in that case in view of the peculiar facts, the initiation of proceedings against the appellant was not justified and proceedings were quashed. Learned counsel for the petitioner also placed reliance upon the judgment passed by the Hon'ble Apex Court in *Chittranjan Das vs. State of Orissa, 2011(3) RCR (Criminal) 512*, in which, prosecution not launched as sanction for prosecution was refused by the Government and public servant retired from the service and it is held that prosecution cannot be launched even after retirement if the sanction was refused by Government before retirement of the public servant. On the similar point, learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in *D.L.Rangotha vs. State of Madhya Pradesh, 2016(4) RCR (Criminal) 949*.

I have gone through all the above-cited judgments and the same fully apply to the facts of the present case.

In view of the above discussion and law laid by the Hon'ble Supreme Court, I find merit in the present revision petition and the same is allowed. The impugned order dated 19.01.2016 passed by learned Judge, Special Court, Sri Muktsar Sahib, is not as per law and the same is set aside and petitioner is discharged.

October 26, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes